

CF

IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(CIVIL)

ENFORCEMENT CASE NO. 2736 OF 2022

BETWEEN:

ALI KALNARAN

Judgment Creditor

AND

MARKSON SILAS

Judgement Debtor

BEFORE: Aurélie TAMSEUL

(Deputy Master)

MADE: 17th day of September, 2024

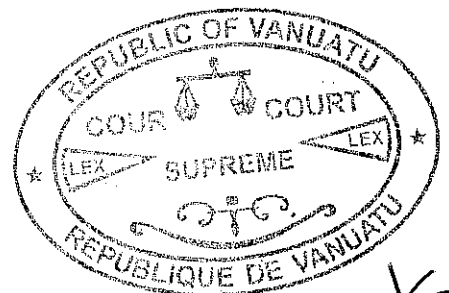
ENTERED: 17th day of September, 2024

APPEARANCES: Junior Garae counsel for the Judgment Creditor via telephone conference, Tom Joe Botleng counsel for the Judgment Debtor absent with excuse

MINUTE AND ORDER

a. Introduction

1. This matter came up for taxation today whereby Mr. Garae filed on the 7th July, 2024 a submission requesting their bill to be taxed at VT 20,000 per hour as per the reasoning in the case of **Vanuatu Commodities Marketing Board v Lessegman [1997] VUSC 24**.
2. The Court noted from paragraph 48 of the judgment dated 4th July, 2022 stating that "costs must follow the event. The Defendant is to pay the Claimant's costs as agreed or taxed by the Master..."



1/3

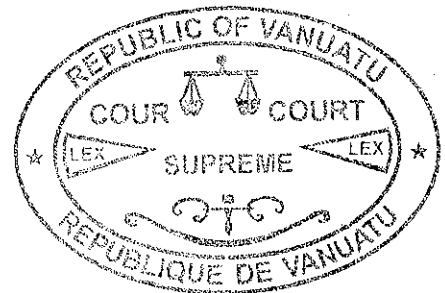
b. Case law

3. The Court of Appeal in the case **Hurley v Law Council of the Republic of Vanuatu [2000] VUCA 10¹** posed three questions as follow:

1. *What is the appropriate hourly rate in Vanuatu in any assessment of party and party costs? (my emphasis)*
2. *What are the circumstances in which it will be appropriate to recover the costs of the services of overseas counsel generally and particularly in the circumstances of the present case?*
3. *Did the exercise of the trial Judge's discretion miscarry?*

c. Discussion

4. The Court informing counsel that where there is no indication that the costs are to be paid on indemnity basis (solicitor/client), the presumption remains that costs are to be taxed on the standard basis (party/party).
5. The standard basis is not defined in the Rules but overtime numerous judgments from the Supreme Court were issued, amongst others the one referred to by counsel in their submission.
6. Counsel agrees with the Court that the highest Court of the land is the Court of Appeal. Therefore, we looked into the records of the said Court to seek clarification on the standard basis.
7. In determining the first question, the Court of Appeal in the **Hurley v Law Council of the Republic of Vanuatu [2000] VUCA 10** case arrived at the conclusion that VT 10,000 (including VAT) should prevail as the norm subject always to the ability of counsel to make submissions on the unique circumstances of a case.
8. Counsel is reminded that Judges have a discretionary power in awarding costs.
9. Where counsel wishes to have their bill taxed in an hourly rate higher that the party-to-party costs of VT 10,000, based on the circumstances of their case, they ought to raise the issue before the Judge, who having dealt with the substantive case, is better placed to allocated an appropriate taxing amount prior to transferring the file to the Maser's office for taxation.



¹ Hurley v Law Council of the Republic of Vanuatu [2000] VUCA 10; Civil Appeal Case 12 of 1999 (17 July 2000), <http://www.paclii.org/vu/cases/VUCA/2000/10.html>

d. **Finding**

1. The request for the bill of costs to be taxed at VT 20,000 per hour is not granted.
2. That the bill of costs will be taxed at VT 10,000 per hour.
3. That the matter is listed for taxation on the 21st October, 2024 at 9 a.m.

