

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

Civil
Case No. 20/544 SC/CIVL

BETWEEN: Ali Kalnaran
Claimant

AND: Markson Silas
Defendant

Dates of Trial: 1 and 2 February 2022
Before: Justice V.M. Trief
In Attendance: Claimant – Mr J. Garae, via video link from Luganville Court House
Defendant – Mr T.J. Botleng
Date of Decision: 4 July 2022

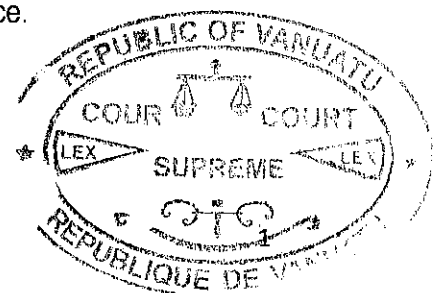
JUDGMENT

A. Introduction

1. This case concerns an alleged agreement between the Claimant Ali Kalnaran and his uncle the Defendant Markson Silas for the sale of motor vehicle parts. Mr Silas is alleged to have sold parts of the vehicle but never given the sales proceeds to Mr Kalnaran.

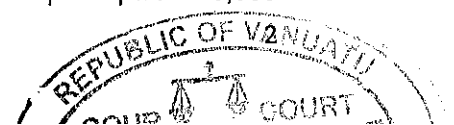
B. The Pleadings

2. Mr Kalnaran contends that in 2018, he and Mr Silas agreed that Mr Silas would sell off parts of Mr Kalnaran's vehicle and that Mr Silas did so in 2018 and 2019. However, despite request, he has never received the sales proceeds. He seeks judgment of VT1,090,000 for the value of the vehicle parts and costs.
3. Mr Silas denied that Mr Kalnaran was the registered proprietor of the vehicle. He denied making any verbal agreement with Mr Kalnaran and alleged that he sold parts of the vehicle with Mr Kalnaran's father's agreement to recover expenses that he incurred as a result of fixing the vehicle. He alleged that DISYC Auto Repair's quotation for Mr Kalnaran should not be relied on as it does not have a valid business licence.



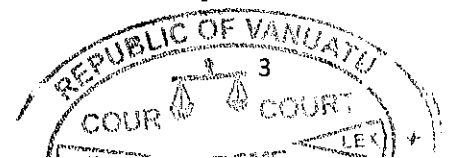
C. Evidence

4. Ali Kalnaran was the Claimant. He produced his sworn statements which became **Exhibits C1 and C2**. He deposed that in 2010, he purchased a vehicle registration number 153 at Luganville, Santo and shipped it to Malekula where his late father registered it in the father's name. In 2018, he and Mr Silas agreed that given the current value of the vehicle, Mr Silas would sell the parts of the vehicle as that would make more money than selling the vehicle. They agreed that Mr Silas would keep the sales proceeds in Mr Silas' bank account and give them to Mr Kalnaran when he returned from seasonal work overseas.
5. Mr Kalnaran deposed that he was in New Zealand for 7 months. They had regular Facebook chats and he was told that parts had been sold. He returned to Vanuatu in 2019 but was unable to reach Mr Silas by phone. He visited Mr Silas' garage and Mr Silas told him that he would check the amount in his bank account and advise him later. He did not. Subsequently, he ignored Mr Kalnaran's phone calls.
6. On 24 September 2019, his brother Eli Kalnaran and Dieno Kalnpel of DIYSC Auto Repair went to Mr Silas' garage, inspected the truck and made a quotation for the truck parts totaling VT1,090,000 [**"Annexure AK1" of Exhibit C1**].
7. In cross-examination, Mr Kalnaran stated that Eli Kalnaran was present with him at Mr Silas' garage and witnessed his and Mr Silas' verbal agreement in 2018. He agreed he had not stated the exact date and time in his evidence as to when he and Mr Silas made their agreement. When asked what month and dates in 2018 the parts were sold, he answered, "Between 2018 and 2019..." He agreed no specific dates in 2018 or 2019 were set out in the Claim. He stated that Mr Silas did not tell him who he sold the parts to, but that he sold parts of the vehicle. He strongly denied that Mr Silas spoke with Mr Kalnaran's father about problems with the truck. He maintained that he had an agreement with Mr Silas in 2018, that Mr Silas then sold vehicle parts but did not give him the money. He stated that only Eli Kalnaran went to see DIYSC Auto Repair. He did not agree that DIYSC Auto Repair's quotation was false.
8. Mr Kalnaran agreed that he had not produced into evidence any receipt to show that the truck was his nor shown any such receipt to his brother Eli. He agreed that his father registered the truck at Malekula in his father's name. He readily agreed he had not produced a document from the Malampa Provincial Government to show that. He also agreed he had not applied to be appointed administrator of their father's estate. He agreed he had not produced into evidence any of his Facebook chats with Mr Silas. He stated that Mr Silas did not tell him the amount of money received from sales of vehicle parts and kept in Mr Silas' bank account.
9. Mr Kalnaran disagreed that there was any agreement with his late father that Mr Silas would buy vehicle parts, pay Johnnie Joseph VT50,000 and remove the truck from his premises at Tautu village and then Mr Silas would buy all parts to repair the vehicle. He also did not agree that Mr Silas had paid VT50,000 to Johnnie Joseph or paid VT5,000

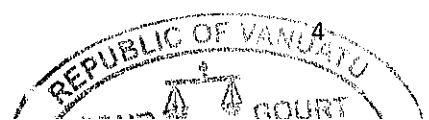


to Mr Kalnpel for towing services. He did not agree that Mr Silas bought a radiator for the truck. He did not agree that his father failed to reimburse Mr Silas' expenses. He did not agree that Mr Kalnpel was forced to make his quotation without first seeing the truck.

10. Eli Kalnaran is the Claimant's brother. His sworn statement became **Exhibit C3**. He deposed that Mr Kalnaran bought the vehicle in Luganville and shipped it to Malekula for their late father to use. Their father registered it in his (father's) name. He confirmed being with Mr Kalnaran and Mr Silas in 2018 when they agreed about the sale of the vehicle parts. In September 2019, at Mr Kalnaran's request, he went to see Dieno Kalnpel the owner of DIYSC Auto Repair and took him to Mr Silas' garage where he inspected the truck and then Mr Kalnpel prepared the quotation attached as **Annexure "AK1" of Exhibit C1**.
11. In cross-examination, he agreed he had not attached to his statement a document showing the registration of the truck in his father's name. He agreed he had not stated in his evidence the place or the exact date and month in 2018 that the agreement was made; he had only stated the year. He stated that it was a verbal agreement and he was present as he drove Mr Kalnaran to see Mr Silas. He disagreed that Mr Silas had an agreement with their father to buy spare parts and repair the truck and to pay VT50,000 to Johnnie Joseph. He did not agree that he forced Dieno Kalnpel to make his quotation without inspecting the truck.
12. Mr Eli Kalnaran clarified in re-examination that he had answered in the negative to a question about there being no agreement with Mr Silas because he was asked about what date and month the agreement was made. He stated that he was present when they made the agreement but he did not know the date and month, only that it was in 2018 therefore he answered, "No".
13. Markson Silas was the Defendant. His affirmed statement was produced into evidence as **Exhibit D1**. He deposed that he did not make any verbal agreement with Mr Kalnaran. He stated that his verbal agreement was with Mr Kalnaran's late father to buy spare parts for the truck, repair the truck, pay VT50,000 to Johnnie Joseph for the work done on the truck's gear box before he could remove the truck from Mr Joseph's premises at Tautu village and that Mr Kalnaran's father would pay back all his expenses.
14. On 5 June 2011, he paid VT50,000 to Mr Joseph and VT5,000 to Dieno Kalnpel to tow the truck from Mr Joseph's premises to his garage at Litzlitz [**Annexures SM1 and SM2" of Exhibit D1**]. On 8 August 2011, he paid VT21,000 for a head cylinder gasket and timing belt for the truck and on 9 September 2011, VT15,000 for a radiator [**Annexures SM3 and SM4" of Exhibit D1**]. On 4 October 2011, he issued an invoice to Mr Kalnaran's father for VT146,000 (for the parts plus VT110,000 labour) but was never paid [**Annexure SM5" of Exhibit D1**].
15. He stated that he had no choice but to sell some parts of the truck to recoup his expenses. On 24 April 2016, he sold the gear box to Diego Wersets for VT35,000 and the engine to Philip Jimmy for VT90,000 [receipts attached as **Annexures SM6" of Exhibit D1**].



16. When Mr Silas received the solicitor's letter of demand, he responded by letter dated 8 November 2019 [**Annexure SM8** of **Exhibit D1**]. In that letter, he stated that he began selling truck parts on 24 April 2016 as Mr Kalnaran's father had passed away and he had not heard anything about the truck from Mr Kalnaran or his brothers. So he sold truck parts to recoup the monies that he had spent on the truck (total VT201,000 – VT50,000 paid to Johnnie Joseph's garage, VT5,000 paid for towing from Tautu to Litzlitz and VT146,000 purchase of parts plus labour).
17. In cross-examination, Mr Silas confirmed that he is Mr Kalnaran's uncle. He stated that after he and Mr Kalnaran's father spoke in 2011, he towed the truck to his garage where it has remained until today. He denied ever seeing Mr Kalnaran in 2018. He stated that he never saw Mr Kalnaran and Mr Eli Kalnaran at his house. He denied telling Mr Kalnaran that it would be better to sell the vehicle parts than the truck as a whole. He denied proposing to Mr Kalnaran that he would sell truck parts. He denied telling him that he would sell the truck parts and put the money in his bank account. He denied that in 2019, Mr Kalnaran and Mr Eli Kalnaran came to his garage to inspect the truck; he said that as owner of the garage, that he would know and that it was not possible they came by when he was out as he has never missed a day of work and works from Monday to Friday.
18. Mr Silas agreed that nowhere in his agreement with Mr Kalnaran's father was there agreement that he sell off parts of the truck if the father failed to pay his expenses. He agreed he started to sell the parts after Mr Kalnaran's father's death. He stated that he had only sold some parts to cover his expenses; many parts of the truck remain.
19. Mr Silas confirmed selling the engine, the gear box, the truck springs and the 'full set clutch'. He denied selling other parts, saying the tyres had rotted but remained with the truck, that the radiator was bad and he had bought a new one for VT15,000 and the driving shaft remained but he had loosened it. When asked if he agreed that he had sold many parts of the truck, he said, "Smol" ('A little').
20. In re-examination, Mr Silas clarified that he answered, "Smol" because he was referring to the small number of parts in his receipts. When he towed the truck to his garage, it did not have anything inside - only the engine and gearbox. He had paid Johnnie Joseph's garage and then paid for parts with his own money and put them in the truck. He had only sold off the parts that he had paid for following his agreement with Sethy Kalnaran, Mr Kalnaran's father.
21. Dieno Kalnpel is the owner of DIYSC Auto Repair. His affirmed statement was produced as **Exhibit D4**. He deposed that on 5 June 2022, he was paid VT5,000 to tow the subject vehicle from Johnnie Joseph's premises at Tautu village to Mr Silas' garage at Litzlitz. Further, that he produced his quotation for Mr Kalnaran without first checking those parts of the engine.
22. In cross-examination, Mr Kalnpel stated that in 2019, Mr Eli Kalnaran came to see him at DIYSC and asked him to make an invoice for the truck parts. He told Eli he could not do that so Eli himself listed out parts in Mr Kalnpel's invoice book and the two of them made

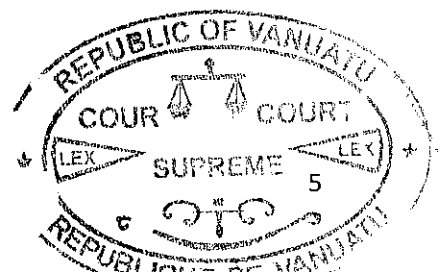


up the price for each part. He denied that they made the quotation after inspecting the truck. He confirmed he was not forced or threatened into making the quotation, and that he voluntarily affixed the DIYSC stamp on the document. He stated that the total on the quotation was VT1,090,000 but that the pricing was simply guessed at by him and Eli. He stated that he has a business licence.

23. Mr Kalnpei stated in re-examination that he and Eli guessed the prices of the truck parts as the truck was elsewhere (at Mr Silas' garage) whilst he and Eli were at DIYSC where they made the quotation.
24. Colet Silas is Mr Silas' wife. Her affirmed statement, produced by consent, became **Exhibit D2**. She is married to Mr Silas. She deposed that in 2011, Mr Kalnaran's father phoned to speak with her husband. The two of them agreed that Mr Silas would repair the vehicle and subsequently, she witnessed Mr Silas paying VT50,000 to Johnnie Joseph. She also observed Mr Silas paying for parts for the vehicle.
25. She was not cross-examined.
26. Herold Joseph is Johnnie Joseph's son. His affirmed statement, produced by consent, became **Exhibit D3**. He deposed that on 5 June 2022, he witnessed Mr Silas paying VT50,000 to his late father for work done on the vehicle engine.
27. He was not cross-examined.

D. Findings

28. This case is wholly dependent on my views as to the credibility and accuracy of the witnesses. Witnesses' demeanour was a small part of my assessment of the witnesses. I looked more for consistency within that witness' account; consistency with other witnesses' accounts; and considered the inherent likelihood, or not, of the witness' account.
29. Mr Kalnaran was cross-examined. I was able to make an assessment of his veracity and accuracy as a witness. He answered questions without hesitation. He stated in cross-examination that only his brother Eli Kalnaran went to see Mr Kalnpei for the quotation for the truck parts. He was not asked in cross-examination or re-examination to explain that inconsistency with his evidence-in-chief. I accepted that Mr Kalnaran was a witness of truth and accepted his evidence.
30. Mr Eli Kalnaran too was cross-examined. He denied all matters put to him in support of Mr Silas' case. It was unhelpful that he was not cross-examined in more detail as to his meeting with Mr Kalnpei and the circumstances in which the DIYSC quotation was produced. I accepted Mr Eli Kalnaran's evidence where it was consistent with another witness' evidence.
31. I deal with Mr Silas' evidence below.



32. The evidence of Mrs Silas and Mr Joseph did not assist me.
33. The evidence of both Mr Kalnaran and Mr Eli Kalnaran was that Mr Kalnaran bought the truck in Luganville and shipped it to Malekula for their father to use. Their father registered it there in the father's name. Mr Kalnaran readily agreed that he had not produced into evidence nor shown his brother Eli a receipt to show that the truck was his. He also agreed he had not produced confirmation from the Malampa Provincial Government of the truck's registration. However, there was no evidence to the contrary that Mr Kalnaran bought and owned the truck. I find on the balance of probabilities, or that it is more likely than not, that the subject vehicle is owned by Mr Kalnaran. The aspect of the Defence denying Mr Kalnaran's ownership of the vehicle fails.
34. Mr Silas alleged in his Defence that he sold truck parts with Mr Kalnaran's father's agreement to recover his expenses incurred as a result of fixing the vehicle. However, Mr Silas accepted in cross-examination that nowhere in his agreement with Mr Kalnaran's father was there agreement that he sell off parts of the truck if the father failed to pay his expenses.
35. In the circumstances, the aspect of the Defence that Mr Silas sold the vehicle parts with Mr Kalnaran's father's agreement fails.
36. The final aspect of the Defence was that DISYC Auto Repair's quotation should not be relied on as DISYC does not have a valid business licence. The owner Mr Kalnpel deposed that he has a business licence. There was no evidence to the contrary. Mr Kalnpel was an independent witness and no motive was shown why he would fabricate his evidence. I accept that that Mr Kalnpel was a witness of truth and accepted his evidence. That aspect of the Defence also fails.
37. By his own evidence, Mr Silas began to sell parts of the truck in 2016. He explained that he did so to recoup his expenses because Mr Kalnaran's father had died and he had not heard anything about the truck from Mr Kalnaran and his brothers.
38. He confirmed that he sold the vehicle parts even though there was no agreement from Mr Kalnaran's father for him to do so.
39. As to the parties' agreement allegedly made in 2018, Mr Kalnaran deposed that he was told by Mr Silas that selling the truck parts would make more money than selling the vehicle as a whole. Mr Silas flatly denied making any agreement with Mr Kalnaran in 2018 however his actions to sell the truck parts are consistent with Mr Kalnaran's account. I do not believe Mr Silas' denials. I find therefore that there was agreement that Mr Silas would sell truck parts and remit the sale proceeds to Mr Kalnaran.
40. Mr Silas's evidence was that when he towed the truck to his garage, it did not have anything inside - only the engine and gearbox. He deposed that he had bought a head cylinder gasket and timing belt for the truck and a radiator, and only sold off the parts that he had paid for. However, the two receipts he produced into evidence [**Annexures "SM6" to Exhibit D1**] show that he sold the engine and gearbox which by his own admission,

were already in the truck when it was towed to his garage. He sold the engine for VT90,000 and the gear box for VT35,000.

41. There is no evidence that Mr Silas bought a new engine or gearbox for the truck at any stage.
42. Mr Silas also confirmed selling the truck springs and the 'full set clutch'.
43. It is accepted that Mr Silas has never remitted any funds to Mr Kalnaran. I find therefore that the agreement was breached.
44. Mr Kalnaran relied on DIYSC's quotation as evidence that the value of the truck parts sold was VT1,090,000. I have accepted Mr Kalnpel's evidence which included that he and Mr Eli Kalnaran produced the quotation without actually inspecting the truck and they made up the figures on the quotation. I reject Mr Eli Kalnaran's evidence that he took Mr Kalnpel to Mr Silas' garage where the truck was inspected before the DIYSC quotation was made. Accordingly, I cannot rely on the quotation as a true assessment of the value of the truck parts listed in there.
45. In the absence of evidence as to the value of the truck springs and 'full set clutch' that were sold, I will allow VT100,000 for those.
46. The Claim has been proved. Judgment will be entered for the Claimant in the sum of VT225,000 being the proceeds of the sale of the engine, gearbox, truck springs and 'full set clutch' but which were not remitted to Mr Kalnaran.

E. Result and Decision

47. Judgment is entered for the Claimant for VT225,000 which the Defendant is to pay to the Claimant **by 4pm on 1 August 2022**.
48. Costs must follow the event. The Defendant is to pay the Claimant's costs as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

F. Enforcement

49. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, I now schedule a Conference **at 8am on 4 August 2022** at the Supreme Court Registry, to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt. For that purpose, this judgment must be personally served on the Defendant.

DATED at Port Vila this 4th day of July 2022
BY THE COURT


Justice Viran Molisa Trief

