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

Civil
Case No. 24/2102 SC/CIVL

BETWEEN: The Church of Jesus Christ of Latter-Day Saints Vanuatu Committee (INC)

First Claimant

AND: Honore Tiasinmal

Second Claimant

AND: Floyd T.Sovuai

First Defendant

AND: Peter Sovuai

Second Defendant

Before: **Hon. Justice EP Goldsbrough**

In Attendance: **Raikatalau, S for the First and Second Claimants**
Boe J for the First and Second Defendants

Date of Hearing: ***3 December 2024***
Date of Judgment: ***17 November 2025***

DECISION

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1. This is an application to strike out the counterclaim and defence filed to a Supreme Court claim filed on 22 July 2024. The defence and counterclaim were filed on 29 August 2024. The application to strike out the counterclaim and defence was filed on 19 September 2024.

2. The Court was invited to consider the documents filed on the application of 17 October 2024, the response from the defendants, 11 November 2024, the claimant's reply to the response and 3 December 2024, the defendant's submission on res judicata. Both counsel made oral submissions. This decision is about the counterclaim and defence.

3. The claim seeks permanent restraining orders against the two defendants based on previous incidents and damages for those incidents.

4. The relationship between the claimants and the defendants, other than all being the Church of Christ members, arises out of the provision of security services by the defendants to Church property.

5. That relationship resulted in earlier proceedings, in CC 3089/20, brought then by the present defendants seeking damages under the contract of services and or some form of equitable relief based on the exact circumstances of service.

6. CC 3089/20 was struck out as disclosing no cause of action. There are remarkable similarities between the claim raised in CC 3089/20 and the present counterclaim.

7. The present counterclaim, as set out together with the defence

    1. That the claimants failed to follow the procedures set out in the Vendor form authorised by Howard Niu, Director of the Area Pacific Physical Facilities.
    2. As a consequence of the second claimant's failure to materialise the contract, the first defendant was only paid a wage rate of VT 218 400 per month for four (4) people's salary.
    3. This payment continued until 12 February 2019, when the First defendant was told that his contract had been terminated.
    4. The second Claimant's termination letter did not mention any reason as to why he was terminated.
    5. The Second Claimant's termination letter did not mention any reason as to why he was terminated.
    6. The Second Claimant further says that he had already won the contract through his successful bid which lapses on 28 March, 2020.

8. Effectively, the counterclaim seeks the same relief as requested in the original claim. Whether the doctrine of res judicata or the doctrine of estoppel applies, given that the original claim was struck out not following a hearing of the matter but on a strike-out application, need not be decided in this application; the remaining question is whether the counterclaim discloses a reasonable cause of action.

9. It is not a claim in contract because, as the counterclaim itself declares, no contract ever materialised. Failing to follow the procedures set out in a Vendor Form does not disclose a cause of action. There is no claim for work done over what period and by whom for which an action to recover instead of contractual terms pleaded. It is pleaded that a contract, said not to exist, was then terminated without reason. Finally, it is said that the 2nd defendant had already won the contract " through some succession yet undisclosed tender process."

10. If the counterclaim had been better particularised, it would reflect a scenario identical to CC 3089/20, that is, a claim for the difference between what the counterclaimants were paid and what they believed they should be paid. Perhaps that explains why the claim CC 3089/20 is described as a claim in equity rather than a contract.

11. In submission on the application, Counsel for the claimants submitted that the counterclaim is a claim in equity, not a contract. This perhaps explains why it is suggested that the counterclaim discloses no cause of action.

12. Considering the nature of the case, what counsel for the counterclaimants appears to be saying is that the claim is founded in contract, at first a verbal agreement which should, in the course of time, have been converted into a written agreement, but that written agreement never materialised. But the basis of the deal remains, and the counterclaimants are now suing for the value of the services they provided.

13. The principles to be applied at a strikeout are well established. In Poilapa v Mahe [2024] VUCA 32, the Court of Appeal said:-

> On an application to strike out a claim such as this, the applicant must show that a trial of the claim is unnecessary because, inter alia, it is so obviously untenable that it cannot possibly succeed. This will involve examining the pleadings and the evidence, not for the purpose of making findings of fact, but only to determine whether a triable issue is disclosed.
> In determining an application to strike out, any court must begin its deliberations based on the assumption that the claimants can show through evidence that what they assert in the claim is correct. That is not to say that the claimants will ultimately succeed in that task, simply that the basis for the strike out determination will be the assumption that the claimants can prove their case at trial. As the strikeout is heard and determined before any facts are found based on evidence, this assumption route is the only possible way to fairly decide the application.

14. The Court of Appeal has also said[1]

> A decision to strike out in circumstances as described herein will not normally be made if it is possible to cure the defects in the pleadings by reasonable amendment. If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

15. The counterclaim is not pleaded correctly but could be remedied by amendment. Counsel for the counterclaimants must consider the available evidence and seek to amend the pleadings accordingly. If that is not done, the counterclaimants are unlikely to succeed at trial.

16. The application to strike out the counterclaim is therefore dismissed. Both counsel asked for an order for costs of VT 100,000, depending on the decision. As the application to strike out has been dismissed, an order for the payment of VT 100,000 costs is made in favour of the counterclaimants.

[1] Bulememe v Republic of Vanuatu [2022] VUCA 10

17. This matter, subject to counsel for the counterclaimants seeking permission to amend his pleadings, needs to proceed to trial. In the circumstances, the matter is returned to the Chief Registrar for re-allocation.

Dated at Port Vila this 17th day of November 2025

BY THE COURT

Hon. Justice EP Goldsbrough

REPUBLIC OF VANUATU
COUR COURT
LEX SUPREME LEX
REPUBLIQUE DE VANUATU