

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

Civil
Case No.24/3034 SC/CIVL

BETWEEN: Global Organic Products Distributor
Claimant

AND: Yvano Lorenzo Maraschio and Josian Maraschio
First Defendants

AND: Ian Vuti
Second Defendant

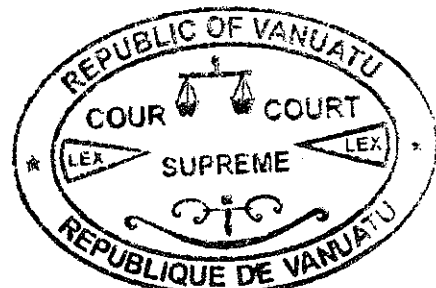
Before: Hon. Justice EP Goldsbrough

In Attendance: Mr Rollanson Willie for the Claimant
Ms Viska Muluane for the Defendants

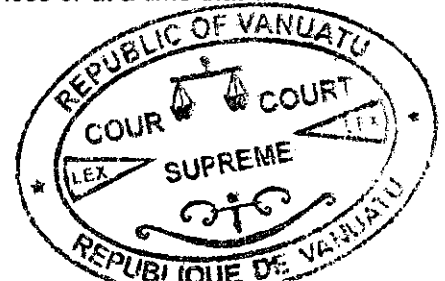
**Date of
Discontinuance:** 6th December 2024
**Date of Costs
decision:** 15th July 2025

DECISION on COSTS

1. On 24 September 2024, a claim was filed, brought in the name of Global Organic Products Distributor Limited as the claimant. Before filing any proof of service, an *ex parte* application for urgent relief was heard and dismissed on 27 September 2024. By 8 November 2024, an application had been filed to amend the claim. The proposed amendment sought to bring the proceedings in the name of an individual, rather than the original company. Given the nature of the claim, the Court had indicated to counsel for the original claimant that his prospects of success, as initially presented, were doubtful, and the source of the instructions was questioned.
2. A hearing was scheduled for a further application for relief *inter partes* for 5 December 2024. By 27 November 2024, a response to the urgent application had been filed by the defendants. That was eventually supported by sworn statements on November 2 and 3, 2024.



3. At the hearing on 5 November 2024, counsel for the claimant sought time to consider the response filed and indicated that he may take a certain course after taking instructions. The following day, a notice of discontinuance was filed. An order had been made allowing counsel to file submissions on costs if the proceedings were discontinued. Those submissions were filed on 16 December 2024.
4. The defendants seek costs of VT 924,200, disbursements of VT 11,400, and VAT of VT 140,340, totalling VT 1,075,940. In response, counsel for the claimant submits that VT 50,000 would be an appropriate order.
5. Costs are dealt with in Part 15 of the Civil Procedure Rules No. 49 of 2002. (CPR). Rule 15.1 outlines the general provision that the Court has discretion in deciding whether and how to award costs, and that, as a general rule, the costs of a proceeding are payable by the party who is not successful in the proceeding.
6. Here, the claimants acknowledge that, in principle, they should pay the costs. Rule 15.3 provides that if the parties do not agree on the amount of costs to be awarded, the judge must determine the costs as set out in the rules. That is the purpose of this decision.
7. Rule 15.5 provides for costs to be ordered on a standard basis unless there is reason to award them on an indemnity basis. Rule 15.5(4) and (5) outline the circumstances under which indemnity costs may be ordered. Rules 15.5 (4) and (5) provide:-
 - (4) The court may order costs to be paid on an indemnity basis if the costs are:
 - (a) to be paid to a party who sues or is sued as a trustee; or
 - (b) the costs of a proceeding brought for non-compliance with an order of the court; or
 - (c) to be paid out of a fund.
 - (5) The court may also order a party's costs be paid on an indemnity basis if:
 - (a) the other party deliberately or without good cause prolonged the proceeding; or
 - (b) the other party brought the proceeding in circumstances or at a time that amounted to a misuse of the litigation process; or



(c) the other party otherwise deliberately or without good cause engaged in conduct that resulted in increased costs; or

(d) in other circumstances (including an offer to settle made and rejected) if the court thinks it appropriate.

8. Rule 15.8 sets out the matters a judge must take into account in making an award of costs. Rule 15.8 provides:-

15.8 (1) In determining an amount of costs, the judge must consider:

(a) whether it was reasonable to carry out the work to which the costs relate; and

(b) what was a fair and reasonable amount of costs for the work concerned.

(2) The judge must determine the amount of costs that, in his or her opinion, is a fair and reasonable amount.

(3) In determining what is a fair and reasonable amount of costs, the judge may have regard to:

(a) the skill, labour and responsibility shown by the party's lawyer; and

(b) the complexity, novelty or difficulty of the proceeding; and

(c) the amount of money involved; and

(d) the quality of the work done and whether the level of expertise was appropriate to the nature of the work; and

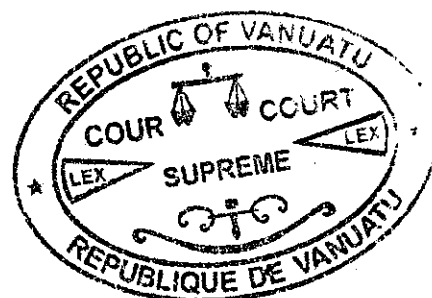
(e) where the legal services were provided; and

(f) the circumstances in which the legal services were provided; and

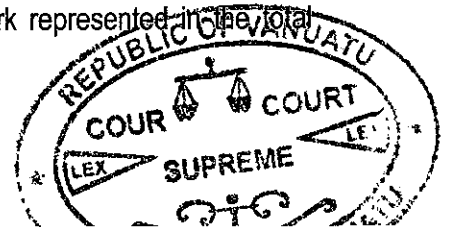
(g) the time within which the work was to be done; and

(h) the outcome of the proceeding.

9. The defendants seek indemnity costs. In a submission, the defendants argue that the claimant initiated the proceedings under circumstances that constituted a misuse of the litigation process, deliberately or without good cause, resulting in increased costs. That submission amounts to a conflagration of 15.5 (5) (b) and (c).



10. I cannot agree with that submission. The claimant initially brought the claim as a Limited Company. That was wrong, given the nature of the claim. The proposed amendment sought to change the claim from one brought by a limited company to a similar claim brought by an individual, albeit an individual who is also a shareholder (and perhaps director) of the same limited company.
11. The same submissions seek a costs order against either the limited company or the individual. The order for costs will be against the individual who purported to give instructions, at first in the name of the company but thereafter as a named individual. That was the purpose of the application to amend. It was not a ruse to increase the cost of the proceedings or to introduce delay. It would be wrong to order the Limited Company, in which the defendant has an interest as well, to pay costs not properly incurred by the company.
12. It is correct to suggest that the claim was never likely to succeed in its current form. It took some time for counsel for the claimant to recognize this fact, but no longer than the time it took for him to read the defendant's response. That is not a reason to order indemnity costs.
13. Once the decision is made to order standard rather than indemnity costs, the itemised bill of costs submitted on behalf of the defendant loses most of its significance. Standard costs are the former party and party basis.
14. To determine quantum, the Court must consider those factors set out in Rule 15.8 above. The value of the claim is VT 134,419,000. It is a substantial sum, and, although the claim seeks damages in that amount, it is more of a claim for an account, as from a total of VT 376,544,000, which is said to have been invested in the GOPDI group of companies, only VT 243,124,000 has been accounted for.
15. Counsel for the defendant attended one brief hearing when opposing counsel sought time to consider the filed response to the applications. Thereafter, a Notice of Discontinuance, envisaged during that hearing, was filed. After that, only the question of costs remained, and liability for costs, but not quantum, is admitted.
16. It was not necessary, in my view, considering the claim, the application to amend, and the application for interlocutory relief, to undertake the amount of work represented in the total



amount of costs claimed. The real issue was identified in the brief submission filed on behalf of the defendant. It is a complex issue, but identifying the issue was not complicated.

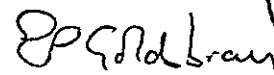
17. Time was spent, according to the itemised bill, on matters not part of these proceedings, for example, issues concerning the involvement of the police. Equally, time was spent on the real issue, not now to be determined in these proceedings, but necessary to be dealt with in any subsequent filing on the same material claim. That need not be the subject of a costs order in this case, as the work is necessary for the identification and resolution of the fundamental issues between the parties.

18. In submissions before discontinuance, counsel for the defendant suggested that a figure of VT 100,000 be awarded if the application for relief was refused and a similar amount if the proposed amendment was not approved. Both of those submissions were contained in documents filed in opposition, and so must have been in contemplation of contest hearings which did not take place. However, figures in that area, as opposed to VT 1 million, appear to be reasonable given the circumstances.

19. An order for costs following the discontinuance is made in favour of the defendants in the sum of VT 100,000, together with VT 11,400 disbursements and VAT of VT 16,710, making a total of VT 128,110. The fee payable on an application for determination of costs, as set out in CPR Schedule 1 Part 2 made under Rule 4.12, should be settled if not already paid.

Dated at Port Vila this 15th July 2025

BY THE COURT



Hon. Justice EP Goldsbrough

