

BETWEEN: Paul and Janet Hoctene, and Saling Watek
Appellants

AND: Pierre Hoctene and
First Respondent

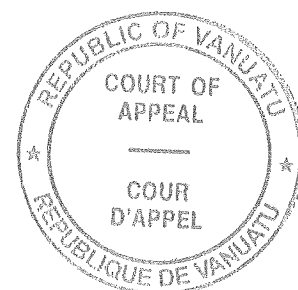
Estate of Michael Hoctene
Second Respondent

Date of hearing: 12 February 2019
Before: Chief Justice V. Lunabek
Justice J. von Doussa
Justice G.A. Andrée Wiltens
Counsel: Mr D. Thornburgh for the Appellants
Mr E. Molbaleh for the Respondents
Date of Decision: 22 February 2019

JUDGMENT

A. Introduction

1. This case concerns a supposed large Spanish Lottery win of more than VT 115.75 million by the now deceased Second Respondent. It was contended that the Appellant, one of the deceased's sons, had acted dishonestly to access all the winnings for himself to the exclusion of the remainder of the family.



2. An Application to strike-out the civil Claim, in reliance on the Court's inherent jurisdiction, namely that the Claim had of no realistic prospect of success, was declined by the primary Judge.

3. This is an appeal from that decision declining to strike out the Claim.

B. The Decision

4. The primary Judge relied on the contents of a sworn statement by Mr Amando Leingkone, and some banking evidence as demonstrating not only that there was a serious issue to be tried, but as also showing that the claimant had an arguable case – he found there was evidence to support the Claimant's claims.

C. The Appeal

5. Mr Thornburgh pursued only one of his several grounds of appeal, namely that there was no evidence of the winning funds ever coming into the Appellant's possession – he maintained that without such evidence the whole allegation of his client having impersonated his father, wrongly and dishonestly claiming the lottery winnings, and eventually receiving the winning funds for his own purposes was completely undermined.

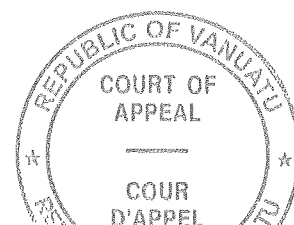
6. Mr Thornburgh challenged the primary Judge's finding that there was evidence to support the Claim. In particular, he pointed to the dubious and oddly worded correspondence appended to Mr Leingkone's sworn statements – he submitted they bore the hallmarks of fraud. He invited the Court to inspect the evidence contained in the Appeal Book to see if any sign of the lottery winnings by his client was evident – he submitted there was not.

7. Mr Molbaleh re-iterated many aspects of his Claim. He submitted that the correspondence appended to Mr Leingkone's sworn statement was genuine and demonstrated that the deceased had won the lottery, and that the winnings had been paid out. He wondered how it was that the appellant, with a poor educational background could possibly have accumulated the assets he apparently has without utilising the lottery winnings. He advanced the argument that further discovery might yet produce evidence to support the Claim.

D. Discussion

8. We scrutinised the Appeal Book, especially the banking records, but we were unable to find any evidence of any of the supposed winnings arriving in the Appellant's bank accounts. We simply cannot see where the primary Judge found evidence to support the Claim – and we accordingly conclude he erred.

9. Given that this Claim commenced in June 2017, and given that a number of summonses to various Vanuatu banks have been issued and complied with, the lack of this crucial




evidence rather re-inforces Mr Thornburgh's submissions of an absence of evidence showing that the appellant ever received any lottery money.

10. We are not impressed by Mr Molbaleh's plea for further time to effect further disclosure. Not only would that be tantamount to a fishing exercise, it would be a waste of resources and contrary to public interest.
11. Mr Thornburgh's submissions as to the likely truth being that the Lottery "win" was just a scam is supported by the fact that prior to any funds being able to be paid out a required fee was demanded. Further, once the first fee had apparently been received, a second much larger fee was demanded prior to the funds apparently being able to be transferred. Finally, the last correspondence makes it abundantly plain to anyone with a suspicious mind that in fact no money would be transferred. We consider it highly likely that the deceased was taken in by a scam.
12. The Claim is wholly reliant on the appellant having received the lottery winnings. Absent that piece of evidence, the remainder of the Claim falls away. There is no evidence that the appellant received any lottery winnings – hence in our view the application to strike out the claim ought to have been granted.

E. Decision

13. The appeal is allowed. The Claim is struck out in its entirety.
14. The appellant is entitled to costs, for this appeal and for the earlier strike-out application. We fix those costs at VT 120,000. They are to be paid within 21 days.

**Dated at Port Vila this 22nd day of February 2019
BY THE COURT**


Chief Justice V. Lunabek

