

**BETWEEN: James Kalo Sakarai**

**Claimant**

**AND: Robert Edgar Sugden**

**Defendant**

***Date of CONFERENCE: 21st day of July, 2022 at 9:00 AM***

***Before: Justice Oliver Saksak***

***In Attendance: Mr Robert Sugden for Himself as  
Defendant/Applicant***

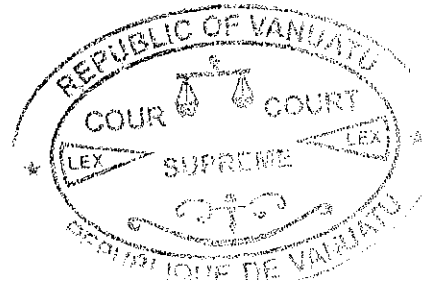
***The Claimant in person unrepresented as  
Respondent***

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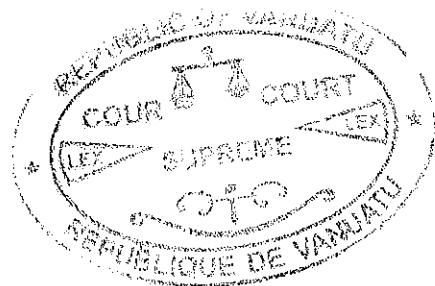
**JUDGMENT**

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1. On 19<sup>th</sup> July 2022 this Court heard Mr Sugden's application to strike out the claimant's proceeding.
2. I also heard the claimant in relation to his own application to set aside the defendant's strike out application.
3. I allowed Mr Sugden's application and struck out this proceeding in its entirety with no order as to costs. I dismissed the claimant's application.
4. I now provide my reasons.
5. First the claimant's application to set aside Mr Sugden's application. The claimant used Rules 1.2 (1), 1.3 (a) and (b), 7.7 (a) (ii) and 18.10 (2) and (c) as the basis of his application. However the application was misconceived.



6. The strike out application by Mr Sugden was properly filed. It was not an abuse of process.
7. The claimant filed Civil Case No. 633 of 2021 on 4<sup>th</sup> March 2021. Mr Sugden was First Defendant and Ascension Limited as Second Defendant in that proceeding. Then on 14<sup>th</sup> June 2021 he filed a Notice of Discontinuance notifying Mr Sugden he had discontinued his claim against him with immediate effect. Subsequently on 21<sup>st</sup> June 2021 the claimant obtained default judgment against Ascension Limited for the sum of VT 8,000,000 plus interest of VT 900,000 and filing fees of VT 30,000.
8. The basis of Mr Sugden's application was Rule 9.9 (4) (a) of the Civil Procedure Rules which states that if a claimant has discontinued proceedings, "*the claimant may not revive the claim.*"
9. That is a matter for discretion of the Court. In exercising this discretion I have to compare the two cases filed by the claimant.
10. In Civil Case No. 633 of 2021 the amount claimed was VT 21,500,000 ( to be assessed), with 10% interest per annum and VT 30,000 as filing and service fee.
11. Civil Case No. 206 of 2022 is linked and so closely connected with the claim against the Ascension Limited in CC 633 of 2021 that it was impossible to separate the two by discontinuing against one and proceeding only against the other.
12. The claimant made a choice to discontinue against Mr Sugden in CC 633/21. It was a bad choice based on bad advice perhaps. But the claimant must now live with the consequences of his choice. He cannot have a second bite at the same cherry.



13. In his claim against Mr Sugden the claimant still includes Ascension Limited in paragraphs 4, 5, 6, 7, 8, 10, 11,12 and 13. Then at paragraph 14 the claimant hangs the responsibility of Ascension Limited on Mr Sugden. That is an abuse and a misconception of his claim.
14. I accept Mr Sugden's submission that on that authorities of Henderson v Henderson and the Unshun case the claimant is estopped and cannot be permitted to issue another proceeding against Mr Sugden.
15. Accordingly the claimant's claim and proceeding were struck out in its entirety with no order as to costs.

**DATED at Port Vila this 22nd day of July, 2022.**

**BY THE COURT**

  
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**Oliver Saksak**  
**Judge**

