

**BETWEEN: Joe Henry**

**Claimant**

**AND: Johnny Malicum & Larisa Ioloukapalu**

**First Defendants**

**AND: Paradise Beach Sub-Division**

**Second Defendant**

**AND: Rainbow Estate Limited**

**Third Defendant**

**Judge :** *Justice Oliver.A.Saksak*

**Counsel:** *Mr Roger Tevi for the Claimant*  
*No appearances for the Defendants*

**Date:** *14<sup>th</sup> May 2021*

---

## JUDGMENT

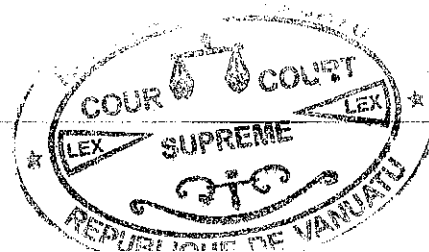
---

### **Background**

1. The claimant filed proceedings on 15<sup>th</sup> October 2020 seeking:
  - (a) A refund of VT 2.100.000, (b) damages for breach of agreement at VT 1.000.000,
  - (c) general damages at VT 648,200, (d) interest at 10% and (e) costs.
2. The claimant was duly served on the First and Second Defendants on 26<sup>th</sup> October 2020.
3. The defendants have not filed any defences and/or responses.

### **Default Judgment**

4. Default Judgment was entered on 8<sup>th</sup> February 2021 for the principal debt of VT 2.100.000 at 10% as interest.



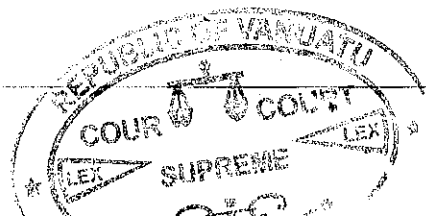
5. Damages was to be assessed pending further evidence and submissions.
6. On 28<sup>th</sup> April 2021 the claimant withdrew claim for damages for breach of agreement.
7. Directions were issued for the filing of submissions as to general damages. And interest on the general damages was reduced to 5% per annum when Counsel agreed to the reduction as proposed by the Court.

### **Submissions**

8. The claimant filed written submissions on 6<sup>th</sup> May 2021.
9. The defendants have still not filed any responses and/or submissions.

### **Discussion**

10. It is regrettable that the defendants despite service have not taken any steps to make known their positions in relation to the claim.
11. The Civil Procedure Rules provide clear time periods for the filing of claims, responses and defences. Where those time periods have lapsed after a claim has been filed, a claimant may proceed with his claim by seeking default judgment or summary judgment if a defence has been filed, but with no prospect of success.
12. The claimant has taken the default route because there has been no defence filed by the defendants.
13. The claimant has had judgment by default for the principal debt of VT 2.100.000. His claim for damages for breach of agreement has been withdrawn.
14. His only remaining claim was for general damages to be assessed by the Court.
15. He claims for the sum of VT 648,200 with interest and costs.
16. The claimant filed his evidence in support of his claim for general damages on 15 October 2020. He annexes receipts and invoices.



17. The claimant's evidence is unchallenged.

18. With the written submissions filed on 6<sup>th</sup> May 2021 the claimants set out in paragraph 4 a Table of Costs and expenses totalling VT648,200.

19. Those figures are not challenged by the defendants.

**Finding**

20. Accordingly, I find the appropriate amount of general damages to be awarded in favour of the claimant is VT 648,200.

21. Interest is added to the sum of VT 648,200 at 5% per annum from the date of filing of claim to the date of payment.

22. The claimant is entitled to his costs fixed at VT 100.000.

**DATED at Port Vila this 14<sup>th</sup> day of May 2021**

**BY THE COURT**

Oliver.A.Saksak

**Judge**

