IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/1659 COA/CIVA
[2025] VUCA 30

BETWEEN: **SHEFA PROVINCIAL GOVERNMENT COUNCIL**
Appellant

AND: **TIMBALAND LIMITED**
Respondent

Date of Hearing:	***6th August 2025***
Coram:	***Hon. Chief Justice Vincent Lunabek*** ***Hon. Justice Mark O'Regan*** ***Hon. Justice Anthony Besanko*** ***Hon. Justice Edwin Goldsbrough*** ***Hon. Justice Viran Molisa Trief*** ***Hon. Justice Dudley Aru*** ***Hon. Justice Maree MacKenzie***
Counsel:	***Mr Edward Nalyal for the Appellants*** ***Mr Justin Ngwele for the Respondents***
Date of Judgment:	***14th August 2025***

JUDGMENT OF THE COURT

Introduction

1. On 11 December 2017, Madame Goiset and the Shefa Provincial Government Council ("*the Appellant*") entered into a written tenancy agreement for the use and repair of office space at the Appellant's premises. The term of the tenancy was three (3) years, and was renewable.

2. Saliently, the terms of the agreement included that: -

    1. The rental was VT 80,000 monthly for the first six (6) months and increasing to VT 100,000 per month.

    2. Madame Goiset was permitted to enter the property and improve the existing structures to an official standard facility.

3. Madame Goiset agreed to provide intentions and quotations of expenditure to the Landlord prior to and or at the completion of construction and or renovation work.

3. After the tenancy agreement was executed, the Respondent alleges it repaired and renovated the office space as provided for in the agreement and then rendered invoices to the Appellant[1] for reimbursement, but the Appellant refused to make payment.

4. Accordingly, the Respondent filed a claim on 17 May 2024 alleging breach of contract for refusal to pay the invoices. By way of relief the Respondent sought:

1. Liquidation damages of VT 23,641,198.
2. General damages of VT 5,000,000.
3. Interest from the date of breach of contract to the date of judgment.
4. Costs.

5. A defence and Counter-claim were filed on 3 July 2024. The defence as pleaded was:

a. The Appellant denied it had breached the contract.
b. While accepting there was a tenancy agreement, the Appellant denied that the agreement provided for the Respondent to renovate and repair the office space. Rather, the Respondent was to provide quotations for the work for approval prior to the work being carried out, which it did not do.
c. The invoices were too high.
d. That the tenancy agreement was terminated for non-payment of rent.

6. The claim was filed by Timbaland Limited ("the Respondent"), and not Madame Goiset. The issue of the Respondent's standing to bring the claim was not pleaded in the defence. It was, however, addressed in the evidence and submissions made to the primary Judge. As we explain below, the primary Judge rejected the Appellant's contentions.

7. By way of counterclaim, the Appellant alleged that: -

a. The Respondent breached the tenancy agreement by failing to making rental payments totalling VT 1,200,000.
b. The Respondent caused damage to the premises when removing movable chattels.

8. The relief sought under the counterclaim was: -

[1] Quotations 3358 and 3762

1. Dismissal of the claim on the basis it was statute-barred.
2. Rental arrears in the sum of VT 1,200,000.
3. Damages for breaches of agreement to be assessed by the Court.
4. Cost of the damage caused by Timbaland Limited.

9. By judgment dated 12 May 2025,[2] the Respondent was successful in its claim and judgment was entered in the Respondent's favour in the sum of VT 18,703,871. This was calculated as follows:

a.	Quantum merit (for work done)	-	VT 12,079,901
b.	Interest on VT 12,079,901 at 15% for 6 years	-	VT 3,623,970
c.	General Damages	-	VT 3,000,000

10. The primary Judge dismissed the counterclaim for rental payments and held that the Appellant's purported termination of the tenancy agreement was unlawful.

11. The Appellant appeals against various findings made by the primary Judge, the relief granted to the Respondent, and the dismissal of the counterclaim.

The Appeal

12. The notice of appeal contained nine grounds of appeal. At the outset of the hearing, the Appellant abandoned the contention that the claim was statute-barred under s 3 of the Limitation Act. The grounds advanced at the hearing were:

1. That the Respondent had no standing to bring the claim.

2. The primary Judge erred in finding the Appellant's termination of the tenancy agreement was unlawful and dismissing the counterclaim.

3. The primary Judge erred in awarding the Respondent VT 12,079,901 for the work done.

4. The primary Judge erred in awarding the Respondent VT 3, 000,000 in general damages.

Issue One: The Respondent's standing to bring the claim

13. The Appellant contends that the Respondent lacked standing to bring the claim because it was not a party to the tenancy agreement. Rather, it was Madame Goiset who signed the tenancy

[2] *Timbaland Limited v Shefa Provincial Government Council* [2025] VUSC 114

agreement. During argument, Mr Nalyal accepted that the Appellant did not plead a lack of standing in the defence. His contention was that the issue was before the Court as it was addressed in the evidence.

14. For the Respondent, Mr Ngwele contends that the primary Judge did not err in rejecting the standing issue as it was not pleaded in the defence and was a late challenge.

15. The primary Judge rejected the argument as to a lack of standing on the basis that it was not pleaded in the defence, and as such denied the Respondent the opportunity to respond with relevant evidence.[3]

16. We accept that the standing issue was raised by the Appellant in the evidence and was responded to.[4] Madame Gosiet filed a sworn statement[5] and said that the Claimant was Timbaland Limited and provided an explanation for her authority to sign the tenancy agreement. In order to consider this ground of appeal, it is unnecessary to set out in detail Madame Goiset's explanation. It is sufficient to note that Madame Goiset provided responsive evidence to the Court refuting a lack of standing for the Respondent to bring the claim.[6]

17. The Civil Procedure Rules ("CPR") permit a party to amend a statement of the case to better identify the issues between the parties, with leave of the Court.[7] Given the evidence of Mr Kalo and Madame Goiset as to the issue of standing, it was open to the Appellant to have sought leave to amend the defence, which could have been done at any stage of the proceedings.[8] However, this did not occur.

18. The perils of a failure to properly identify the issues in statements of a case were recognised in *UK Learning Academy Ltd v Secretary of State for Education* at 47:

> *"I would add here that I endorse the view expressed by the judge to the parties at the trial and repeated in his judgment at [11] that the statements of case ought, at the very least, to identify the issues to be determined. In that way, the parties know the issues to which they should direct their evidence and their challenges to the evidence of the other party or parties and the issues to which they should direct their submissions on the law and the evidence. Equally importantly, it enables the judge to keep the trial within manageable bounds, so that public resources as well as the parties' own resources are not wasted, and so that the judge knows the issues on which the proceedings, and the judgment, must concentrate. If, as he said, there was "a prevailing view that parties should not be held to their pleaded cases", it is wrong. That is not to say that technical points may be used to prevent the just disposal of a case or that a trial judge may not permit a departure from a pleaded case where it is*

[3] At paragraph 32
[4] Refer Willie Kalo's sworn statement filed on 6 August 2024
[5] The sworn statement was filed on 29 August 2024
[6] Madame Gosiet's authority to sign the agreement is addressed at paragraphs 4 -10 of the sworn statement filed on 29 August 2024
[7] Rule 4.11 of the CPR
[8] Rule 4.11(2)(a) and (b) of the CPR provides that an amendment may be made with leave of the Court at any stage of the proceedings.

just to do so (although in such a case it is good practice to amend the pleading, even at trial), but the statements of case play a critical role in civil litigation which should not be diminished".

19. We can see no error in the primary Judge's decision to reject the argument as to lack of standing. It was open to him to do so, as firstly, it was not pleaded, and secondly, when the issue was raised in the evidence, leave could have been sought to amend the defence, but was not. And, as was said in *UK Learning Academy Ltd*, statements of case play a critical role in civil litigation which should not be diminished.

Issue Two: Did the primary Judge err in dismissing the counterclaim and finding the termination of the tenancy was unlawful?

20. The Appellant's contention is that the primary Judge erred in dismissing the counterclaim for unpaid rent and finding that the tenancy agreement was unlawfully terminated. That is because the Appellant contends that it terminated the agreement for non-payment of rent, and therefore, the agreement was lawfully terminated.

21. As the primary Judge said, the basis for the Appellant terminating the tenancy agreement was non-payment of rent of VT 1,200,000. The Respondent refuted this and said that rent of various amounts had been paid, including VT 500,000 cash on 9 August 2019. After considering the evidence, the primary Judge assessed that the Respondent had paid VT 850,000 in rent, noting that the Appellant did not adduce any evidence as to how the claimed rental of VT 1,200,000 was calculated, whether invoices for rent were issued and when the rent was due. As such, the Judge did not accept that there was any rent outstanding.

22. The Appellant contends that the tenancy agreement was terminated on 7 November 2018, when the Appellant decided to terminate the agreement. However, it is common ground that the Appellant did not communicate its decision until it sent a letter dated 29 March 2019 to the Respondent. In the meantime, the Respondent continued with the renovations to the premises, which were completed in December 2018.[9] Also, the primary Judge accepted that VT 500,000 was paid in rental. This was paid after the date on which the Appellant claimed the agreement was terminated, yet was accepted by the Appellant.[10]

23. We note that the Appellant did not adduce as evidence the purported decision of the Council to terminate the tenancy agreement in November 2018. We consider that termination of the agreement occurred only in March 2019, because it had to be communicated to the Respondent to be of effect. There is no evidence that the decision was communicated in November 2018, so the agreement was still on foot in December 2018, when the quotations for the work were provided to the Appellant.

[9] See Quotations 3357 and 3762 which were issue on 15 and 31 December 2018 respectively
[10] After Madam Goiset's sworn statement filed on 16 July 2024 at paragraph 12

24. The tenancy agreement is poorly drafted. It purports to address two distinct issues – a rental agreement and also a commercial contract for the Respondent to carry out repairs and renovations to the Appellant's premises. The agreement itself is silent as to when rent was to be paid. We do not understand why the Appellant did not follow up on the rent and put the Respondent on notice that it needed to be paid, if it was due, but unpaid.

25. The primary Judge found that the tenancy agreement was unlawfully terminated, because he accepted that the Respondent had fulfilled its obligations to pay rent. The primary Judge noted the paucity of evidence to support the counterclaim for non-payment of rent and accepted the Respondent's evidence that rent of VT 850,000 had been paid. Having regard to the matters discussed above, we consider those findings were open to the primary Judge.

26. There is no error in the primary Judge's dismissal of the counterclaim for non-payment of rent or the finding that termination of the tenancy agreement was unlawful.

Issue Three: Did the primary Judge err in awarding the Respondent VT 12,079,901?

27. The Appellant contends that the primary Judge erred in awarding the Respondent VT 12,079,901 in quantum meruit for the work done to the Appellant's premises. The Appellant's main contention is that what was provided to the Appellant was a quotation and not an invoice. Mr Nalyal also raised question marks as to the provenance of the quotations. Mr Nalyal submitted that the issuing of the quotations did not trigger an obligation for the Appellants to pay the quoted sums, and that they should have had the opportunity to check works done at the premises before making payment to the Respondent.

28. During the hearing, Mr Ngwele accepted that the Respondent issued quotations to the Appellant to seek reimbursement for the work done, rather than invoices. Nevertheless, he contended that there was no error in the primary Judge's determination that the Respondent should be reimbursed for the work done, which benefitted the Appellant.

29. The primary Judge proceeded on the basis that the quotations were in fact invoices, and that it was an implied term of the agreement that the Appellant had a duty to pay the amount detailed in the quotations issued to the Appellant. The primary Judge assessed the amount to be paid to the Respondent was VT 12,079,001, being the total of both quotations, on a quantum meruit basis. He considered that the photographs provided by the Respondent evidenced that renovations were undertaken, which the Appellant had the benefit of. The primary Judge found that in the absence of final invoices, the two quotations (which the primary Judge treated as invoices) were deemed the final invoices issued pursuant to the agreement.

30. It is tolerably clear that the Appellant and Respondent had a different interpretation of clause 3 of the agreement, and whether the Respondent was to provide quotations or invoices to the Respondent for payment. The Respondent believed it was issuing invoices for payment by the Appellant, whereas the Appellant believed the obligation was for the Respondent to provide quotations. In terms of construing the terms of the agreement between the parties, the

agreement is to be interpreted objectively.[11]. In the context of commercial contracts, construction of a contract will only be determined by what a reasonable person would have understood it to mean.[12]

31. Our view is that a quotation is a contractor's estimate for work to be done,[13] which can be accepted or rejected, whereas, an invoice is rendered for the work done by one party for another.[14]

32. We consider that a reasonable person would have understood clause 3 to mean that the Respondent was to provide quotations for approval. It was reasonable for the Appellant to be provided with an estimate of costs or details of how much was actually spent on the repairs, before authorising payment. Clause 3 refers to quotations after work was done. We consider this to be very odd. The normal procedure would be for a quotation for the proposed work to be obtained and then accepted. Once accepted, the work would be undertaken in accordance with the quotation, and an invoice would be submitted for payment. Then payment would be made for the amount of the invoice. We do not need to address these issues further because the fact is that the Respondent never presented invoices showing the actual amount expended on the works, as we now explain.

33. The key issue in assessing this appeal ground is whether there was any evidence of the cost or value of the work, which was undertaken. We accept that work was done to the premises, as evidenced by the before and after photographs, but the photographs are not evidence of the actual cost of the work done, or how much the Respondent spent on the repairs.

34. The Respondent's case was that it was the Respondent Company that undertook the repairs and sought reimbursement from the Appellant.[15] Yet the quotations were not addressed to the Appellant. They are seemingly quotations issued by the Respondent to itself, and do not show the extent of the work undertaken and what the Respondent actually spent to complete the renovation. There are no receipts for the cost of the materials used, wage records to show the actual labour costs, or any sub-contractor's costs.

35. It was for the Respondent to prove its claim by providing evidence that it had expended the amount set out in the quotations, issued to itself. The Respondent provided no supporting receipts or other invoices or documents to prove either the extent of the work undertaken, or the amount claimed in the quotations. There was nothing to support the costs contained in the

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[11] *Deutsche Genossenschaftsbank v Burnhope* [1995] 4 ALL ER 717 AT 724

[12] *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451

[13] Black's Law Dictionary, 7th Edition defines "*quotation*" as "*A contractor's estimate for a given job*"

[14] See *Shell New Zealand Holding Co Ltd v Commissioner of Inland Revenue* CA 118/93, 11 May 2004, where the Court of Appeal considered the ordinary meaning of "*invoice*" before considering it in a specific statutory context. The Court said ""*Invoices are rendered in commercial transactions where goods are supplied or work is done by one party for another. Invoices record what was done and the charge. It may be a cash or credit transaction and in the latter case it is common for a monthly or other periodic statement to be issued subsequently. Whether payable on delivery or under the credit arrangement the invoice states the price or charge involved.*"

[15] At paragraph 7 of the sworn statement of Madame Goiset filed on 16 July 2025.

quotations. The photographs show that work was done but are not evidence of what was spent to undertake the work.

36. Before the primary Judge, and during the hearing of the appeal, Mr Ngwele contended there was evidence of attempts by the Appellant to settle the claim. We accept that there were meetings and discussions about the Respondent's claim to be paid for the repairs and renovations. There was reference to a resolution made by the Finance Committee on 20 and 21 December 2023 to settle the claim.[16] However, the resolution did not form part of the evidence, and in stark contrast, at a full Council meeting on 2 February 2024, the Minutes recorded a lack of agreement as to whether to settle the claim.[17] Therefore, the bare fact there were settlement discussions does not evidence any agreement by the Appellant to pay the amount of the two quotations, particularly given the lack of agreement at a full Council meeting.

37. For the reasons set out above, we consider that the Respondent did not prove its claim for reimbursement. Therefore, the primary Judge erred in awarding the Respondent VT 12,079,901.

Issue Four: Did the primary Judge err in awarding general damages?

38. The primary Judge found that the Respondent was entitled to general damages of VT 3 million. The Judge determined that the tenancy agreement had been unlawfully terminated by the Appellant, and in such circumstances, stress and pain will be felt, so assessed quantum of damages in a general way to be VT 3 million.[18]

39. The Appellant contends that the primary Judge erred in awarding damages of VT 3 million as there was no evidence to support the quantum of damages awarded, and the Court did not give reasons for either the basis for a damages award, or the quantum awarded. As we explain below, we accept the Appellant's contentions.

40. During the hearing of the appeal, Mr Ngwele accepted that there was no basis to award damages for stress and pain.

41. In *Remy v Kyong Sik Jang* [2018] VUCA 5, this Court set out the principles guiding a Court in assessing damages. Pertinent to this appeal, the Court said that when a Court is required to assess damages, the Court starts from the principle that it is for the Claimant to identify the losses which are claimed, and to lead evidence to establish them.[19]

42. What evidence was there to establish a claim for damages related to economic loss, and not stress and pain? In Madame Goiset's sworn statement of 16 July 2024, she said she had been treated unfairly and as a result of the breach of contract, the Respondent suffered losses,

[16] Refer Madame Goiset's sworn statement filed on 29 August 2024, exhibit D
[17] Refer Paul Soane's sworn statement filed on 28 August 2024
[18] At paragraphs 39 and 40
[19] At paragraph 30

including reduced business operations and an inability to meet business expenses.[20] However, there was no evidence at all to substantiate these losses.

43. While Madame Goiset asserted she had been unfairly treated by the Appellant, she did not bring the claim, the Respondent Company did. A company has its own legal personality,[21] so whether or not Madame Goiset suffered stress and pain is irrelevant. There is no basis in law for awarding a company damages for stress and pain.

44. The final point is that the primary Judge did not give reasons as to how he calculated the quantum of damages to be VT 3 million.

45. For these reasons, we consider that the primary Judge erred in awarding the Respondent general damages of VT 3 million.

Disposition of the appeal

46. We make the following orders:

a. The appeal is allowed.

b. The judgment sum of VT 12,079,901 is set aside, as is the interest awarded on that sum.

c. The award for general damages of VT 3,000,000 is set aside.

d. The Respondent is to pay the Appellant's costs of VT 150,000.

Dated at Port Vila this 14th day of August 2025.

BY THE COURT

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Hon. Chief Justice Vincent Lunabek

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[20] Paragraphs 24- 28 of the sworn statement.

[21] *James Hardie Industries PLC v White* [2018] NZCA 580