

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

Civil
Case No. 16/3137 SC/CIVL

BETWEEN: Kemsi Andrew
Claimant

AND: Max Andrew Tamata
First Defendant

AND: Republic of Vanuatu
Second Defendant

Before: Justice Aru
In Attendance: Mr. C. Leo for the Claimant
Mr. R. Sugden for the First Defendant
Mr. L. Huri for the Second Defendant

REASONS FOR RULING

1. On 12 June 2017, after hearing submissions on Applications made by the defendants I made orders to the effect that:-
 - a) the claimants claim be struck out;
 - b) the first and second defendants were entitled to costs to be agreed or taxed by the Master;
 - c) Reasons were to be provided.

2. These are the reasons. The Applications were filed by both the first and second defendants seeking orders that the claim be struck out. Both Applications were made pursuant to rule 18.11 after being given leave to do so on 20 March 2017. Rule 18.11 provides:-



"18.11 Failure to comply with an order

(1) This rule applies if a party fails to comply with an order made in a proceeding dealing with the progress of the proceeding or steps to be taken in the proceeding.

(2) A party who is entitled to the benefit of the order may require the non-complying party to show cause why an order should not be made against him or her.

(3) The application:

(a) must set out details of the failure to comply with the order; and

(b) must have with it a sworn statement in support of the application; and

(c) must be filed and served, with the sworn statement, on the non-complying party at least 3 business days before the hearing date for the application.

(4) The court may:

(a) give judgment against the non-complying party; or

(b) extend the time for complying with the order; or

(c) give directions; or

(d) make another order.

(5) This rule does not limit the court's powers to punish for contempt of court.

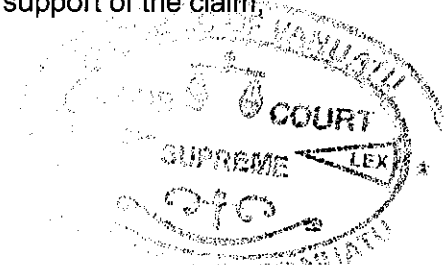
3. The first defendant Max Andrew filed his sworn statement to support his Application and the second defendant relied on the sworn statement deposed by Ms Adeline Bani. The main ground addressed by both applications is that the claimant has persistently failed to comply with the orders issued in the management of this case. These orders are as follows:-

- Orders 12 December 2016

Not complied with. The claimant failed to file and serve sworn statements in support of the claim within 28 days;

- Orders of 23 February 2017

Not complied with. The earlier orders were re issued and a further 7 days was given to the claimant to file and serve sworn statements in support of the claim;



- Orders of 20 March 2017

Not complied with. A further 7 days was given to the claimant to file and serve sworn statements in support of the claim. Wasted costs of VT 5000 in favour of each defendant was also not paid;

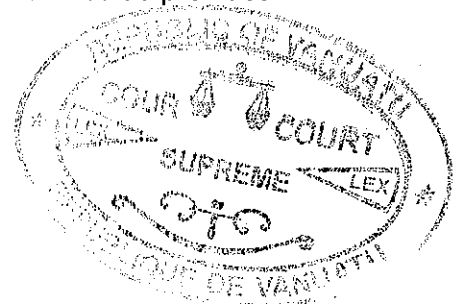
- Orders of 12 April 2017

Not complied with. A further 7 days was give to the claimant to file and serve additional sworn statements. The claimant was also ordered to pay wasted costs of VT 5000 to each defendant making a total of VT 10,000 each inclusive of previous orders for wasted costs. This was not paid;

- Orders of 12 May 2017

Not complied with. A further 7 days was given to the claim to file and serve further sworn statements by 25 May 2017. The previous orders for wasted costs of VT 10,000 to each defendant was still not paid and the claimant was again redirected to comply;

4. It was submitted by Mr Sugden that the claimant's breaches of every single procedural order made by the court is oppressive on the defendants and puts them to great and unnecessary expense that cannot be compensated by wasted costs orders. It was submitted that on 20 March 2017, the court gave liberty to the defendants to apply and still the claimant breached every single order made since 20 March.
5. Mr Huri for the second defendant adopted the submissions made by Mr Sugden. Mr Leo on the other hand in response gave no reasons for the claimants non-compliance with the orders issued. He still submitted that he needed another 7 days to comply with all the orders made including orders for payment of wasted costs and that the substance of the matter must take priority over procedural issues. Two sworn statements were filed by the claimant on 9 June.
6. The effect of non-compliance with orders made at a conference as provided in rule 6.8 (2) is:-



"If a party or his or her lawyer has failed to comply with an order made at a conference without reasonable excuse, the judge may order that the party's claim or defence be struck out."

7. While I agree that the substance of any matter must be priority, that cannot be a good reason to justify blatant breaches of the orders referred to above and has put the defendants at great cost at having to come to court each time only for the court to re issue its earlier orders because of the claimant's non-compliance. Even when responding to the applications and still requesting more time to comply with the orders issued.
8. For these reasons I am satisfied that after taking into account rule 6.8 (2), the claim is struck out.

DATED at Port Vila this 13 day of June, 2017.

BY THE COURT



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D ARU
Judge

