

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

Civil
Case No. 21/1060 SC/CIVL

BETWEEN: Angelique Boulekone
Claimant

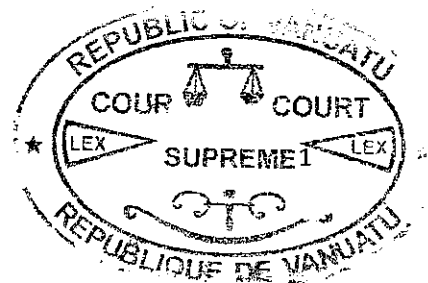
AND: Michael Matalue
Defendant

Date of Trial: 31 August 2023
Before: Justice V.M. Trief
In Attendance: Claimant – in person
Defendant – Mr D.K. Yawha
Date of Decision: 12 September 2023

JUDGMENT

A. Introduction

1. The Claimant Angelique Boulekone and the Defendant Michael Matalue have three children together. This was a disputed Claim seeking payment of monies from Mr Matalue in the nature of parental support or maintenance.
2. Defendant's counsel Mr Yawha also pressed the Defendant's Application to Strike out the Claim which had not been earlier determined by the Court.
3. Up until the day before trial, Ms F. Kalsakau of the Public Solicitor's Office ('PSO') represented Ms Boulekone. Ms Kalsakau appeared at the commencement of trial and sought leave to cease acting for Ms Boulekone. She explained that Ms Boulekone was ineligible under the PSO means test to be represented by the PSO and so the Public Solicitor had directed that Ms Kalsakau file a Notice of Ceasing to Act.



4. I informed Ms Boulekone that she could request time to find another lawyer or proceed with trial in person. Ms Boulekone said that Ms Kalsakau had also explained this to her but that this matter had taken too long and so she would proceed with the trial in person. I therefore granted Ms Kalsakau leave to cease acting and excused her.
5. The trial proceeded with Ms Boulekone in person.

B. Background

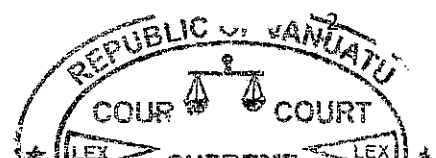
6. By the Claim, Ms Boulekone alleges that she has struggled to look after their three children on her own since they were born and has only received child maintenance since the end of November 2020. She claimed refund or contribution towards school fees for 2015-2021 totalling VT877,450 and refund of monies given to Mr Matalue from 2015 to 2020 totalling VT230,000. It is alleged that Ms Boulekone continues to suffer monetary loss due to the actions and negligence of Mr Matalue.
7. The claim for refund of monies given to Mr Matalue was particularised as follows in para. 7 of the Claim:

7. *The Claimant puts forward her spending's as from 2015 to 2021 (6 years period).*

(a) *Breakdown of all monies spend on the Defendant since 2015 to 2020.*

2015 TO 2020 EXPENSES TO MICHAEL MATALUE				
Years	Receipt number	Date of receipt	Description	Amount
2015	witness children	2015	TVL – study to PNG – cash money & goods	VT90,000
2016	witness children	2016	GO2RENT – gift for Christmas holiday	VT10,000
2017	witness children	2017	Caillard Kaddour	0
2018	witness children	2018	Caillard Kaddour – cash money VT10,000	VT10,000
2019	witness children	2019	Caillard Kaddour – cash money VT5,000/month	VT60,000
2020	witness children	2020	Caillard Kaddour – cash money VT5,000/month	VT60,000
				VT230,000

8. Ms Boulekone deposed in her Sworn statement filed on 8 April 2021 that she and Mr Matalue commenced their relationship in 1998 when they were students in New Caledonia [Exhibit C1]. They had their three children together but he also had six other children with other women. She has struggled to look after their three children on her own since their first child was conceived in 2003 to now. She attached



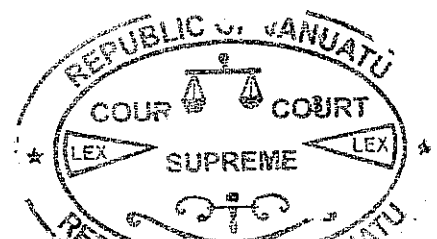
breakdowns of expenses that she spent on Mr Matalue from 2001 to 2020 without attaching copies of receipts in respect of the matters pleaded in para. 7 of the Claim as well as other items such as UNELCO bills, taxi fares and pocket money.

9. In her Sworn statement filed on 8 October 2021, Ms Boulekone attached copies of school statements showing her payment of various school fees from 2017 to 2021 [Exhibit C2]. She stated that Mr Matalue had contributed very little to their children's school fees.
10. Finally, Ms Boulekone deposed in her Sworn statement filed on 13 January 2022 that she filed child maintenance cases in 2008, 2013 and then in 2017 without success. Finally, the Island Court made a maintenance order in 2020 and Mr Matalue has started paying via deductions from his salary but there is an amount of VT332,000 which is still outstanding [Exhibit C3].
11. The Claim is disputed. It is alleged in the Defence that Mr Matalue has supported Ms Boulekone and the children with food and school fees when requested but he cannot recall when and the amount spent. He admitted that he is paying maintenance. He denied any agreement with Ms Boulekone to refund monies she gave him during their love relationship if their relationship ended.
12. Mr Matalue deposed in his Sworn statement filed on 20 July 2021 that there was nothing contractual in his and Ms Boulekone's spending on each other because it was out of love for each other [Exhibit D3]. He is now paying maintenance for the children via salary deductions [Exhibit D1]. He stated in cross-examination that he has never lived with Ms Boulekone and their 3 children; he has at all times lived with the woman that he lives with and their daughter.
13. On 19 July 2021, the Defendant filed Application to Strike Out on the grounds that the claim for refund of expenses was statute-barred, that the Claim did not disclose a cause of action for breach of contract or any other cause of action and that in any event, there was insufficient proof of the Claim (the 'Application').
14. On 26 July 2021, the Claimant's submissions in response to the Application were filed. Then Claimant's counsel Mr E. Molbaleh's submissions denied the grounds generally but without reference to any legal principles or case law.

C. Discussion

15. There is no cause of action known in the common law be that in negligence, tort law or the law of contract for failure to pay parental support or maintenance.
16. This is explained in *Halsbury's Laws of England* (4th ed., Butterworths), vol. 5(3) at para. 801 as follows:

At common law there is no legal obligation on a father or mother to maintain a child unless the failure to do so would bring the case within the criminal law.



17. Maintenance is available only as provided by legislation. The *Maintenance of Family Act* [CAP. 42] provides that a man who fails to make adequate provision for his wife and children who are aged under-18 or a mother who deserts her children who are aged under-18 commits a criminal offence: section 1.
18. Following a conviction, the Court may make orders for provision of the wife or children: section 2, *Maintenance of Family Act*.
19. The *Maintenance of Children Act* [CAP. 46] provides that a woman may make a civil claim against a child's father for a sum of money for the maintenance and upbringing of the child.
20. Ms Boulekone filed a claim for maintenance in the Efate Island Court and obtained maintenance orders in 2020. There is no legal basis for her to file a second claim in the Supreme Court seeking additional maintenance or other payment of parental support.
21. For the reasons given, the Claim does not disclose a cause of action and must be dismissed and struck out.

D. Result and Decision

22. The Claim is **dismissed**.
23. The Defendant's Application to Strike out the Claim filed on 19 July 2021 is **granted** and the Claim is **struck out**.
24. Mr Yawha stated in closing that if the Defendant were successful, that he would not seek costs. Accordingly, there is no order as to the costs of the Application and of the proceeding.

**DATED at Port Vila this 12th day of September 2023
BY THE COURT**


Justice Viran Molisa Trief

