

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil

Case No. 23/165 SC/Civil

BETWEEN: Aore Island Limited
Claimant

AND: Freshwater Holdings Limited
First Defendant

AND Klaas Sybranda
Second Defendant

Before: Justice Oliver A. Saksak

Counsel: Mr Andrew Bal for the Claimant
First and Second Defendants in person- unrepresented

Date of Hearing: 19th July 2024
Date of Judgment: 14th November 2024

JUDGMENT

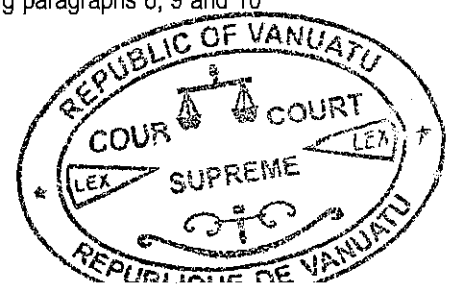
Introduction

1. This is a claim in negligence for damages claimed for-

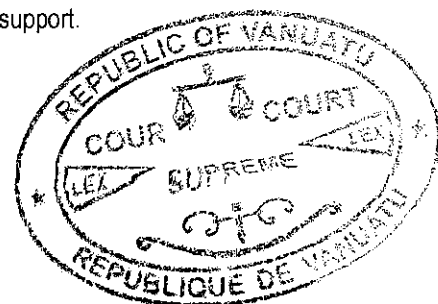
- a) Loss of 30 calf breeders - VT 1,800,000
- b) Repairs and Replacement costs of damaged gate-..... VT 400,000
- c) Damages for negligence- VT 1,000,000
- d) General Damages- VT 500,000
- e) Special Damages- VT 1,000,000
- f) VAT- VT 330,000
- g) Costs

Background

2. The claimant filed an initial claim on 6th February 2023 and filed an amended claim on 8th February 2023 joining Klaas Sybranda as Second Defendant to the proceeding and amending paragraphs 8, 9 and 10 of the original claim.

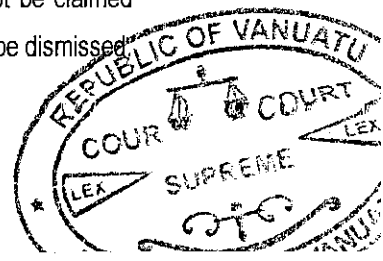


3. Initially the Court granted default judgment on 13th April 2023 following the claimant's request for default judgment. The Court was under the wrong impression that no Response and/or defence had been filed. However on 19th May 2023 it was discovered that the defendant had in fact filed a response and defence on 14 and 16 February 2023 well before the Request for Default Judgment was filed.
4. Accordingly Mr Bal sought leave to file an amended claim and to have it reserved on the two named defendants.
5. Subsequently following a formal application by the defendants filed on 23rd May 2023, the Court set aside the Default Judgment entered on 13th April 2023.
6. On 17th April 2024 the second defendant withdrew his counter-claim and the claimant withdrew in return his application for summary judgment. The parties agreed to a trial date being 19th July 2024 to be held at the Court in Luganville. The Court gave time to the defendant to file and serve sworn statements in response and in support of his defence. The defendants failed to comply with direction orders.
7. On 19th July 2024 a short trial hearing was held at the Court in Luganville when the claimant gave oral evidence confirming his two sworn statements filed on 6th February 2023 on 15th July 2024 and tendering them into evidence as Exhibits C1 and C2 respectively.
8. The claimant was cross-examined by the second defendant and re-examined by Mr Bal.
9. The second defendant did not give any evidence as he had not filed any sworn statements to support his defence and after Mr Bal objected to him doing so. But he indicated he would file written submissions.
10. Mr Bal filed written submissions on 26th August 2024. Mr Sybranda filed his written submissions earlier on 16th August 2024 together with a sworn statement in support.
11. Mr Sybranda's submissions in the main was that the Court should dismiss the claimant's claims on several grounds including, that there was improper service, there was no cause of action established, there was insufficient evidence showing losses of breeding stock, there were unreliable and contradictory evidence by unreliable and hostile witnesses, and that the claim and proceeding was an abuse of process.
12. Those grounds were substantiated by the sworn statement filed by Mr Sybranda in support.



Discussion

13. The claimant's first claim relates to loss of 30 calf breeders to the value of VT 1,800,000. There is no pleading as to which year or years these calf breeders were lost. Further there is no evidence by the claimant to show what exact dates these breeders were lost and whether or not they were pregnant at that time. And there is no evidence by the claimant also as to the value of the cattle at the time of their alleged loses from any butcheries to which the claimant supplied or sold his cattle for slaughter to assist the Court make comparisons. For lack of evidence, this head of damages must fail.
14. Next the repairs and replacement costs of the damaged fence in the sum of VT 400,000. The defendants denied any damage to the alleged gate. And they denied that Willie Tavuti was their employee at the time of the alleged damage being done. Mr Tavuti should have been a witness for the claimant but was not. Mr Woon relied on his evidence by sworn statement dated 15th July 2024 in particular to paragraph 3 where he states there were 2 witnesses by name of Maxi-Million Scherin and Sheryn Scherin and their annexures " MW1" and " MW2". However these documents are not admissible because Mr Woon was not the maker of those documents. Further Mr Woom made reference to another witness by name of Maria Reid in paragraph 5 of his statement being the former wife of Mr Sybranda and former director of the First Defendant Company annexed as " MW3". This document too is not admissible as evidence before the Court because Mr Woon is not the maker of the document. It is improper for the document to be annexed to Mr Woon's sworn statement.
15. In cross-examination it appears the gate was in issue. If the gate was damaged in 2017 the best evidence should have been a photograph of the gate to be disclosed to the Court as evidence but sadly there are no photographs of the alleged damaged gate by the claimant.
16. Next if the gate was repaired at the cost of VT 400,000 where are the documents showing the details of the materials purchased and their related costs and the labour costs involved? I find there is no evidence substantiating this head of claim and therefore this claim too must fail.
17. Next is the claim for damages for negligence. For the claimant to succeed first he must establish the tortfeasor and he has not done so. And such this claim is not made out and must fail too.
18. Next there are separate claims for general and special damages in he sums of VT 500,000 and VT 1,000,000. These in my view are duplicate claims. The claims for 30 calf breeders alleged lost and costs and repairs and replacement of the damaged gate are special damages. They could not be claimed separately again as the claimant has done. These claims too are not established and must be dismissed.

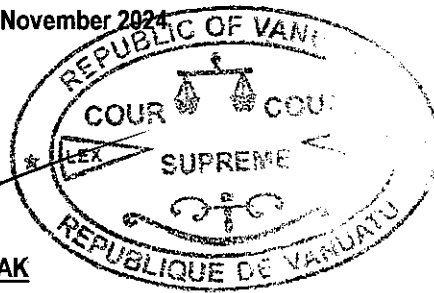


Conclusion

19. In summary I find that the claimant has not made out his claims against the defendants.
20. I gather from the submission of the second defendant and his sworn statement that there appears to be animosity between these individuals. Those personal vendetta cannot in my view be used as a cause of action to pursue claims that are old and which lack the relevant evidence to support them.
21. All claims of the claimant are dismissed in its entirety.
22. In the circumstances there will be no order as to costs. Each party bears their own costs.

DATED at Port Vila this 14th day of November 2024

BY THE COURT



Hon. OLIVER A SAKSAK

Judge