

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

**Civil  
Case No. 15/687  
SC/ADMIRALTY**

**BETWEEN:**

**SETH MASSING**  
*Claimant*

**AND:**

**THE MARINE VESSEL H. TINO**  
*Defendant*

**Coram:** *Justice Oliver A. Saksak*

**Counsel:** *John Less Napuati for the Claimant  
Jack I Kilu for the Defendant*

**Date of Hearing:** *22 May 2017*

**Date of Decision:** *12 June 2018*

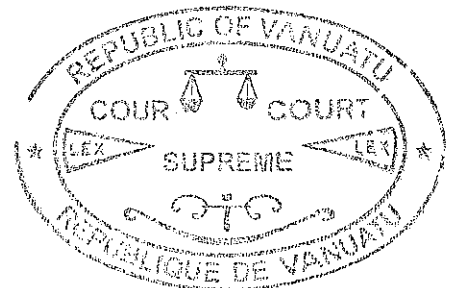
---

## **DECISION**

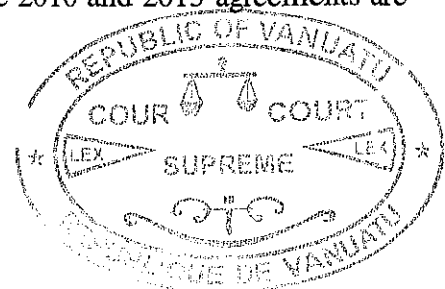
---

1. This decision is delivered more than 12 months after the trial hearing. Counsel for the Claimant was directed to file written submissions within 14 days and Counsel for the defendant was directed to file written submissions within 7 days thereafter. No such written submissions have been filed. Reminders to do so were sent by emails dated 1 September and 6 September 2017 and on 13 December 2017. The failure in filing submissions has resulted in this long delay in delivering this decision.
2. The Claimant filed a document entitled Verified Complaint in Admiralty in Rem on 18 November 2015 and filed an Amended Verified Complaint on 13 December 2015. The Claimant's complaint is that he has a maritime lien for –
  - (a) Works and repairs carried out on the Defendant's Vessel; and
  - (b) Outstanding wages/salaries for the crew of the defendant's vessel.

The complaint is based on an agreement entered between the Claimant and the defendant in August 2010.



3. The agreement is annexed to the sworn statement of the defendant dated 1 December 2015 and it is dated 1<sup>st</sup> January 2010, not in August 2010 as asserted in the complaint. The agreement has 8 clauses. It is signed by the Claimant and the defendant. It is a renewal of the original agreement dated in August 2008. It is the same agreement with the same 8 clauses. The only thing that changed was the date.
4. I have read the agreement carefully. There is no provision for repairs of the vessel and there is no provision recording the parties' agreement about a maritime lien.
5. The agreement appears to be drafted by a layperson. In an important commercial arrangement setting of this nature, it was proper for the parties to instruct lawyers to draft a proper legal document. The documents before the Court is entitled "AGREEMENT SERVICES". It does not cater for repairs of the vessel.
6. The Claimant's complaint for costs of repairs he claims he incurred in 2008 under the said agreement are time barred under the provision of the Limitations Act which states that a suit made under a contract is to be instituted within 6 years. The complaint was filed in November 2015, some 7 years outside of the time period allowed by law. The Claimant's complaints about repair costs done in 2008 are therefore time-barred and are hereby dismissed.
7. Further, the Claimant's complaint is misconceived and must be dismissed on that basis. There is no legal basis for such a complaint. The Civil Procedure Rules states clearly that every proceeding is started by filing a claim. Rule 2.2 of the Civil Procedure Rules.
8. The document filed by the Claimant is a complaint, not a statement of claim. As such it has no legal basis and is misconceived and the only rational decision the Court takes is to dismiss the Claimant's complaint in its entirety.
9. The defendant filed a defence and a counter-claim. His counter-claims are made purportedly under the 2008 agreement. These counter-claims are also time-barred and are hereby dismissed. The counter-claims made based on the 2010 and 2013 agreements are



also dismissed on the basis that those purported agreement are unlawful in that it was made under duress. Further its terms are uncertain. It cannot be enforceable.

10. The counter-claims of the defendant fail in their entirety and are dismissed.

11. As to costs each party must bear their own costs. The defendant has paid security for costs into Court at VT500,000. I order that the Registrar releases this amount back to the defendant immediately.

**DATED at Port Vila this 12<sup>th</sup> day of June 2018.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

