

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

**Civil
Case No. 20/1547 SC/CIVL**

BETWEEN: ZACHIAS TOSUS
Claimant

AND: SOCIETE DE SERVICE PETROLIERS
Defendant

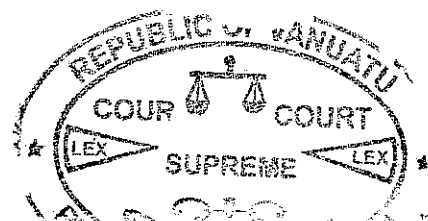
Before: *Justice Oliver A. Saksak*

Counsel: *Mr James Tari for the Claimant
Mr Abel Kalmet for the Defendant*

Date of Hearing: *21 July 2023*

RESERVED JUDGMENT

1. This is a claim for damages for loss of his vehicle and loss of earnings.
2. The Claimant alleges that he brought an empty drum labelled "Mazout" to the defendant's employees for refilling the drum with Mazout. They filled it up with Benzine instead. As a result, he filled his vehicle up with benzine which damaged and destroyed the engine of his vehicle. He claims he has lost his vehicle, its use and earnings of the vehicle.
3. The defendant denied liability. They pleaded in their defence that the drum brought in by the claimant was labelled "Benzine" which they filled up with Benzine fuel.
4. The claimant gave evidence in support of his claim. He did not call any independent witnesses to support and confirm his evidence. He had the duty of proof on the balance of probabilities to prove the defendant's agents were negligent.
5. His claim is dismissed as he has not made the threshold requirement. His evidence lacked credibility. He said the drum he brought to the fuel station was labelled "Mazout". That was inconsistent with the drum that was retrieved from his home at Fanafo after he had complained to the defendant. That was the first untruth in his evidence. The defendant's evidence shows he brought a drum labelled Benzine with Simeon Aru's name on it.



6. Second, he was wrong about the date which he said was on 17 May 2018. The summary of sales produced by the defendant in evidence shows there was no sale of Mazout to Simeon Aru on 17 May 2018. The summary shows there were 2 cash payments made by Simeon Aru on 17 May 2018.
7. There was an issue of Tax Invoice No. 502549 for a drum of Mazout on 9 May 2018 to Simeon Aru. If this was the fuel the claimant was to have filled up for his vehicle, then on 17 May 2018 he brought the wrong labelled drum "Benzine" to be filled up. And he was not present to tell the defendant's agents he wanted Mazout, not Benzine.
8. Therefore, the drum of fuel he took to Fanafo was a Benzine drum with Benzine in it. The drum was clearly labelled Benzine. It was the claimant who brought the drum to the station for refuelling and it was he who brought it up to his home, and it was him who refilled his own vehicle with Benzine. I have no doubt he read the label which he lied about. I have no doubt that when he pumped out the benzine to refill his vehicle, he smelt it to be different from Mazout. Despite his knowledge it was the wrong fuel, he refilled his vehicle with it. He said in evidence it was his son who did it but he did not call his son to support and confirm his evidence.
9. The defendant and his agents were therefore not negligent. They only performed their duties of refuelling a drum which was clearly labelled "Benzine". I accept the evidence of the defendants.
10. The claimant's claim is baseless and untenable. It is therefore dismissed. In the circumstances there will be no order as to costs. Each party bears its own costs.

DATED at Port Vila this 18th day of December, 2023.

BY THE COURT

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Oliver A. Saksak
Judge

