

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

**Civil Appeal  
Case No. 20/3446 COA/CVA**

**BETWEEN:** Don Ken  
Appellant

**AND:** Republic of Vanuatu  
Respondent

**Date of Hearing:** 12 February 2021

**Before:** Justice J. Mansfield  
Justice J. Hansen  
Justice D. Aru  
Justice G.A. Andrée Wiltens  
Justice V. M. Trief

**In Attendance:** Ms A. Sarisets for the Appellant  
Mr H. Tabi for the Respondent

**Date of Decision:** 19 February 2021

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**JUDGMENT**

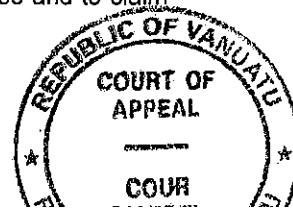
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**A. Introduction**

1. This is an appeal against a Supreme Court decision to award certain recompense to Mr Ken, which it is contended on appeal is an insufficient award due to numerous errors by the primary judge.

**B. The Decision**

2. Mr Ken was entitled to certain housing benefits as a Member of Parliament. He commenced to live in a furnished Government house at Collardeau area, Port Vila in 2011 when appointed a Minister of the Government. Thereafter he resided there continuously until early 2017. The capacity in which resided there varied – part of the time he was in occupation without a formal lease agreement; at other times his entitlement as a Member of Parliament was on the basis of paying 15% of his monthly salary as rent. The evidence as to when he was a Minister was unclear, with a previous agreement as to the details between counsel being later varied and disputed.
3. The house was initially in poor condition, and Mr Ken negotiated with the Housing Officer, Mr Vidal Taiwia, to be able to do renovations and maintenance on the house and to claim

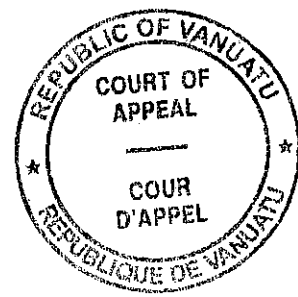


back the costs expended from the Government. His renovation and maintenance work claim was for the period of March 2014 through to 30 June 2015.

4. The devastating effects of Cyclone Pam in March 2015 caused significant damage to the house, which matters Mr Ken remedied.
5. Mr Ken sought to be reimbursed almost VT 11.8 million for the work done to the house over the period that he was in residence. He produced invoices to support the work done and the materials involved.
6. The primary judge accepted the oral arrangement between Mr Ken and the Housing Officer. Even though Mr Taiwia denied such arrangement, the primary judge did not accept that evidence and preferred Mr Ken's version of events. He set out in his judgment his reasons for that determination. However, the primary judge determined that Mr Ken was not entitled to the entire duration of his housing allowances and accordingly reduced the award to take that into account.
7. The primary judge did not accept the defence contention that notice to quit the premises had negated the oral agreement for Mr Ken to be able to claim back his expenditure. Nor was it accepted that the oral agreement was curtailed at the end of the first period of residence due to a change in the Government affecting Mr Ken's entitlements.
8. The defence also put forward evidence to the effect that the work undertaken by or for Mr Ken was of such poor quality that it had to be done again; and further, that much of the work was cosmetic and unnecessary. The primary judge considered this evidence to not be relevant, even though it was admitted into evidence by consent.
9. The primary judge awarded Mr Ken VT 1.13 million. That was in relation to work done on the house in the periods of 31 March 2014 to 12 December 2014, 21 November 2014 to 19 December 2014, and 27 March 2015 to 8 May 2015. He disallowed claims for the period 22 November 2014 to 30 June 2015 as by then Mr Ken had been officially advised he was not to continue with any structural developments.
10. The primary judge set off against this award VT 630,320 being rent Mr Ken should have paid to the Government for some 19 months of unauthorised residence in the house.

### **C. The Appeal**

11. Ms Sarisets submitted that the periods determined by the primary judge as being Mr Ken's entitled occupancy were wrongly curtailed, with the result that some of the maintenance and renovations had wrongly been disallowed by the primary judge.



12. She further submitted that every invoice presented in evidence ought to have been taken into account and been part of the award to Mr Ken. There were numerous invoices, especially those of 2014, which were submitted to have been wrongly not recompensed.
13. There was no challenge to the findings relating to the set off. In Ms Sariset's submission, Mr Ken should have been awarded the full sum claimed, namely VT 11.7 million less the set off.

**D. Discussion**

14. In argument, Ms Sarisets accepted that not only did she have to demonstrate that all the funds were expended as alleged, but also that such expenditure was reasonable and warranted. She was unable to point to any evidence relating to this issue.
15. Accordingly the Court was unable to accept her submissions that all the receipts should have been included in the award, or indeed that any other receipts should have been included. Mr Ken was fortunate to receive judgment for the invoices allowed considering this lacuna in the evidence, and also having regard to the rejected defence evidence as to the poor quality and necessity of the work done.
16. The Respondent did not file a cross-appeal or a Notice of Contention. Despite that Mr Huri considered it appropriate to challenge many of the primary judge's factual findings. When the inability to do so was pointed out to him, he conceded he had no option but to accept the factual findings and attempt to demonstrate to the Court they were incorrect. He failed to do so in respect of a single finding. In the end he was content for the Court to leave the award as it was.

**E. Result**

17. The appeal is dismissed as being without merit.
18. Considering the inappropriate challenges without a cross-appeal or Notice of Contention, there is no order as to costs in favour of the Respondents.

**DATED at Port Vila, this 19<sup>th</sup> day of February 2021.**

**BY THE COURT**

  
**Hon. Justice John Mansfield**

