

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

Civil
Case No. 24/2582 SC/CIVL

BETWEEN: Isleno Leasing Company Limited
Claimant / Applicant

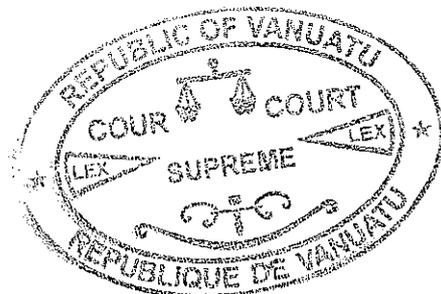
AND: The Republic of Vanuatu
Defendant / Respondent

Before: Justice Oliver Saksak
In Attendance: Mr Robert Sugden for the Claimant as Applicant
Mr Lennon Huri for Defendant/ Respondent
Date of Hearing: 9th October 2025
Date of Decision: 27th February 2026

JUDGMENT

Introduction

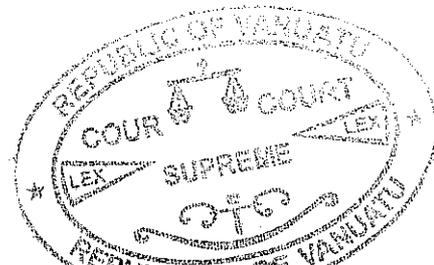
1. The Claimant filed an application on 7th July 2025 pursuant to Rule 18.11 of the Civil Procedure Rules (the CPR) seeking orders that:
 - a) The Defence filed on 3rd December 2024 be struck out and judgment be entered for the Claimant;
 - b) The Defendant pays VT 245,800,964 together with interest at 15% per annum on the original judgment of VT 77,009,325 from 24/08/24 to the payment date;
 - c) The unliquidated part of the judgment in Civil Case No. 212 of 2011 be assessed and paid;
 - d) The costs of Civil Case No. 212 of 2011 and Civil Case No. 2371 of 2018 be assessed and paid; and
 - e) Damages for negligence be assessed and paid; and
 - f) Costs of the proceeding be assessed and paid.



2. In its defence, the Defendant denies liability asserting that the claim is misconceived and that it should be struck out with costs in the sum of VT 50,000.

Background

3. An original claim was filed on 20th August 2024 seeking:
 - a) VT 221,800,964 with interest at 15% per annum on the judgment sum of VT 77,009,325 from 24/08/24;
 - b) Assessment of the unliquidated parts of the Isleno's Claim in CC 212 of 2011 as per paragraph 41 of the judgment dated 20/08/2018;
 - c) Costs as awarded in paragraph 40 of the judgment to be assessed, and
 - d) Costs of the claim.
4. The claimant sought leave to amend the claim and filed an amended claim on 28 August 2024 seeking the following:-
 - a) Payment of the liquidated part of the judgment in CC 212 of 2011;
 - b) Assessment of the unliquidated part of the judgment and payment thereof;
 - c) Assessment of its costs of CC 212 of 2011 and CAC 2371 of 2018 and payment thereof;
 - d) Damages for negligence, and
 - e) Costs.
5. A defence was filed by the Defendant on 3rd December 2024 asserting that:
 - a) Pursuant to the Companies Act and the Public Finance and Economic Management Act, Air Vanuatu (Operations) Limited (AVOL) is a separate entity from the Government and as such the Government is not liable for the debts of AVOL;
 - b) The Claimant was listed as a creditor by the liquidation of AVOL and was included in the process which resulted in the signing of a Deed of Compromise;
 - c) Pursuant to the Company Case (of AVOL) the Claim is misconceived as being bound by the Deed of Compromise and the claim should be addressed to the Administrators of the Deed of Compromise and not the Defendant; and
 - d) The claim should be dismissed with costs at VT 50,000.



6. An application for disclosure was filed by the claimant on 20 February 2025 in relation to documents listed in the application.
7. On 12th June 2025 the defendant filed its response to the application for disclosure and informed that the claimant should provide better details of the documents required to be disclosed before further disclosures could be made. Subsequently the Court Ordered disclosure on 20th March 2025 by 5th May 2025. The defendant did not comply with that order.
8. Subsequently as a result, the claimant filed its application in 7th July 2025 seeking the reliefs listed in paragraphs 1 (a) – (f) in this judgment.
9. As a result non-compliance, the claimant sought wasted costs in the sum of Vt 10,000 and allocated further conference hearings for 13th June and 14th July 2014 and directing that the costs to be paid by 14 July 2025 failing which the Claimant's counsel had liberty to file a strike out application.

Evidence

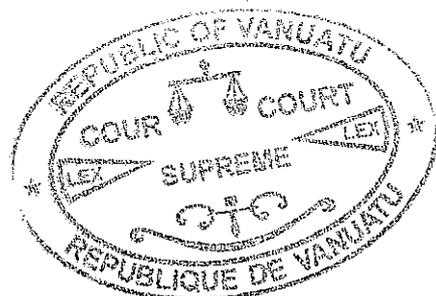
10. The claimant filed evidence in support of the claim by sworn statement of Clarence Lavinya Ngwele on 3rd September 2025 with relevant documents annexed, which included the Deed of Compromise.
11. The Defendant filed its evidence by sworn statements from Roan Lester- two sworn statements dated 6th October 2025 and Joe Ligo and George Maniuri statements dated 3rd October 2025 respectively in support of the defence.

Submissions

12. The Claimant relied on filed submissions of 5th and 30th September 2025 as well as the oral submissions made at the hearing on 9th October 2025.
13. The Defendant relied on its Responding submissions filed on 19th September 2025 and its Response to the Claimant's application for disclosure filed on 12th June 2025, as well as their oral submissions made on 9th October 2025.

Discussion

14. In summary the Claimant is essentially arguing that because the defendant has failed to provide a list of documents within 6 months, the defendant's defence should be struck out and judgment be entered in favour of the claimant. The claimant relies on Rule 8.5 (3) of the Civil Procedure Rules (CPR) to argue that the sworn statements by Roan Lester, Joe Ligo and George Maniuri are insufficient because they have not met the criteria set out in subrule 3 (a),(b) and (c).



15. Rule 8.5 (3) states:

"For a list of documents from a person who is not an individual, the sworn statement must also:

- a) Be made by a responsible officer or employee; and*
- b) Give the name of the person who identified the individuals who may be aware of documents that should be disclosed, and*
- c) Give the name and of the individual s who have been asked whether they are aware of any of those documents."*

16. Counsel for the Claimant submits that the three statements fall short of making inquiries from responsible officers or employees of the government from all government departments, ministerial offices, government controlled enterprises including Air Vanuatu (Operations) (AVOL), the Vanuatu Financial Services Commission (VFSC) and the Vanuatu National Provident Fund (VNPF.

17. The defendant on the other hand has submitted that the defendant has complied by disclosing all the documents in its control pursuant to Rule 8.3 which states:

"Disclosure limited to documents within party's control

8.3 (1) *A party is only required to disclose a document that is or has been within the party's control.*

(2) *A document is or has been in a party's control if:*

- (a) the document is or was in the party's physical possession; or*
- (b) the party has or has had the right to possess it."*

18. Mr Lester, Mr Ligo and Mr Manuiri have deposed to in their respective sworn statements all the documents in schedules 1 and 2 that are or have been in their physical control and that there are no other documents they possess or are in control of that can be disclosed. Further, they all assert the disclosed documents are privileged documents.

19. Further, the deponents of the defendant's sworn statements deposed to the fact that a cyber-attack on the government in November 2022, two tropical cyclones in March 2023 and a 7.3 magnitude earthquake on 17 December 2024 have caused damage to government offices causing extensive damage and loss to data and important documents and records.

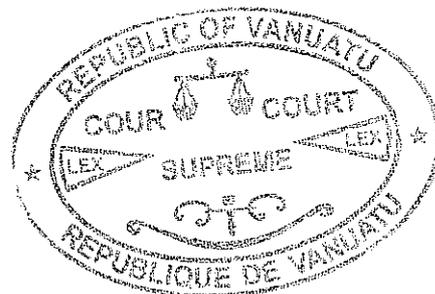
20. These occurrences are acts of God and they should be accepted as such. It is common knowledge and ground that these natural disasters caused extensive damages and losses everywhere to all alike. No one was immuned from them. If therefore these Directors of Government Departments and Ministers explain in their sworn statements the reasons for not being able to disclose any further documents as a result of to these natural disasters, then why press for disclosure when the obvious answer and result is that it is highly unlikely those documents will be found and disclosed.

21. It appears to me from the persistence of the claimant that they are out on a mere fishing expedition. The claimant seeks disclosure of documents from 1987 to date. The question I pose is whether it is necessary? This case has its genesis from CC 212 of 2011. On 20th August 2018 the



Court gave judgment in favour of the claim for a liquidated sum and damages which has been determined to be in the total sum of VT 77,009,325.

22. This case could have been brought to finality in 2018 by the claimant taking steps to enforce the judgment. They have waited until after AVOL was liquidated and filed their new claim on 20th August 2024, some 6 years later.
23. Much time and costs have been put to all parties since 2011 to date and yet the claimant saw fit to file new proceedings in August 2024 and amended it some 3 months later by filing an amended claim on 20th November 2024. The claim is not against AVOL but against the Republic. The claim against the Republic is the assertion that the Republic has breached its duty of care. The original judgment debt of VT 77,009,325 has increased to VT 221,000,964 with damages for negligence to be assessed.
24. It appears the claimant is out to seek more documents to establish a relationship that existed between the government and AVOL and to establish a duty between these entities and the claimant and to show there was a breach of that duty. But I ask don't they have some documents already in their position to establish that aspect of their case from the sworn statement of Clarence Ngwele? This is a civil case and it suffices for the claimant to prove its claim for negligence on the balance of probabilities.
25. Why therefore need more documents to be disclosed or discovered through more sworn statements? Is it really necessary? It is settled law that sworn statements do not reveal matters in question but it is pleadings that determine whether documents sought should be disclosed (see Unelco (Vanuatu)) Ltd v Republic JRC 4 of 2015 in which the Court adopted the judgment of Lindgren J in Trade Practices Commission v CC (New South Wales) Pty Ltd and others [1995] FCA 1418, (1995) 131 ALR (581 to 590).
26. The claimant pleads negligence among others in its amended claim. The defendant in its defence denies being liable for the debt of AVOL which it asserts is a separate legal entity.
27. From the pleadings it appears to me the real issue for determination is not whether the Government had a duty of care and that it breached that duty in failing to pay AVOL's debts. This is a question of fact which requires factual evidence.
28. The real issue rather is whether the Government is liable and should be made so to pay off AVOL's debts. This is a question of law which requires only legal submissions in my considered view. No further evidence is necessary to determine this issue. Only a further submissions hearing is necessary to be allocated for this purpose.



29. For those reasons and under the circumstances of the case, I reject the claimant's application and dismiss it with costs in favour of the defendant. I will hear Counsel further in relation to costs at a directions hearing to be held on Wednesday 4th March 2026 at 9:30am in chambers.

DATED at Port Vila this 27th day of February 2026

BY THE COURT

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Hon. Justice Oliver A Saksak

