

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(CIVIL)

ENFORCEMENT CASE NO. 853 OF 2025

BETWEEN:

SILVER HOLDIG LIMITED

Applicant

AND

GEORGE BOAR

Respondent

BEFORE: Aurélie TAMSEUL

(Deputy Master).

MADE: 8<sup>th</sup> day of October, 2025

ENTERED: 9<sup>th</sup> day of October, 2025

COUNSEL: Corrine Hamer counsel for the Applicant, Respondent unrepresented

PRESENT: Mr. George Boar (Respondent)

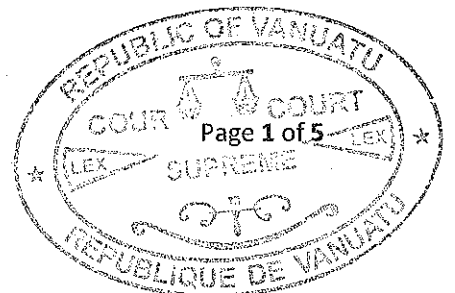
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Decision

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a. Introduction

1. Following the decision entered on the 15<sup>th</sup> November 2024, the Applicant filed on the 25<sup>th</sup> March, 2025 an Application for taxation with a sworn statement in support filed on the same date in support.
2. The Applicant served the Respondent with the said Application, on the 2<sup>nd</sup> April, 2025 via email to [boarlaw72@gmail.com](mailto:boarlaw72@gmail.com).
3. The Master's secretary issued a notice of hearing on the 3<sup>rd</sup> April, 2025 listing the matter for taxation on the 5<sup>th</sup> May, 2025.



4. The Court commenced and completed the taxation exercise on the 5<sup>th</sup> May, 2025 arriving at a total costs amount of VT 212,2216 and time was given for the parties to discuss a payment plan.
5. The Respondent filed on the 22<sup>nd</sup> May, 2025 an Application to set aside costs Order of the 5<sup>th</sup> May, 2025 on the basis that he was denied his right under the principle of "audi alteram partem".
6. Mr. Boar filed the following additional documents, to wit:
  - (i) On the 21<sup>st</sup> July, 2025 an opposition to the bill of costs;
  - (ii) On the 5<sup>th</sup> August, 2025 a Response to the taxed bill of costs;
  - (iii) Submission on Audi Alteram Partem on the 18<sup>th</sup> August, 2025
7. The matter was then listed for conference on the 8<sup>th</sup> September, 2025 wherein the parties orally took the Court through their submission.
8. The decision is as follows.

**b. The Law**

**Civil Procedure Rules**

**Overriding objective**

**1.2 (1)** *The overriding objective of these Rules is to enable the courts to deal with cases justly.*

**(2)** *Dealing with cases justly includes, so far as is practicable:*

**(a)** *ensuring that all parties are on an equal footing; and*

**(b)** *saving expense; and*

**(c)** *dealing with the case in ways that are proportionate:*

**(i)** *to the importance of the case; and*

**(ii)** *to the complexity of the issues; and*

**(iii)** *to the amount of money involved; and*

**(iv)** *to the financial position of each party; and*

**(d)** *ensuring that the case is dealt with speedily and fairly; and*

**(e)** *allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.*

**Times for filing documents**

**4.13 (1)** *The following documents must be filed within the following times:*

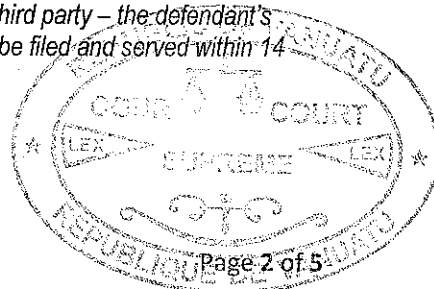
**(a)** *the defendant's response must be filed and served within 14 days of the date of service of the claim;*

**(b)** *the defence must be filed and served within 28 days after the date of service of the claim, except if subrule (2) applies;*

**(c)** *the claimant's reply must be filed and served within 14 days of the date of service of the defence;*

**(d)** *if the defendant has made a counterclaim against a third party – the reply containing the defence to the counterclaim must be filed and served within 28 days of the date of service of the counterclaim;*

**(e)** *if the defendant has made a counterclaim against the claimant or a third party – the defendant's reply to the claimant's or third party's defence to the counterclaim must be filed and served within 14 days after the service of the claimant's or third party's reply.*



### **Default by defendant**

9.1 If a defendant:

- (a) does not file and serve a response or a defence within 14 days after service of the claim; or
- (b) files a response within that time but does not file and serve a defence within 28 days after the service of the claim;

the claimant may file a sworn statement (a "proof of service") that the claim and response form was served on the defendant as required by Part 5.

### **Amount of costs in Supreme Court**

15.7 (1) If possible, the judge must also determine the amount of costs at the time of judgment.

**(2) However, if the judge cannot do this, the judge must:**

**(a) ask the successful party to prepare a statement of costs, and fix a time by which this is to be done; and**

**(b) fix a date for determining the costs.**

(3) The statement must set out:

(a) each item of work done by the lawyer, in the order in which it was done, and numbered consecutively; and

(b) the amount claimed for each item; and

(c) the amount disbursed for each item; and

(d) the lawyer's rate of charge.

**(4) The statement of costs must be filed and served on the other party within the time fixed by the judge. [.....]**

(5) The judge **may give directions** to facilitate the costs determination. **[ my emphasis ]**

### **Matters judge to take into account**

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

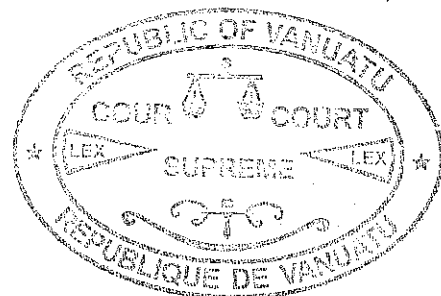
(d) the quality of the work done and whether the level of expertise was appropriate to the nature of the work; and

(e) where the legal services were provided; and

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

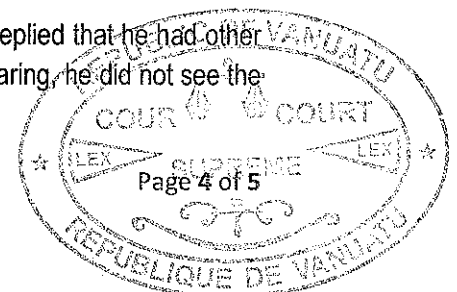
(g) the time within which the work was to be done; and

(h) the outcome of the proceeding.



**c. Consideration**

9. It has been determined that Mr. Boar accepted mode of communication with the Applicant is via the email address boarlaw72@gmail.com. Mr. Boar has, at no point in time, disputed the said mode of service used by the Applicant in this matter.
10. Mr. Boar confirmed that boarlaw72@gmail.com is his email address and that on the 2<sup>nd</sup> April, 2025 he received the email from the Applicant counsel attaching the Application for taxation outlining the bill of costs and the sworn statement in support.
11. An administrative staff from counsel for the Applicant filed, on the 3<sup>rd</sup> April 2025, a sworn statement of service via email of the Application and the sworn statement in support.
12. In light of **Rule 1.2** and with the expectation that Mr. Boar would comply with the times for filing documents requirement under **Rule 4.13**, the matter was listed for taxation on the 5<sup>th</sup> May, 2025 which is more than 28 days from the date of the email service.
13. The taxation date was given pursuant to **Rule 15.7**. Then the Court proceeded to tax the bill of costs in the absence of a Response being filed pursuant to **Rule 4.13 and 9.1**. In taxing the bill, the Court took into consideration the requirements set out in **Rule 15.8** in determining the amount granted for each item.
14. Mr. Boar argued that, had he received a notice of hearing, he would have filed a response and would have appeared on the 5<sup>th</sup> of May, 2025 to orally object to the bill of costs. Mr. Boar further argued that his right to be heard were denied him and thus requested that the taxed bill of costs entered on the 5<sup>th</sup> May, 2025 must be set aside.
15. To support his argument, Mr. Boar referred to the cases of, which I quoted as stated therein his submission, **Cooper v Wandsworth Board of Works (1863) 14 CB. 180, Ridge v Baldwin (1964) AC 40**, and **Ayamiseba v Attorney General (2006) VUCA 21; CAC 13 of 2006**
16. The quoted cases all dealt with the complainant not being given the right to be heard.
17. Mr. Boar, on the other hand, was served via email, with the Application and the sworn statement. Technically, he was put in notice that an Application for taxation was filed and that under the Rules he needed to file a Response within the period stated therein.
18. Mr. Boar has had more than 28 days, which is more than sufficient time, to file a Response but which he opted not to. A failure to file an objection more than 28 days after the date of the email service caused the Court to reasonably assume that Mr. Boar had no objection to the bill of costs.
19. When asked for the reasons of such a failure, the Respondent simply replied that he had other important matters to attend to and because he received no notice of hearing, he did not see the urgency in filing a Response.



20. Mr. Boar was then reminded that the time for filing of documents is laid out in the Rules and not conditional upon the listing date.
21. It was then put to Mr. Boar that had the matter not listed for taxation to date, would he had filed a Response, he conveniently answered in the positive but provided no further regulatory basis to support the said response.
22. Furthermore, though Mr. Boar was not present during the taxation exercise, the bill of costs' findings is recorded in a table for ease of reference.
23. Though Mr. Boar was not present during the taxation exercise, the facts of this case show that, in being served with the Application for taxation, he was put on notice to ensure that he take steps to protect his interest but which he opted not to exercise.

**d. Finding**

- (i) That the matter was conducted in keeping with the Rules quotes herein part b of this decision.
- (ii) That the email service via boarlaw72@gmail.com is proof that the Respondent was put on notice and thus being given the right to be heard by filing an objection to the bill of costs which he opted not to exercise.
- (iii) The Application to set aside cost order of VT 212,216 is not granted.
- (iv) Mr. Boar has a copy of the reasons in arriving at VT 212,216 made available to him for purposes of appeal should he wish to take that course.
- (v) That Mr. Boar to pay wasted costs of VT 20,000 to the Applicant within 28 days from the date of this order.
- (vi) That the Applicant to file a memorandum to confirm if the taxation costs amount VT 212,216 together with the wasted costs of VT 20,000 have been paid before 4 p.m. on the 7<sup>th</sup> November, 2025.
- (vii) That the matter is listed for review without hearing 12<sup>th</sup> November, 2025.

