

(Civil Jurisdiction)

BETWEEN: Joe Sel Nakou

First Claimant

Mike Waiwai

Second Claimant

AND: Hellen Nausa and family, Lamin Isaac and family,
and Job Nikalin and Family

Defendants

Date: Wednesday, 5 September 2018

Before: Justice G.A. Andrée Wiltens

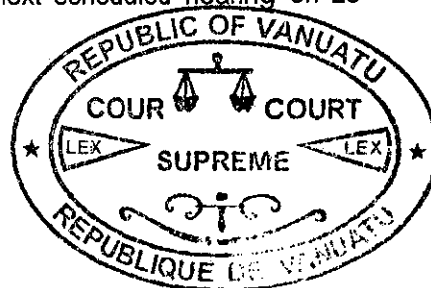
Counsel: Mr D. Yawha for the Claimants

Ms C. Thyna for the Defendants

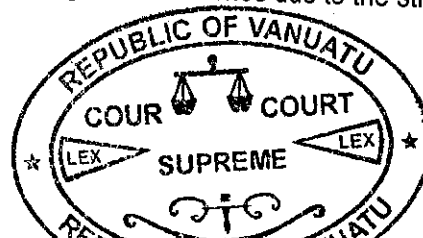
JUDGMENT

1. An application for summary judgment with a supporting sworn statement has been filed. It is based on the following grounds:

- Failure by the defendants to comply with the Court direction of 13 December 2017, namely to file and serve any statement of defence and any supporting sworn statements by 4pm on 9 February 2018 – a statement of defence and counter-claim were in fact filed just one day before the next scheduled hearing on 28 March 2018, but no supporting sworn statements.



- pay the wasted costs order of VT 10,000 made on 28 March 2018 for non-appearance at the Conference and the VT 30,000 further wasted costs ordered on 9 May 2018 for the very late filing of the statement of defence, and counter-claim. There has been a failure to pay the wasted costs within the 21 days directed – and indeed, a failure to pay them at all; and
 - file and serve any sworn statements in support of the defence and counter-claim within the 21 days directed – and indeed a failure to do so at all.
2. It should be noted that the Court gave fair warning of the consequences of non-compliance with the time-tabling directions. That warning has seemingly gone unheeded.
 3. In support of the claimants' amended claim I have sworn statements by Mr Nakou and Mr Waiwai, both of whom attach a number of documentary exhibits to their statements to support their contentions. Both have filed further sworn statements in response to the defence and counter-claim filed, again with supporting documentary appendices.
 4. As against that body of evidence, I have a bare denial and alleged counter-claim filed by counsel – but no evidence whatever.
 5. I accept the evidence of Ms Kaukare to the effect of the extremely limited steps taken by the defendants to date, and also as to the strength of her clients' case. The documentary exhibits appended to the sworn statements are compelling.
 6. Mr Yahwa relies on Rules 1.2 and 1.3 of the Civil Procedure Rules No. 49 of 2002 – which compel the Court to consider all applications in light of the over-riding objectives of the Rules, one of which is Rule 1.2(2)(d), namely to, so far as is practicable, to ensure the case is dealt with speedily and fairly.
 7. Mr Yahwa also relies on Rule 18.11 – which deals with failures to comply with Court orders. The Rule enables Mr Yahwa to apply to the Court to require the non-compliant party to show cause why an order should not be made against him/her. In particular, the Court is empowered to give judgment, to extend time, to make directions or to make further orders. The Rule makes it plain that an application invoking this jurisdiction must be on notice of at least 3 working days.
 8. Mr Yahwa also seeks "punishment for contempt", pursuant to Rule 18.11(5). I assume he intends the Court to deal with his application in terms of Rule 18.14. If so, again, it must be on notice and following a hearing - see Rule 18.14(4)(b).
 9. As no notice of the present application for summary judgment and/or alternative relief has been established by a sworn statement as to service, I cannot make the orders sought unless and until I have such proof of service.
 10. Mr Yahwa has made further submissions addressing what he described as alternative relief, relying on Rule 9.6. Effectively this is tantamount to striking out the defence due to the strength



of the claimants' case and the limited or non-existent prospects of a successful defence. I cannot accede to this application at this time, as again there is no proof of service.

11. Accordingly, I direct that Mr Yahwa's application is to be served on the defendants, and proof of service (at least 14 days prior to the date of hearing is required) is required to be lodged with the Court.
12. The application will be heard at 8am on 2 October 2018 in Chambers.

Dated at Port Vila this 5th day of September 2018
BY THE COURT

G.A. Andrée Wiltens
Justice G.A. Andrée Wiltens

