

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

Civil
Case No. 23/2984 SC/CIVL

BETWEEN: AARON BONGMIAL HANGHANGKON
Claimant

AND: NATIONAL BANK OF VANUATU
Defendant

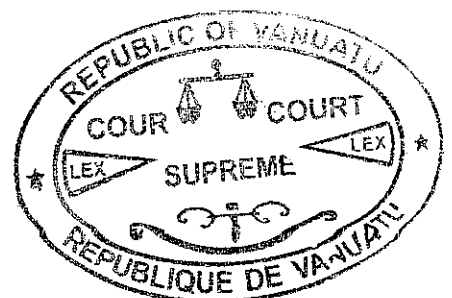
Date of Trial: 9 December 2024
Date of Decision: 9 December 2024
Before: Justice M A MacKenzie
Counsel: Claimant – Self represented
Defendant – Mr A Kalmet

DECISION

Introduction

1. At the outset of the trial on 11 October 2024, I granted Mr Hanghangkon's application to adjourn the trial. The reasons are set in the Ruling dated 15 October 2024.
2. As at 11 October 2024, Mr Hanghangkon had not filed any evidence in support of the claim despite directions being made to do so on 3 separate occasions. He had not paid the trial fee either. At paragraph 12 of the ruling, I made clear directions for a trial on 9 December 2024, including that:
 1. Mr Hanghangkon was to pay the trial fees by 25 November 2024.
 2. Mr Hanghangkon was to file and serve a sworn statement by 2 December 2024.
 3. He was also to pay VT 10,000 wasted costs by 25 October 2024.
3. Mr Hanghangkon has not complied with the directions at all. Mr Hanghangkon was clearly told that a possible consequence of noncompliance was the risk that the claim would be struck out.¹

¹ I refer to paragraph 11 of the ruling dated 15 October 2024



4. Mr Hanghangkon did not attend the trial. He was telephoned and reminded about the trial. He advised my clerk that he was going to discontinue the claim. When this information was relayed to me, I asked my clerk to telephone Mr Hanghangkon again and enquire when he was intending to file the notice of discontinuance. He was telephoned three times and did not answer.
5. In all the circumstances I decided to dismiss the claim pursuant to rule 12.9 (2)(b) of the Civil Procedures Rules given Mr Hanghangkon's nonattendance at the trial. I made an order for costs in favour of the Defendant, as either agreed or taxed.
6. I said I would give written reasons. These are my reasons.

Discussion

7. If a claimant does not attend when a trial starts, there are various steps that the Court may take, pursuant to rule 12.9 (2) of the CPR:

Failure to attend

12.9 (1) If a defendant does not attend when the trial starts:

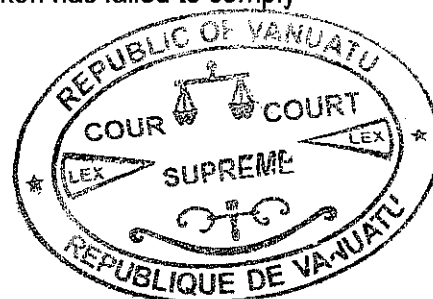
- (a) the court may adjourn the proceeding to a date it fixes; or*
- (b) the court may give judgment for the claimant; or*
- (c) the claimant, with permission of the court, may call evidence to establish that he or she is entitled to judgment against the defendant.*

(2) If a claimant does not attend when the trial starts:

- (a) the court may adjourn the proceeding to a date it fixes; or*
- (b) the court may dismiss the claimant's claim and give judgment for the defendant; or*
- (c) the defendant, with permission of the court, may call evidence to establish that he or she is entitled to judgment under a counterclaim against the claimant.*

(3) The court may give directions about further dealing with the proceeding and must consider the question of costs.

8. I acknowledge that the overriding objective of the CPR is to ensure the cases are dealt with justly. Procedural fairness is critically important, which is why the Court granted an adjournment of the trial on 11 October 2024. Despite the fact that the directions were then made to ensure that the trial could proceed, Mr Hanghangkon has failed to comply



with the directions and has not filed a sworn statement as directed. There is no evidence to support the claim. Further, Mr Hanghangkon has failed to comply with the direction to file a sworn statement on 4 separate occasions.

9. Mr Hanghangkon has had a more than sufficient opportunity to file evidence in support of his claim, which appears to be entirely without merit. In *Carlot v Santhy* [2009] VUCA 5, the Court of Appeal upheld the primary judge's decision to dismiss a counterclaim in circumstances where the counterclaimant had not filed any witness statements before the trial in support of his counterclaim. The Court said:

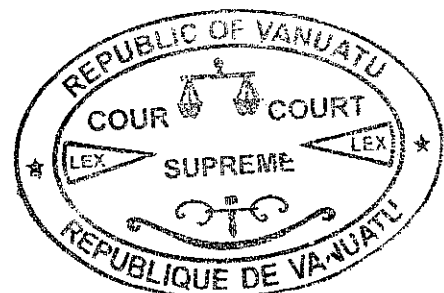
"22. The decision by a judge to grant an adjournment is discretionary. It can be made on the Court's own motion or by application from a party. In this case the appellant and his counsel were not present in Court on 19th August 2008 but the respondents (as Claimants) were. The claimants were ready to proceed with the trial hearing.

23. The respondents were for the purpose of their counterclaim claimants. Rule 12.9(2), where the claimant fails to attend when the trial commences, allows the Judge to adjourn the case or give judgment for the defendant.

24. In this case the Judge decided to give judgment rather than adjourn the counter-claim. This was well within the Judge's discretion and in the circumstances hardly surprising. The appellant had not filed any witness statements before the trial in support of his counterclaim. No excuse was offered for the failure to turn up for the trial on 9 August 2008.

26. For the reasons given there is no merit in the appeal against the dismissal of the counterclaim. It is dismissed.

10. Whether to dismiss the claim due to Mr Hanghangkon's nonattendance is discretionary. Mr Hanghangkon had already been granted an adjournment. As with *Carlot v Santhy*, Mr Hanghangkon has filed no evidence in support of his claim, and repeatedly ignored directions to do so. I consider that Mr Hanghangkon's lack of attendance of the trial, and that he has not filed any evidence despite directions to do so on 4 different occasions, demonstrates a distinct lack of interest in prosecuting his claim. Then there is Mr Hanghangkon's indication that he intended to file a notice of discontinuance, which signals that he did not wish to pursue the claim. In the circumstances, it is just and fair to dismiss the claim.



Result

- 11. The claim is dismissed.
- 12. There is an order for costs in favour of the Defendant, as either agreed or taxed.

**DATED at Port Vila this 9th day of December 2024
BY THE COURT**

Mackenzie
.....
Hon. Justice M A Mackenzie

