

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

Civil  
Case No. 21/680 SC/CIVL

**BETWEEN:** National Bank of Vanuatu Limited  
Applicant

**AND:** Simeon Malachi Athy  
Respondent

*Date:* 28 March 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Applicant – Mr G. Blake  
Respondent – Mr T.J. Botfeng

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**DECISION AS TO APPLICATION TO HAVE CLAIMANT'S COUNSEL AND FIRM BE  
EXCUSED FROM REPRESENTING THE CLAIMANT**

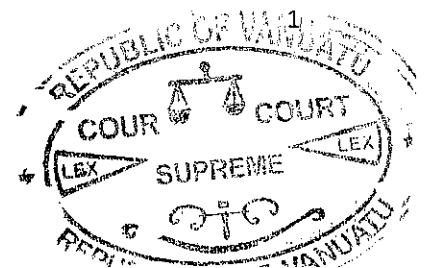
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A. Introduction

1. This was an application by the Respondent Simeon Malachi Athy for an order that the Claimant National Bank of Vanuatu Limited's ('NBV') counsel Mr Blake and his law firm Ridgway Blake Lawyers ('RBL') cease acting for the NBV in this matter and that Mr Blake be referred to the Law Council for possible disciplinary action (the 'Application').

B. Background

2. This matter was commenced by NBV's Application filed on 10 March 2021 pursuant to s. 59 of the *Land Leases Act* for enforcement of mortgage as a result of Mr Athy defaulting in repaying monies owed and secured by registered mortgages.
3. Mr Athy's Defence and Counter Claim filed on 19 July 2021 alleges negligence, breach of statutory duty, misrepresentation, unconscionable conduct and undue influence by NBV in granting Mr Athy additional loan increases secured by variations to the mortgages.
4. Mr Athy's Counter Claim is opposed by way of the Defence to Counter Claim filed on 9 December 2021.



5. On 20 July 2022, Mr Athy filed the Application seeking an order that Mr Blake and RBL cease acting for the NBV.

C. Grounds of Application and Submissions

6. The grounds of the Application are as follows:

- a. That Mr Blake and RBL have an ulterior motive loaded with bad faith and oppressive intention in prosecuting the claim (presumably the Applicant's Application filed on 10 March 2021) as Mr Blake acted for Wilco Hardware Limited ('Wilco') in Civil Case No. 244 of 2011 ('CC 11/244') against Mr Athy and used their 'inside knowledge' of Mr Athy's indebtedness to NBV to obtain orders against Mr Athy rather than pursuing enforcement;
- b. That Mr Blake and RBL had inside knowledge of Mr Athy's dealing with NBV giving rise to an 'unfair advantage' to prosecute Mr Athy in CC 11/244 and Mr Blake took advantage of the inside knowledge to gain financially;
- c. In Mr Blake's letter dated 9 December 2021, he questioned Mr Athy's capability in management and doubted whether Mr Athy was fit and proper to be appointed as Governor of the Reserve Bank of Vanuatu ("RBV") in the first place. However, Mr Athy's official position has no relevance to his debt with NBV yet Mr Blake saw fit to raise this unrelated matter to the issue at hand thus demonstrating Mr Blake's ulterior motive, and bad and oppressive intent in prosecuting this matter; and
- d. Mr Blake and RBL's action in CC 11/244 along with his continued acting in the present matter will result in diminished public confidence in the administration of justice and so the Court must guard against this by ordering that Mr Blake and RBL cease to act in this matter and refer them to the Law Council.

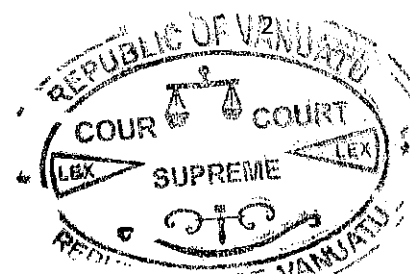
7. The Sworn statement of Mr Athy was filed in support on 3 February 2022. Mr Athy stated as follows in paras 41-43 of that sworn statement:

41. *The Court will note that paragraphs 3 and 4 of the Court Minute [dated 7 December 2012 in Civil Case No. 244 of 2011, Wilco Hardware v Athy per Spear J] states:*

3. *There will be a redirection order that any severance allowance or other payment due to Simeon Athy by the Republic be paid first and foremost as to VT2,365,050 to Ridgway Blake Lawyers account Wilco Hardware Holding Limited and that shall be a first charge on any funds owing by the Republic to Simeon Athy.*

4. *This enforcement conference will reconvene at 8.30am on 7th February 2013 in the event that the judgment debt has not been settled in full by this redirection order. In that event, and having regard to Ms La'au's indication as to her instructions, it can be expected that there will then be an order for the seizure and sale of the Travellers' Motel and possible Mr Athy's home in Bellevue as well.*

42. *This Honorable Court will note that in 2012, Ridgway Blake Lawyers were acting for Wilco Hardware but was insisting that any government debt owed to me must be first charged in favour of Wilco Hardware. Further, Ridgway Blake Lawyers insisted that order be made to seize and sell my Travellers' Motel (11/OX21/061) and Bellevue property (12/0634/036) so as to pay off my outstanding accounts with Wilco Hardware Limited.*



43. *That I confirm Wilco Hardware Holding Ltd had no registered mortgage over my Travellers' Motel property lease title 11/OX21/061 and Bellevue property lease title 12/0634/036. The fact that Ridgway Blake Lawyers went that far to have court orders to that effect amount to oppressive manner in which they conducted their case against me. National Bank of Vanuatu did not file a claim against me in 2012 seeking enforcement of its mortgage over lease titles 11/OX21/061 and 12/0634/036 and yet Ridgway Blake Lawyers was adamant to have my lease titles sold in 2012.*

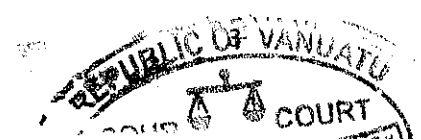
8. The Application was opposed. Mr Blake rejected absolutely any suggestion of professional misconduct by him and RBL. He submitted that the power to garnishee debts owed to a judgment debtor is provided for in the Enforcement Procedures in the *Civil Procedure Rules*. It is difficult to see what unprofessional conduct is involved in pursuing such lawful enforcement processes. He submitted that with all due respect, no ulterior motive can be attached to a lawyer acting for a client who is owed money, especially when the debt was not denied but had nevertheless not been paid. Further, RBL had a duty to search the leases register and inform the court of the existence of any registered mortgages on any properties they were seeking to enforce against, so that the interests of that third party may be taken account of. They did so. Justice Spear opted for garnisheeing the debt rather than enforcing against the leasehold titles. He stated that when RBL acted in CC 11/244, it was not acting for the NBV in respect to any enforcement processes in relation to mortgages granted by Mr Athy. In fact, such court enforcement processes were not pursued by the NBV until the present proceedings were filed 9 years later, in 2021.
9. He submitted that there was simply no abuse of the court's processes involved in him acting in two different sets of proceedings against Mr Athy which are entirely unrelated except in the sense that Mr Athy owed money in each case, and which have been filed 10 years apart.
10. Mr Blake also submitted that the 9 December 2021 letter complained of clearly states it was written to Respondent's counsel "without prejudice" and therefore it is not admissible in evidence. However, as an observation, and having regard to the *Chamberlain* case cited<sup>1</sup>, he submitted that it was with respect, entirely proper for him to draw attention to the perceived risks that Mr Athy is running by continuing to maintain the content and nature of his Defence and Counter Claim and the potential conflict of interest that arises between his role as Governor of the regulator of an institution such as the NBV and his personal interest in seeking to absolve himself from liability for a loan which he readily admits having obtained.

D. Discussion

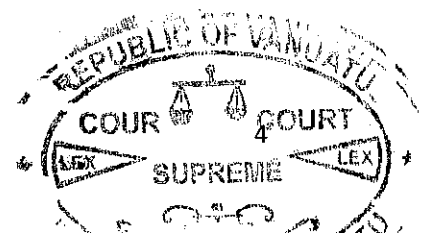
11. The complaint against Mr Blake and RBL representing NBV in the present matter can be summarised as follows:
  - a) That in CC 11/244 in 2012, RBL acted unethically when representing Wilco in its debt recovery claim against Mr Athy for VT2,365,050 unpaid accounts for housing materials for the construction of Mr Athy's apartment unit known as Travellers' Motel at his property at Nambatri, Port Vila; and

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<sup>1</sup> Chamberlain v Law Society of the Australia Capital Territory (1994) 11854, per Black CJ, Lockhart, Whitlam and Beazley JJ.



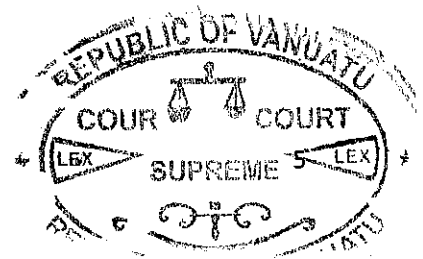
- b) RBL's without prejudice letter of 9 December 2021 addressed to Mr Athy's lawyer reflected a clear breach of professional ethics and conduct.
12. Mr Athy in para. 41 of his sworn statement set out paras 3 and 4 of Justice Spear's Minute dated 7 December 2012 in CC 11/244 but omitted para. 5 in which the judge set out exactly where the information as to Mr Athy's indebtedness to NBV had come from:
5. It is acknowledged that details of the Travellers' Motel property and the mortgage attaching to it is explained in the memorandum of counsel dated 6<sup>th</sup> December 2012. Furthermore, the current amount of the Judgment debt as at today is VT2,365,050 as per the statement presented by Ms La'au with the addition of VT5,000 for today's conference.  
*(my underlining)*
13. The Memorandum of Counsel dated 6 December 2012 in CC 11/244 by Ms Jennifer La'au (solicitor employed by RBL), counsel for Wilco, stated as follows:
1. *We appeared before the Court in this matter on 30 November 2012.*
  2. *The Enforcement Debtor appeared for himself.*
  3. Attached Leasehold title Search conducted at the Lands Records Office over title 11/OX21/061 (Traveller's Motel) and copies of a recent registered Variation of Mortgage dated 21 August 2012, Certificate of Name and Transfer of Lease.
  4. The Enforcement Debtor refused and/or failed to produce the leasehold title reference to his home at Belle View, Port Vila.  
*(my underlining)*
14. As set out in para. 5 of the Court's Minute dated 7 December 2012, the information as to Mr Athy's indebtedness to NBV was obtained through a leasehold titles search of the Land Leases Register. RBL conducted the search and forwarded the information to the Court in the discharge of its duty as counsel. Mr Botleng's submissions that Mr Blake and RBL had inside knowledge of that indebtedness to obtain orders against Mr Athy are utterly devoid of merit.
15. It was also alleged in the Application that orders were obtained against Mr Athy rather than pursuing enforcement. Justice Spear recorded in para. 4 of the Court's Minute dated 7 December 2012 that counsel and the parties were there for an enforcement conference. Accordingly, the submission on Mr Athy's behalf that enforcement was not pursued is also utterly devoid of merit and flies in the face of the Respondent's own evidence.
16. With the leasehold titles search information before him and considering that information, Justice Spear opted for garnisheeing the debt rather than enforcing against the leasehold titles. Garnisheeing a debt by making a redirection order is part of the enforcement procedures in the *Civil Procedure Rules*. Mr Botleng's submission that there was bad faith or oppressive intention involved in pursuing such lawful enforcement processes is devoid of merit. Counsel should be checking whether an application being pursued has a legal basis and is substantiated by the evidence rather than making such unsubstantiated application to the Court.



17. Further, no ulterior motive can be attached to a lawyer acting for a client who is owed money, especially when the debt was not denied but had nevertheless not been paid.
18. Mr Botleng's submissions as to unfair advantage and that Mr Blake took advantage of inside knowledge to gain financially are roundly rejected.
19. It is common ground that when RBL acted for Wilco in CC 11/244, the NBV had not commenced any enforcement process in relation to the mortgages granted by Mr Athy. In fact, NBV did not commence such court enforcement processes until the present proceedings which were filed in 2021.
20. I agree with Mr Blake's submission that there was simply no abuse of the court's process in him acting in two different sets of proceedings against Mr Athy which are entirely unrelated except in the sense that Mr Athy owed money in each case, and which have been filed 10 years apart.
21. In addition, there is simply no evidence of unprofessional conduct by Mr Blake and RBL in pursuing lawful enforcement process to recover a debt admittedly owed by Mr Athy to a client of RBL. The debt owed to Wilco was paid in accordance with the Court's Orders in CC 11/244. That had nothing to do with NBV.
22. Mr Botleng pointed to Mr Blake's letter dated 9 December 2021 questioning Mr Athy's capability and fitness to be appointed as Governor of the RBV as demonstrating Mr Blake's ulterior motive and oppressive intent in prosecuting this matter as Mr Athy's position had no relevance to his debt. However, that letter was written to Mr Athy's then counsel and clearly stated that it was written "without prejudice". Accordingly, it cannot be disclosed unless the NBV agree and it is not admissible in evidence.
23. That said, Mr Blake correctly pointed out as an observation that by maintaining the content and nature of his Defence and Counter Claim, Mr Athy is running the risk of a potential conflict of interest that arises between his role as Governor of the regulator of the NBV and his personal interest in seeking to absolve himself from liability for a loan which he readily admits that he obtained. Respondent's counsel needs to advise his client as to this.
24. In the circumstances, Mr Blake's letter dated 9 December 2021 does not show any ulterior motive and oppressive intent on Mr Blake's part.
25. For the reasons given, none of the grounds of the Application are made out. There is no basis to order that Mr Blake and RBL cease acting for the NBV in this proceeding. The Application must be declined and dismissed.

E. Result and Decision

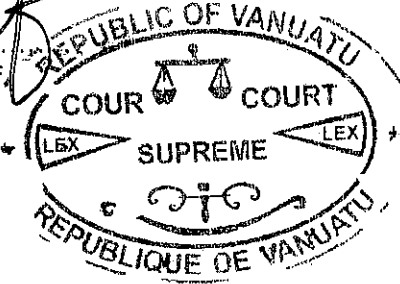
26. The Respondent's Application to have Claimant's Counsel and Firm be Excused from Representing the Claimant is **declined and dismissed**.



27. The Respondent is to pay the Applicant's costs of the Application as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

**DATED at Port Vila this 28<sup>th</sup> day of March 2023  
BY THE COURT**

*VM Trief*  
Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, and "SUPREME" is centered below it. Two small triangles containing the word "LEX" are located on the left and right sides of the seal.