

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

Civil Appeal
Case No. 21/3562 SC/CIVA

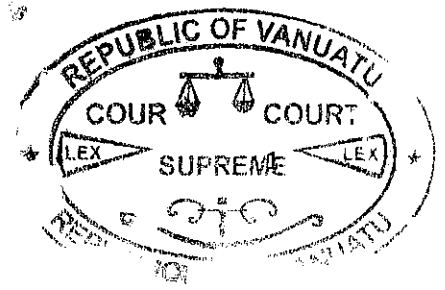
BETWEEN: Tropical Plantations Limited
Appellant

AND: Pierrette Carlo
Respondent

Date: 2 August 2022
Before: Justice V.M. Trief
Counsel: Appellant – Mr A. Kalmet
Respondent – Mr R. Willie

DECISION AS TO COSTS

1. By Judgment dated 2 June 2022, the Appellant Tropical Plantations Limited's ('TPL') appeal was allowed and the Magistrates' Court judgment dated 6 October 2021 set aside. Additionally, the Respondent Pierrette Carlo's Claim in Magistrates' Court Civil Case No. 20/2355 was dismissed.
2. I then heard counsel as to costs and now set out my decision.
3. The matter of costs is entirely discretionary.
4. TPL seeks costs on an indemnity basis based on the *Calderbank* offer (made "without prejudice except as to costs") by letter dated 11 December 2020 to the Public Solicitor's Office (Ms Carlo's lawyers), copied to Mr Willie. Further, that costs be agreed and if not, taxed by the Master.
5. Ms Carlo was given time to file and serve submissions. Despite follow-up by the Registry, Mr Willie has not filed submissions on her behalf.



6. TPL was successful in its appeal. The Magistrates' Court judgment which had found against TPL was set aside and Ms Carlo's Claim in the Magistrates' Court dismissed. Given the result, the usual rule applies and costs must follow the event.
7. TPL's *Calderbank* offer was made prior to both the Magistrates' Court judgment and this appeal. The offer was for Ms Carlo to discontinue her claim within 14 days with no order as to costs, but if the matter proceeded to trial and Ms Carlo was unsuccessful, indemnity costs would be sought.
8. Ms Carlo was successful in the Magistrates' Court but that has actually caused TPL to expend more. As the final result was in favour of TPL, the offer to settle was even more reasonable. The unnecessary incurrence of the proceedings in the Magistrates' Court and in this Court should be reflected by indemnity costs.
9. Accordingly, it is ordered that the Respondent is to pay the Appellant's costs in the Magistrates' Court and in this Court on an indemnity basis as agreed and if not, taxed by the Master.

**DATED at Port Vila this 2nd day of August 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

