

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Civil
Case No. 18/1698 SC/CIVL**

BETWEEN: Freddy Nalo
Claimant

AND: Union Electrique Company (UNELCO)
First Defendant

AND: Tony Alvos
Second Defendant

Coram: Justice Aru

**Counsel: Mr. E. Molbaleh for the Claimant
Mr. M. Hurley for the Defendant**

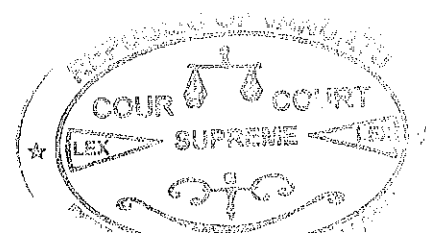
JUDGMENT

Introduction

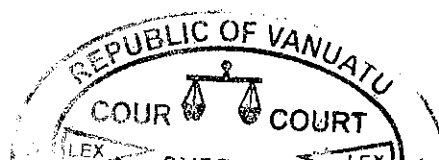
1. This is a dispute over a contract for services. Mr Nalo was retained as a contractor by Union Electrique Du Vanuatu Limited (UNELCO) to supervise the assembly of four (4) prefabricated houses for its use. The first house was to be located at Musina, Vanua Lava and the rest on Ambae . Each house to be located at three different places Saratamata, Longana and Lolowai. At the completion of all works Mr Nalo was paid in full the amounts agreed to. He now claims he was underpaid.

Background

2. The parties agree that in 2015 the second defendant, Mr Tony Alvos on behalf of the first defendant UNELCO retained Mr Freddy Nalo to supervise the assembly of a prefabricated oil mill and powerhouse at Musina, Vanua Lava (Vanua Lava Contract).
3. Mr Nalo travelled from Port Vila to Vanua Lava in 2015 to supervise the assembly of that prefabricated oil mill and powerhouse.
4. In respect of the Vanua Lava Contract the defendant paid:-
 - a) All travelling, accommodation and meals during the claimant's time on the island of Vanua Lava;



- b) All transportation of materials and personnel to the job site each day;
 - c) All local assistance (labourers) wages;
 - d) Other contractors to build the concrete foundational slaps to which the prefabricated structure was erected upon;
 - e) All tools ,plans and equipment needed to build the houses; and
 - f) All shortfall of materials.
5. Mr Nalo signed UNELCO's works order dated 25 September 2015 in respect of the Vanua Lava Contract at the Domestic airport in Port Vila on 26 September 2015 which was co-signed by Mr Alvos on behalf of UNELCO.
6. At the completion of the Vanua Lava Contract UNELCO paid Mr Nalo a first payment of VT 40,000 on 11 November 2015 and a second payment of VT 40, 000 on 11 December 2015.
7. Thereafter Mr Alvos on behalf of UNELCO retained the claimant to supervise the assembly of prefabricated houses on Ambae (Ambae Contract).
8. The claimant travelled from Port Vila to Ambae and supervised the assembly of houses on Ambae from on or about 13 December 2015.
9. In respect of the Ambae Contract the defendant paid:-
- a) All travelling, accommodation and meals during Mr Nalo's time on the island of Ambae;
 - b) All transportation of materials and personnel to the job site each day;
 - c) All local assistance (labourers) wages;
 - d) Other contractors to build the concrete foundational slabs to which the prefabricated structures were to be erected upon;
 - e) All additional and missing materials to complete the houses; and
 - f) All tools, equipment and plans needed to build the houses.
10. Ultimately, Mr Nalo supervised the assembly of three (3) prefabricated houses on Ambae being one at Saratamata, being the same size as the house at Musina, one house



at Longana about half the size of the house at Musina and one house at Lolowai which is also about half the size of the Musina house.

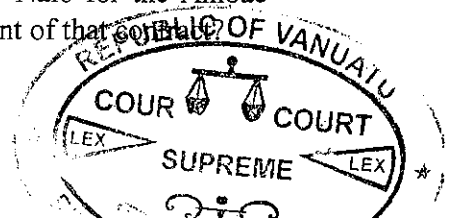
11. At the end of the Ambae Contract Mr Nalo complained to Mr Alvos that the sum of VT 160,000 was too low for his work.
12. The defendants took into account Mr Nalo's complaint and renegotiated payment for the Ambae Contract.
13. Mr Nalo signed an invoice addressed to UNELCO dated 11 May 2016 in respect of the Ambae Contract and UNELCO paid Mr Nalo the total sum of VT 390,000 to settle that invoice.

Summary of the pleadings

14. Essentially Mr Nalo feels that he was not treated fairly in that he was not allowed time to discuss the details of his contract. He says he was told at the airport when he was ready to board the flight not to worry but to do the work as his payment was already prepared for him. He says that it was done on purpose so that nothing is recorded in writing and that the actions of the defendants amounted to duress.
15. Mr Nalo says that he was under paid for the overall works under the Vanua Lava Contract and Ambae Contract. He claims that a valuation was done for the works carried out and says that he is entitled to VT15, 000,000. That is the relief he is seeking. In the alternative he claims that his wages for the period spent completing both contracts be paid. He also claims general damages in the sum of VT 1million with 10 % interest.
16. In their defence, the defendants deny the claim and in summary say that Mr Nalo was fully paid for the works on Vanua Lava and Ambae and there is nothing owing to Mr Nalo. They deny any duress on their part and say that Mr Nalo's valuation is irrelevant and unrelated to the amounts agreed with him for the works.
17. The defendants say that Mr Nalo is not entitled to the relief sought.

Issues

18. The parties agreed a number of issues for determination namely:-
 - 1) Was the sum of VT 80,000 paid by UNELCO to Mr Nalo for the Vanua Lava Contract in 2015 agreed to be in full and final settlement of that contract?
 - 2) If the answer to question 1 is no, what is the appropriate additional sum that the UNELCO should pay Mr Nalo for the Vanua Lava Contract?
 - 3) Was the sum of VT 390,000 paid by UNELCO to Mr Nalo for the Ambae Contract in 2016 agreed to be the in full and final payment of that contract?



- 4) If the answer to question 3 is no, what is the appropriate additional sum UNELCO should pay Mr Nalo for that contract is no the first defendant.

Discussion

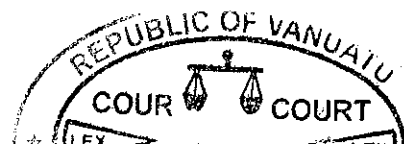
19. Mr Nalo was a former employee of Vanuatu Building Systems (VBS), a business specialising in prefabricated houses. They had supplied the materials for the Vanua Lava and Ambae building projects. Soon after the business ceased operations. When Mr Nalo was contacted by UNELCO, VBS was no longer in operation. Mr Nalo was retained by UNELCO under contract to supervise the work given his knowledge and experience in assembling prefabricated houses.

Valuation Report

20. The only point of contention between the parties is the total amount of money paid to Mr Nalo for the Vanua Lava and Ambae contracts. This arises as a direct result of the valuation report prepared by Mr Richard Rahuban. He said in his evidence that he is an engineering consultant and Mr Nalo contacted him and gave him the plans and photos of the completed prefabricated houses. Based on that he worked out the labour costs of Mr Nalo to be VT 16,158,400. Under cross examination he confirmed that there were no written instructions from Nalo to him concerning the valuation and there were also no written instructions from Mr Nalo's lawyers to him on the matter. Mr Rahuban confirmed that he was not informed of Mr Nalo's contract with UNELCO and was not given any of the documents relating to the work Mr Nalo did for UNELCO. Mr Rahuban was only aware of Mr Alvos's sworn statement when it was shown to him in Court and had not seen any of the attachments before.
21. The important aspect of the dispute which is Mr Nalo's retainer by UNELCO and payments made to him for his services were not factored into the valuation and were never considered by Mr Rahuban. That puts into question Mr Rahuban's evidence as it is of no assistance to this case and is rejected.

1) Was the sum of VT 80,000 paid by UNELCO to Mr Nalo for the Vanua Lava Contract in 2015 agreed to be in full and final settlement of that contract?

22. Mr Molbaleh submits that the monies received for the Vanua Lava Contract was too small. He submits that his client was tricked and made to sign under duress the first Works Order No 04/TOR/15- Housing Works Supervision, Oil Mill and Powerhouse Musina dated 26 September 2015. The evidence is that Mr Nalo was contacted at home and the details of the works to be carried were discussed with Mr Alvos at the offices of UNELCO at Tagabe. Mr Nalo admitted that having worked with VBS assembling prefabricated houses he had the experience required for the job. When discussing the terms of engagement, based on his experience he was free to decide whether or not to do the job. Mr Nalo was not an employee of UNELCO, employed through a recruitment process where he had to apply for the job. His engagement was a contract for his



services. Mr Nalo agrees that all materials, tools and equipment, transportation and allowances were paid for by UNELCO. He was unemployed at the time and there is no evidence of duress or any threats or pressure or undue influence on him to take up the task.

23. Mr Nalo says that he was already about to board the plane when he was recalled by Mr Alvos into the terminal and rushed to sign the works order. That is disputed by Mr Alvos who says that they were both at the airport together and Mr Nalo signed the works order in good time before boarding the plane. That confirmed the discussions they had earlier about the project. That evidence was not challenged under cross examination and no other evidence was called by Mr Nalo to support his assertion.

24. Mr Nalo agreed that VT 80,000 was the full and final figure for the Vanua Lava project as he signed the works agreement on 26 September 2015 for the supervision of works of the Oil Mill and power house at Musina. On 11 November 2015 he received the first instalment payment of VT 40,000 and the balance was paid on 11 December 2015. This was pleaded by the defendants at paragraph 3 of the defence and is part of the agreed facts.

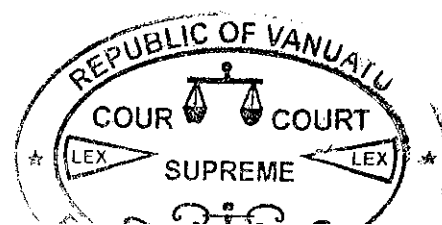
25. My answer to the first (1) issue is yes. The sum of VT 80,000 paid by UNELCO to Mr Nalo for the Vanua Lava Contract in 2015 was agreed to be in full and final settlement of that contract. I need not consider the second (2) issue. I turn next to the third (3) issue.

3) Was the sum of VT 390,000 paid by UNELCO to Mr Nalo for the Ambae Contract in 2016 agreed to be the in full and final payment of that contract ?

26. Mr Molbaleh submits that the contract for Ambae works was not signed and says the amount paid to Mr Nalo was only increased because he was given more work to do than at Vanua Lava.

27. That submission is rejected. The building at Saratamata was the same size as the Musina oil mill and power house. Although no works agreement was signed for Ambae, the parties agreed that the same amount of VT 80,000 would be applied as the total payment. The other two buildings at Longana and Lolowai were each half the size of the Musina building and was agreed that each would be VT 40,000.

28. As Mr Nalo was not happy with these figures and complained, UNELCO reconsidered their agreement and increased the amount to VT 390,000. For the Ambae project the first instalment was paid on 11 December 2015 and the balance on 11 May 2016. Mr Nalo accepted the payments in full and final settlement of the works on Ambae. This was confirmed by Mr Alvos in his evidence and remains unchallenged. It was also pleaded at paragraph 3 of the defence and agreed to by Mr Nalo in the agreed facts.



29. My answer to the third (3) issue is yes. The sum of VT 390,000 paid by UNELCO to Mr Nalo for the Ambae Contract in 2016 was agreed to be the in full and final payment of that contract. I need not consider fourth (4) issue.

General damages

30. Mr Nalo claims as a relief general damages in the sum of VT 1,000,000. It is not pleaded and not particularised as required by r 4.10 (2) of the Civil Procedure Rules. This is a mandatory requirement for any claimant seeking such relief. Mr Nalo has not complied therefore the claim for damages is rejected.

Conclusion

31. The claim is dismissed and the defendant is entitled to costs to be agreed or taxed failing agreement.

DATED at Port Vila this 7th day of October, 2020

BY THE COURT

D. Aru
Judge

