



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

Civil Appeal
Case No. 20/3371 SC/CIVL

BETWEEN: Roy Samuel and Robin Samuel
Appellants

AND: Waltersai Hapsai
Respondent

Before: *Justice Oliver Saksak*
In Attendance: *Tom Joe Botleng for Appellant*
Respondent in person
Date of HEARING: *26th day of July, 2021*
Date of Judgment : *4th August, 2021*

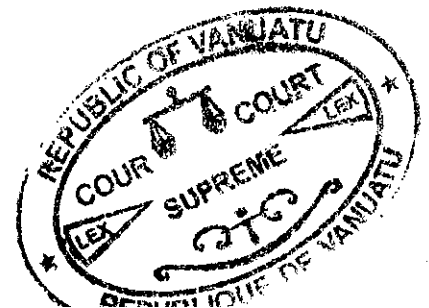
JUDGMENT

Introduction

1. This is a simple appeal against the summary judgment entered in favour of the respondent in the Magistrates Court on 21 October 2020.

The Judgment

2. The Magistrate entered judgment summarily against the appellants and ordered compensatory damage for libel and defamation in the sum of VT 700,000, punitive damages in the sum of VT 300,000, interest at 5% per annum and costs on the standard basis.



Facts

3. Earlier on 7 July 2020 Magistrate Waqanitoga issued direction orders –
 - (a) striking out the amendments reply and summary judgment application of the respondent,
 - (b) striking out the application for leave to amend reply and the application filed on 8 July 2020.
 - (c) directing the respondent to instruct a lawyer to represent him at further hearings and
 - (d) listing the matter for further hearing on 18 August 2020.
4. On 10 October 2020 another Magistrate took carriage of the case and made a handwritten note on the summary judgment as follows:-

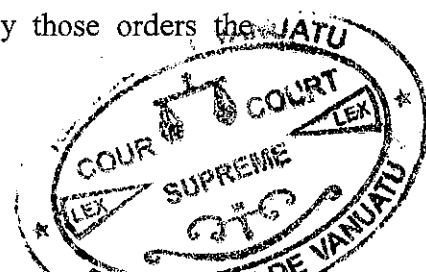
“Orders stayed 6/10/20. Allowing documents further consideration and determination. CT”

The appeal

5. The appellants say the Magistrate erred in doing so. They allege there was gross miscarriage of justice in that the appellants were not given an opportunity to be heard or to file any response to any application for such a stay.

Discussion

6. I have considered the submissions, oral and written by the appellants and the respondent.
7. I accept there was a miscarriage of justice on 21 October 2020 when the Magistrate issued a summary judgment. The correct date was 21 October 2020 and not 28 October 2020 as stated in the Notice of Appeal (paragraph c).
8. The problem with this case is not so much the summary judgment, rather it is the Direction Order dated 7 July 2020 issued on 9 July 2020. By those orders the




Magistrate had struck out all applications by the respondent including his application for summary judgment.

9. It was the respondent who was affected by the Orders but he has no evidence to show he appealed the Orders. He had no evidence to show he ever applied for any stay of the Orders.
10. The handwritten note by the Magistrate appeared to have been done without any application and without any appeal. Having to consider the applications again on 21 October 2020 some three months later, and to enter judgment against the appellants was an error.
11. Accordingly the appeal is allowed.
12. The Summary Judgment dated 21 October 2020 and the Direction Order dated 7th and 9th July 2020 are hereby vacated.
13. I remit the case back to the Magistrates Court for final directions regarding the filing of sworn statements by the appellants in support of their defence, and a proper trial hearing.
14. Each party bears its own costs of the appeal.

DATED at Port Vila this 4th day of August, 2021

BY THE COURT


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Oliver Saksak

Judge

