

**BETWEEN: THE REPUBLIC OF VANUATU**  
**Claimant**

**AND: TUNA FISHING (VANUATU) LIMITED**  
**Defendant**

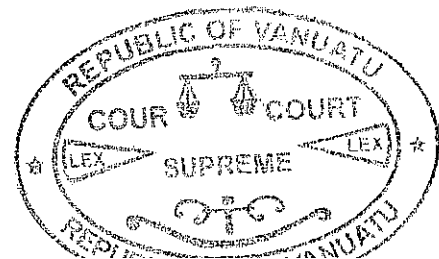
**Hearing:** 28<sup>th</sup> day of November, 2023  
**Before:** Justice W. K. Hastings  
**Counsel:** Mrs. FWR. Samuel for the Claimant  
Mr. A. Kalmet for the Defendant

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**CROSSCLAIM RULING**

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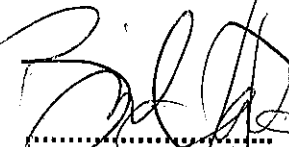
1. The Republic filed its claim on 26 May 2023 alleging the defendant received moneys from Unimed and Lavinia. It claims the moneys were paid to the Defendant on behalf of the Claimant, and that as a result, the Defendant holds the moneys in trust for the Claimant.
2. The Defendant filed a defence and counterclaim on 12 July 2023 denying it was a trustee for the Claimant of the moneys received from Unimed. The counterclaim alleges the Claimant compulsorily acquired the Defendant's leasehold title 11/OA23/062, and seeks payment of the amount due under the deed of release.
3. The Claimant then filed a document called "*Reply, Defence & Set-Off to Counterclaim, Cross-Claim*" on 4 August 2023. At a conference on 28 November 2023, Mr Kalmet for the Defendant objected to the cross-claim part of this document because the Civil Procedure Rules 2002 do not contain any provision for the filing by a claimant of a cross-claim.
4. Submissions on the issue of the cross-claim from Mr Kalmet were filed on 1 December 2023. Submissions from Ms Samuel were filed on 5 December 2023. Counsel were content for me to rule on the papers.
5. In his written submissions, Mr Hurley for the Defendant relied on Justice Trief's Minute of 3 November 2021 in Civil Case No 20/155 in which she deleted paragraphs in a pleading relating to a rejoinder because no such pleading is known to the Civil Procedure Rules.
6. In her written submissions, Ms Samuel submitted the claim and counterclaim are unrelated as to subject, whereas the counterclaim, set off and cross claim are related as to subject, namely the parcel of land to which they all refer. She also submitted the Defendant took no steps between the date the cross-claim was filed on 4 August 2023 and the date it was objected to, 28 November 2023. Not having replied to requests to the Defendant for a defence to the cross-claim, Ms Samuel described what happened on 28 November 2024 as an ambush for tactical reasons "*to ensure that the defendant's counterclaim would be programmed through to trial without the cross-claim.*" She submitted the cross-claim could be renamed "*subsequent counter-claim*" because "*the cross-claim is merely a counterclaim in the (deemed) original proceeding of the earlier counter claim.*"



7. I agree with Mr Hurley. There is no provision in the Rules for a cross-claim. To permit a cross-claim in a reply to a defence to a counterclaim is to extend, in an octopus-like fashion, a cause of action to include an ever greater number of pleadings. The over-riding objective of the rules is to enable the courts to deal with cases justly, which includes in r.1.2, ensuring that the case is dealt with speedily and fairly. Permitting a cross-claim, a pleading not anticipated by the Rules, would defeat the objective of dealing with a case speedily and fairly by adding more documents to this already extensive chain of pleadings.
8. For these reasons, under r.18.10(2)(c), I declare paragraphs 7, 8 and the prayer for relief under the heading "*Cross-claim*" in the document "*Reply, Defence & Set-off to Counterclaim, Cross-Claim*" to be of no effect.
9. Costs in the cause.

**Dated at Port Vila, this 20<sup>th</sup> day of March, 2024**

**BY THE COURT**

  
Justice W. K. Hastings

