

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

Civil
Case No. 21/1827 SC/CIVL

BETWEEN: George Boar
Claimant
AND: Don Ken
Defendant

Date of Trial: 18 August 2025
Before: Justice V.M. Trief
In Attendance: Claimant – in person
Defendant – Mr J. Boe
Date of Decision: 24 February 2026

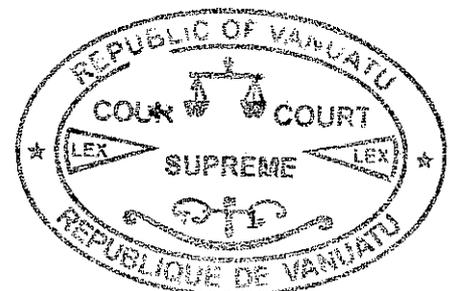
JUDGMENT

A. Introduction

1. The Claimant George Boar was a registered legal practitioner until November 2019. The Defendant Don Ken, a former Member of Parliament, retained Mr Boar as his lawyer in several Court proceedings. By the Claim, Mr Boar is seeking payment of the balance of his legal fees said to be owing in respect of those Court cases under a written agreement with Mr Ken.

B. Background

2. Mr Boar is a former legal practitioner, having been struck off from the Register of Legal Practitioners on 25 November 2019.
3. On 17 February 2020, Mr Boar and Mr Ken entered into an agreement titled, 'Costs Agreement between Solicitor and Client', which was addressed to Mr Ken from Mr Boar and recorded that Mr Boar would assist Mr Ken in three civil matters namely

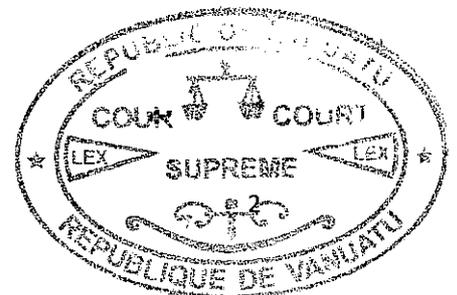


Ken v Republic of Vanuatu, CC 16/1227 (Supreme); *Ken v Lapenmal*, CC 18/1875 (Magistrates’); and *Ken v Republic of Vanuatu*, CAC 18/3176 (the ‘Costs Agreement’).

4. In June 2021, Mr Boar filed a claim in the Supreme Court. He claimed VT2,605,833 together with 10% interest and costs.
5. The matter went to trial after which judgment issued on 17 July 2023.
6. Mr Ken appealed. By judgment dated 17 November 2023, the Court of Appeal quashed the judgment and remitted the matter to the Supreme Court for rehearing: *Ken v Boar* [2023] VUCA 49.
7. The parties filed amended pleadings.
8. This is the judgment following the retrial.

C. The Pleadings

9. Mr Boar alleges in the Amended Claim filed on 11 January 2024 that he and Mr Ken entered into the Costs Agreement dated 17 February 2020 in which Mr Ken agreed to pay him VT2,605,833. He also alleged that it was a term of the Costs Agreement that the sum of VT2,605,833 was the balance of Mr Boar’s invoices No. 13/18, 40/18, 13/19, 81/19 and 001/20 (a 6th invoice No. 4/18 was also referred to in the Costs Agreement: cl. 4) for the three civil cases. Finally, he alleged that despite demand, Mr Ken had not paid him VT2,605,833 thus causing him damage. The relief sought is a money order for VT2,605,833, 10% interest and costs.
10. The Claim is disputed. Mr Ken alleged in his Defence that after he had executed the Costs Agreement, he realized that the agreement also covered the Magistrates’ Court claim that had already been paid to Mr Boar, and that the amount was excessive as he has already made some payments Mr Boar hence owes him only VT355,833. He alleged that he tried to talk to Mr Boar about the excessive amount but was unsuccessful so he made a final payment of VT1,000,000 (funded by a Vanuatu Agriculture Development Bank loan) in 2020 and then stopped because Mr Boar had never issued him with receipts. He denied that he had failed to make payment to Mr Boar. He also alleged that Mr Boar was dishonest by not telling him that he had been struck off on 25 November 2019 hence defrauded him into signing the Costs Agreement on 17 February 2020.
11. In short, Mr Ken accepts that he signed the Costs Agreement on 17 February 2020 but denies that he owes the balance of costs of VT2,605,833 as he has made some payments to Mr Boar but was not provided receipts.



12. The issues between the parties for the Court's determination include whether or not Mr Ken agreed in the Costs Agreement to pay Mr Boar VT2,605,833; what payments Mr Ken has made and whether or not Mr Boar issued receipts for them; and whether or not the Costs Agreement was entered into by fraud because Mr Boar did not tell Mr Ken that he had already been struck off as a legal practitioner, thus vitiating the agreement.

D. Evidence

13. The Claimant Mr Boar relied on his Sworn statements filed on 16 April 2024 [Exhibit C1], on 25 July 2024 [Exhibit C2] and on 19 March 2025 [Exhibit C3].

14. He was cross-examined (which only occurred after Mr Boe's opening address which was when Mr Boe realised that he needed to cross-examine Mr Boar, so I granted leave to Mr Boar to re-open his case and then Mr Boe cross-examined him).

15. Mr Ken's evidence consists of his Sworn statement filed on 1 July 2024 [Exhibit D1] and the Sworn statement of Remon Ken, his wife, also filed on 1 July 2024 [Exhibit D2].

16. Both Mr and Mrs Ken were not available for cross-examination due to Mr Ken's ill health. Consequently, neither one of them was cross-examined.

E. Discussion

17. This is a claim for breach of contract, based on the Costs Agreement. Accordingly, the starting point is the contract.

18. What were the terms of the contract?

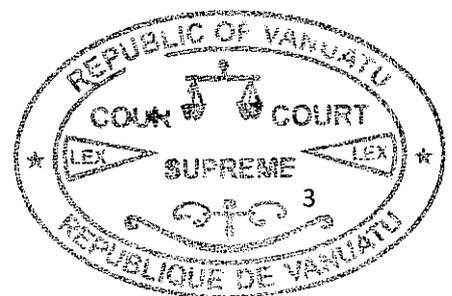
19. Mr Boar exhibited a copy of the Costs Agreement [in Exhibit C1, Attachment "GB2"]. On its face, the agreement purports to be a retainer by Mr Ken of Mr Boar as his legal practitioner in relation to three pieces of litigation. It is written in the future tense:

TO: DON KEN of Port Vila...

FROM: GEORGE BOAR, Barristers, Solicitors and Notary Public trading as BOARLAW, Barristers, Solicitors...

SUBJECT: DON KEN V REPUBLIC; SUPREME COURT CIVIL CASE NO. 1227 OF 2016

DON KEN V EMILE LAPENMAL & ORS; MAGISTRATE COURT CIVIL CASE NO. 1875 OF 2018



DON KEN V REPUBLIC; CIVIL APPEAL CASE NO. 3176 OF 2018

Thank you for your instructions to act for you in these matters. We set out here below the terms and conditions of our engagement.

CHARGES AND EXPENSES (COSTS)

3. a. *We will be charging you VT20,000 per hour for your Supreme Court Civil Case No. 1227 of 2016.*
- b. *We will be charging you VT15,000 per hour for your Magistrate Court Civil Case No. 1875 of 2018.*
- c. *We will be charging you VT20,000 per hour for your Court of Appeal Case No. 3176 of 2018.*

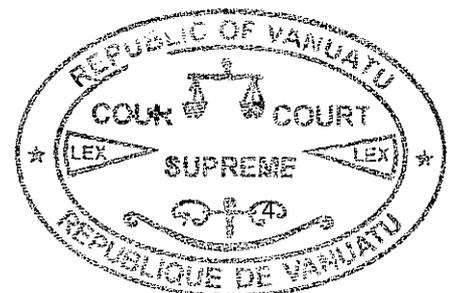
TOTAL COSTS AND EXPENSES

4. *Our total costs and expenses are per our invoices No. 4/18, No. 13/18, 40/18, 13/19, 81/19 and 001/20 amount to VT2,605,833.*

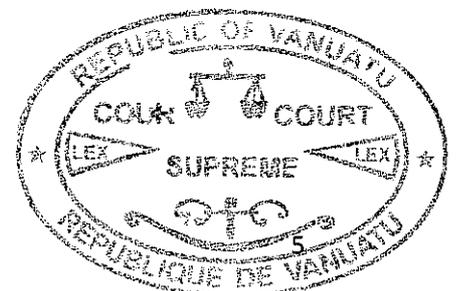
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ACCEPTANCE OF THIS OFFER

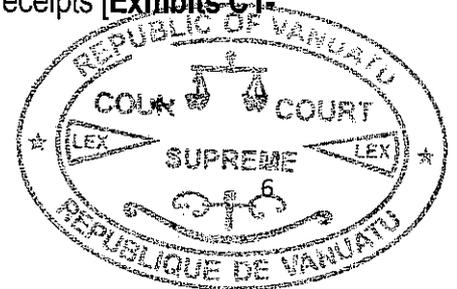
7. *We will begin work, promptly when you notify your acceptance of this offer which you may do orally, or in writing, or by signing and delivering to us the attached duplicate.*
20. Whilst the Costs Agreement is written in the future tense and on its face purports to be a retainer by Mr Ken of Mr Boar as his legal practitioner in relation to the three-named cases, it is plain that it relates to work already performed by Mr Boar as all three-named cases pre-date the Costs Agreement. In addition, Mr Boar was struck off as a legal practitioner on 25 November 2019. As he could not have practised law after 25 November 2019, I must infer that all Mr Boar carried out work for Mr Ken on the three cases prior to his being struck off.
 21. Clause 3 of the Costs Agreement provided that Mr Boar would charge an hourly rate for each case. Clause 7 of the agreement provided that Mr Boar would begin work as soon as the 'offer' (the agreement) was accepted. The prospective nature of these provisions is anomalous given that Mr Boar had already performed the work and especially since Mr Boar was struck off as a legal practitioner before the agreement was signed.
 22. Clause 4 of the Costs Agreement provided that Mr Boar's total costs and expenses over his 6 invoices was VT2,605,833. This wording is also anomalous given that a lawyer acting for a client does not incur costs and expenses; he or she charges the client legal fees. That said, clause 4 appears to assert that the total 'costs and expenses' due to Mr Boar under his six invoices namely No. 4/18, 13/18, 40/18, 13/19, 81/19 and 001/20 totalled VT2,605,833.



23. However, as the Court of Appeal pointed out in *Ken v Boar* at [5], the total of these six invoices was not VT2,605,833 but actually VT3,165,833 (the difference having been paid as a down payment):
5. *The respondent had already issued to the appellant a total of six invoices totalling the amount of VT3,165,833 for payment but the agreement recorded that VT2,605,833 was the total amount charged for the three specified cases. The difference between these two sums was VT560,000 which the parties agree had been paid by the appellant as a down payment.*
24. Mr Boar alleged in the Amended Claim that it was a term of the agreement that the sum of VT2,605,833 was the balance of Mr Boar's invoices for three civil cases.
25. Clause 4 of the Costs Agreement provides that Mr Boar's total 'costs and expenses' as set out in the six invoices is VT2,605,833. The word, "balance" is not used.
26. "Balance" implies that some payment has been made towards the amount owed, thus leaving a 'balance' still to be paid. However, there is no mention in the Amended Claim that a VT560,000 down payment had been made.
27. Mr Boar cannot resile from his concession before the Court of Appeal that Mr Ken has paid him VT560,000 as a down payment for the three cases: *Ken v Boar* at [5].
28. Given Mr Boar's concession before the Court of Appeal that Mr Ken paid him VT560,000 as a down payment, that explains why Mr Boar alleged that the sum of sum of VT2,605,833 was the balance of his invoices for three civil cases. It is Mr Boar's case now that a balance is owed to him, having conceded in the Court of Appeal that Mr Ken paid him a down payment of VT560,000, but he has not set that out in the Amended Claim.
29. For the foregoing reasons, I do not agree it was a term of the agreement that the sum of VT2,605,833 was the balance of Mr Boar's invoices for three civil cases.
30. Mr Boar also alleged in the Amended Claim that Mr Ken agreed in the Costs Agreement to pay him VT2,605,833. However, there is no express term anywhere in the Costs Agreement that Mr Ken agreed to pay Mr Boar VT2,605,833.
31. Clause 4 of the Costs Agreement simply asserted that Mr Boar's 'costs and expenses' as per his six invoices was VT2,605,833 but did not provide that Mr Ken would pay Mr Boar such amount. There is no provision anywhere else in the Costs Agreement that Mr Ken agreed to pay Mr Boar that sum.



32. Accordingly, I find that there is no term in the Costs Agreement in which Mr Ken agreed to pay Mr Boar VT2,605,833.
33. The absence of a payment term in the parties' Costs Agreement is fatal to Mr Boar's Amended Claim.
34. Mr Ken's case in defence is that the amount of VT2,605,0833 was excessive as he had already made some payments but was not provided receipts. In the defence to the Amended Claim filed on 9 April 2024, Mr Ken set out particulars of payments that he says he and Mrs Ken made to Mr Boar from March 2015 through to 24 February 2020 totalling VT2,810,000. He claimed that none of those payments was received.
35. Mr Ken deposed that Mr Boar never gave him a receipt for his VT560,000 down payment in March 2015 or for other payments made from May 2015 to February 2020 totalling VT2,810,000 [Exhibit D1]. Mrs Ken gave the same evidence and added that she assisted her husband to make three payments to Mr Boar [Exhibit D2].
36. On 15 April 2024, Mr Boar filed a Reply to Mr Ken's defence. He denied receiving VT560,000 in March 2015 or any other payment as claimed by Mr Ken. He also alleged in the Reply that all payments for his 'legal costs' (I assume he means 'fees') are paid to his office secretary and receipts are issued.
37. As already stated above, Mr Boar agreed before the Court of Appeal that Mr Ken paid him VT560,000 as a down payment for the three cases: *Ken v Boar* at [5]. He cannot now resile from that concession. Mr Boar's denial of the VT560,000 down payment in the Reply to defence was ill-considered.
38. In his evidence, however, Mr Boar accepted that a down payment had been made. In **Exhibit C2**, Mr Boar denied that Mr Ken paid him VT2,810,000 but stated that Mr Ken paid according to the Costs Agreement of 17 February 2020 as follows: VT3,165,833 – VT2,605,833 = VT560,000.
39. Turning to the matter of receipts, Mr Boar filed all three of his sworn statements after he filed his Reply to Mr Ken's defence. He attached copies of his six invoices [Exhibits **C1 and C3**, Attachment "**GB1**"]. The first page of Attachment "**GB1**" contains a table summarising his six invoices to Mr Ken and receipts issued including Receipt No. 0655, 0676, 0680 and 0698 amongst others totalling VT560,000 received. However, there are no copies of any of those receipts or any other receipts by Mr Boar in evidence.
40. In all three of his sworn statements, Mr Boar deposed that costs (I assume he means 'fees') payments are made to his office and his secretary issued receipts [Exhibits **C1-**



C3]. But he has not adduced a single receipt into evidence. Accordingly, I prefer Mr Ken's evidence that he made payments to Mr Boar but was never issued receipts.

41. Finally, Mr Ken alleged in his defence to the Amended Claim that Mr Boar did not tell him that he had been struck off as a legal practitioner hence the Costs Agreement between them was entered into by fraud thus vitiating the agreement.
42. Mr Ken attached a copy of the Law Council Disciplinary Committee decision dated 25 November 2019 in which Mr Boar was struck off as a legal practitioner [**Exhibit D1**, Attachment "**D2**." He stated that Mr Boar never told him that he had been struck off but led him to believe that Mr Boar was still practising. Mr Ken only found out in mid-2020 that Mr Boar was no longer practising as a lawyer [**Exhibit D1**].
43. Mr Boar's sworn statement in reply to **Exhibit D1** contains a general denial only. He does not address directly the allegations that he did not tell Mr Ken that he had been struck off or that he led Mr Ken to believe that he was still practising. As Mr Ken's evidence is in essence uncontested, I accept Mr Ken's evidence. I therefore find that Mr Boar did not tell Mr Ken that he had been struck off as a legal practitioner hence the Costs Agreement between them was entered into by fraud. This vitiates the Costs Agreement hence I declare it *void ab initio* and unenforceable.
44. For the reasons given, the Claimant has failed to prove the Amended Claim on the balance of probabilities.

F. Result and Decision

45. The Amended Claim is **dismissed**.
46. Costs must follow the event. The Claimant is to pay the costs of the Defendant summarily fixed in the sum of VT300,000 **by 4pm on 25 March 2026**.

**DATED at Port Vila this 24th day of February, 2026
BY THE COURT**


Justice Viran Molisa Trief

