

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

CIVIL APPEAL No. 7 OF 1997

Between : HUDSON & CO

Applicant

And : GREATER PACIFIC
COMPUTERS LTD

Respondent

Coram :

- Mr Justice Vincent Lunabek, Acting Chief Justice
- Mr Justice Bruce Robertson
- Mr Justice John Von Doussa

Counsel :

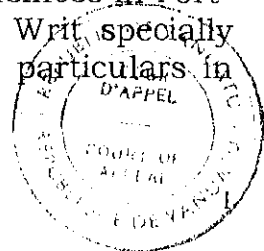
Mr Robert Sugden for the Appellant
Mr John Malcolm for the Respondent

JUDGMENT

The Applicant, which is the Plaintiff in the principal action, applied to the Court of Appeal for leave to appeal against an Order of Saksak J. made on 2nd July 1997. At the conclusion of the hearing the Court indicated that leave to appeal was refused. The Court said that reasons for that decision would be given later, along with directions for the future conduct of the principal proceedings. We now publish the reasons of the Court, and the directions are set out in the statement of Orders.

The background leading up to the Orders of Saksak J. is as follows :

The Applicant is a firm of Solicitors which carries on business in Port-Vila. On 13th February 1997 the Applicant issued a Writ, specially endorsed with a claim for VT 2.107.121, although the particulars in



the pleadings specified that the amount outstanding was VT2.104.548.

On 26th February 1997 the Defendant filed an appearance, and on 18th July 1997 filed a Defence. The Defence admitted that professional services were rendered, but disputed the necessity for some of the services, alleged that excessive time had been charged, and formally denied agreement as to the rate at which the fees were to be computed.

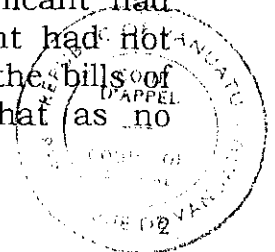
On 23rd March 1997 the Defendant filed a Summons under Order 57 Rule 1 of the High Court (Civil Procedure) Rules, 1964 seeking Orders that :

- a) The note of costs submitted by the Plaintiff dated the 13th day of December 1996 for an amount of VT 2.107.121 be taxed ; and
- b) The Defendant provided an invoice in taxable form.

That Summons came for hearing on 26th June 1997 before Saksak J., who published reasons for the decision which the Applicant seeks to challenge on 2nd July 1997. Orders were that day made, but subsequently amended by the Judge, after hearing the parties. As amended, the Order sealed on 4th August July 1997 reads :

1. That the Plaintiff's bill set out a Annexure "E" of the Affidavit of Robert Edgar Sugden, dated 23rd May, 1997 and filed in this Application be itemised.
2. That the Plaintiff's bills..... when itemised be taxed, the taxation to be set down in September, 1997.
3. That the Writ of Summons issued by the Plaintiff is adjourned sine die.
4. That any or all subsequent actions by the Plaintiff in connection with or incidental to the Writ of Summons are stayed pending the taxation.
5. That the Plaintiff pay the Defendant's costs of the Summons to be taxed if not agreed, the said costs to be set off against any costs awarded to the Plaintiff on the taxation of its bills as ordered in Order No.2 herein, the balance, if there be any in favour of the Defendant, to be paid by the Plaintiff.

A draft Notice of Appeal filed in support of the Application for Leave to Appeal seeks to challenge the reasoning of the primary judge, and certain of the findings of facts made by him. The Applicant had resisted the Summons on the ground that the Defendant had not sought taxation within one (1) month of the delivery of the bills of costs claimed in the Writ. The Applicant contended that (as no



legislation or rules have been enacted in Vanuatu since Independence relating to the taxation of solicitor's costs, the Court should resort to the law of England, in the particular to Section 68 of the Solicitors' Act (1957) (UK) which states :

(1) *Subject to the provisions of this Act, no action shall be brought to recover any cost due to a solicitor until one month after a bill thereof has been delivered in accordance with the requirements set out in the next following subsections :"*

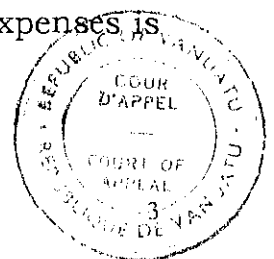
The learned Judge accepted that submission. His Honour went on to hold that there was no evidence that any of the bills claimed had been delivered before 12th February 1997. His Honour held that the bills were delivered on that day. The Writ was issued the following day. The Applicant had not waited for one (1) month. His Honour considered that in these circumstances the Defendant was not prevented by S.68 of the Solicitor's Act (1957) from seeking taxation.

The Applicant, if granted leave, wished to challenge the finding that the bills were not delivered until 12th February 1997, and, further, wished to argue that the primary Judge, in the proper exercise of his discretion, should have refused an Order for taxation on the ground that the Defendant had been given full particular of the claim orally, and had delayed in seeking taxation.

Where an Applicant seeks leave to appeal against an interlocutory order which relates to a matter of practice or procedure, the application will not be granted lightly. Leave will only be granted where it is clear that the substantive rights of a party are likely to have been prejudiced by the order in a way that is not likely to be remedied in the subsequent trial process.

At the present time, in many countries there is public concern about the expense and delays which occur in litigation. It is now recognised that the Courts have an important role to play in minimising expense and delay by controlling the way in which cases are conducted. It is no longer appropriate to allow the parties, without restriction, to decide how the proceedings will be conducted. Courts are now expected to manage litigation so as to ensure that the real issues in dispute are identified and brought to trial as quickly and as simply as possible.

An important procedure in the management of litigation lies in the power of the Court in Order 32 to give the directions. The other Orders in Rules of Court lay down basic rules, to assist the proper resolution of proceedings, but those rules are subject to the powers arising under Order 32 to give directions for different procedures in a particular case. The rules must be applied in a sensible way. It is the responsibility of the Court to ensure that undue time and expenses are not wasted on arguing merely technical points.

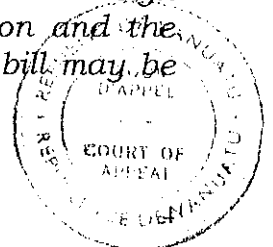


If leave to appeal against Interlocutory Orders is granted as a matter of course, it is like that the trial of the main action will be greatly delayed. The Judge who is responsible for making directions in a matter, and controlling the preparation of the action for trial will be familiar with the proceedings. The Judge will often have an advantage, gained through discussions with the parties at interlocutory hearings about the issues in the proceedings, and the way in which they will best be resolved. The Judge exercises a wide discretion in the formulation of directions. If the Court of Appeal were to grant leave to appeal from procedural directions as a matter of course, the smooth progress of cases to trial would be impeded.

In the present case, the Applicant does not establish any entitlement to an Order granting leave to appeal merely by showing that some aspects of the primary Judge's reasons may be wrong. It is necessary for the Applicant to show that the Orders made, as opposed to the reasons for them, are wrong in the sense that they are likely to impact upon the substantive rights which the Applicant seeks to vindicate at the trial. In the present case, we consider that the directions made by the primary Judge in the Order of 4th August 1997 are plainly appropriate, indeed highly desirable, for the proper conduct of the litigation.

For the purposes of deciding the case, we are prepared to accept that the Section 68 of Solicitors Act (1957) may have application in the absence of any statutory provision on the same topic enacted in Vanuatu since Independence. However, we consider the arguments advanced by the Applicant to the effect of that S.68 imposes a "one month rule" within which taxation of a bill of cost must be sought, is misconceived. The primary purpose of the section is to ensure that a bill of cost is delivered to by a solicitor to the client at least one month before action is taken in the Court to enforce payment. This requirement enables a client who questions the bill to seek further information and to take action, if so advised, to seek taxation. However the failure to seek taxation within that period of time does not forever bar the client from obtaining particulars. The Court was referred to Halsbury Laws of England, 4th Edition, Vol. 44. We have considered the passages to which the Court was referred. However we think that the true position, relevant to this case, is set out in the paragraph 221 which reads :

"In the High Court the solicitor may proceed by writ endorsed with a statement of claim claiming the full amount of his bill of costs or of the taxed costs, and may apply summarily for judgment. If the client raises no defence, judgment may be given for the full amount claimed without reference to taxation. If, however, the client disputes the amount of the bill, the bill may be referred to a taxing master for taxation, the plaintiff being given leave to sign judgment for the amount found to be due on taxation and the costs of the action. If it is too late to tax the bill, the bill may be



referred to a taxing master under the Court's inherent jurisdiction."

The inherent jurisdiction of the High Court of England was considered in *Re a Solicitor* [1961] Ch.491. In Vanuatu, the Supreme Court is the Superior Court of Record. In its inherent jurisdiction it has wide powers to control and regulate the conduct of barristers and solicitors who are officers of the Court. That power extends to the regulation of the amount that may be charged by barristers and solicitors for professional fees. It is important for the maintenance of the standing of the Court, and of barristers and solicitors, that disputes over professional fees are seen to be justly resolved by someone who is independent of the parties. It is customary for this role to be fulfilled by the taxing officer of the Court.

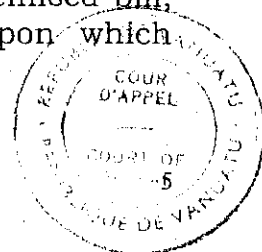
Where a solicitor commences proceedings to recover outstanding costs, and there is a dispute about the amount payable, the parties, and the Court, must be informed as to the nature and extent of the professional services rendered, and the basis upon which the charges have been calculated. If a detailed bill of costs has not already been delivered, the best way of providing particulars of the work and charges is to direct that an itemised bill of costs be delivered by the solicitor to the client.

When itemised particulars of the costs are known, the Defendant should be called upon to indicate which of the items claimed are disputed, the ground for the dispute, and how much if anything the Defendant says is properly payable. In the normal process of taxation, the party disputing a bill will be directed to file written objections containing this information. Again, where a solicitor is suing for outstanding fees, a convenient way of getting particulars of the defence is to direct that a similar procedure be followed.

The Order made by the primary Judge makes provision for these considerations. It requires the Plaintiff to file an itemised bill, and then directs taxation. In the process of taxation the Defendant will be required to indicate the grounds upon which particular items are disputed. Pending the taxation, further steps in the proceedings are stayed. At the conclusion of the taxation, if the Defendant does not pay the amount due, the Plaintiff can apply to the Court to have the stay lifted, and judgment entered for the amount found due on taxation.

As we consider that the Orders made by the primary Judge were appropriate, nothing will be achieved by granting leave to appeal. In these circumstances the Court refused leave to appeal.

After discussion with the parties it was agreed that the Court would give directions extending time for the Plaintiff to file an itemised bill, and requiring the Respondent to indicate the basis upon which



particular items in a bill are disputed. The Court also indicated that the taxation of the bill would be expedited.

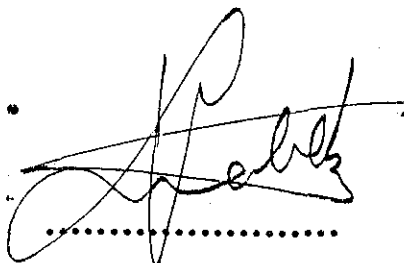
As the application has failed, we considered that the Plaintiff should pay the cost of the application to this Court for leave to appeal.

The formal Orders of the Court are :

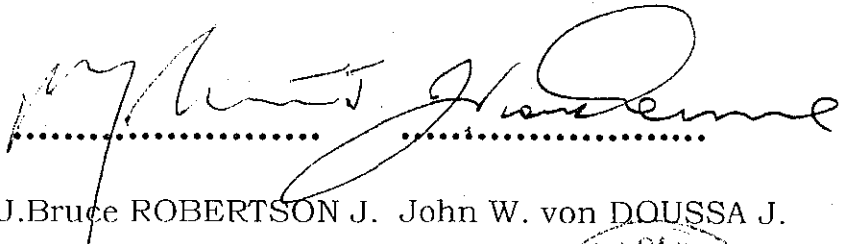
1. Leave to appeal refused.
2. Plaintiff to pay the Respondents' costs of the application for leave to appeal, such costs to be taxed if not agreed, and set off against any amount found due to the Plaintiff on the taxation of the costs claimed in these proceedings. In the event that there is a balance in favour of the Defendant, the Plaintiff will pay the same.
3. Plaintiff to file an itemised bill of costs in respect of all sums claimed in the proceedings by 23rd October 1997.
4. Respondent to file written objections by 30th October 1997 indicating each and every items that is disputed, the ground for dispute, and the amount, if any, at which the Respondent says the item should be allowed.
5. That the Court fix a time for the taxation for the Plaintiff's bill during the month of November 1997.
6. The Orders of Saksak J. sealed on 4th July 1997 are otherwise confirmed.

DATED AT PORT-VILA this 8th day of October 1997

BY THE COURT



Vincent LUNABEK J.



J. Bruce ROBERTSON J.

John W. von DOUSSA J.

