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

Civil Appeal
Case No. 24/977 COA/CIVA

BETWEEN: TABISA HARRISON
Appellant

AND: JONG PHIL SHIN and JUAN YEAUN YU
Respondents

Date of Hearing:	***8 August 2024***
Coram:	***Hon. Chief Justice V. Lunabek*** ***Hon. Justice J Mansfield*** ***Hon. Justice R. Young*** ***Hon. Justice D. Aru*** ***Hon. Justice E. P. Goldsbrough***
Counsel:	***Appellant appeared in person*** ***S. Motuliki for the Respondents***
Date of Decision:	***16 August 2024***

JUDGMENT OF THE COURT

1. This appeal concerns the enforceability of a conditional fee agreement between a lawyer and her clients. The lawyer, who is the appellant, called such arrangement her "*commission*" agreement.

2. The appellant appeared in person on this appeal, rather than as counsel, because she sought to rely upon sworn statements including sworn statements which she had herself made. In the circumstances, it was not appropriate for her to appear as counsel.

3. The circumstances in which the appeal arises are quite short. The appellant says that she entered into a contingency fee agreement with the respondents to conduct a damages claim on their behalf against the Republic of Vanuatu and the Vanuatu Investment Promotion Authority. She says that she entered into an oral commission agreement with the respondents that they would pay her 30% of any judgment sum recovered in that proceeding as her appropriate legal fee.

4. In fact, the appellant entered a default judgment in favour of the respondents in that proceeding in the sum of VT92 million. There was an appeal from that decision. The Court of Appeal set aside that judgment and remitted the claim to the Supreme Court to assess the damages. That claim is still pending in the Supreme Court. The consequence is, obviously, that even on the

appellant's case there is presently no monetary judgment in favour of the respondents on their claim, and consequently no amount owing under the "*commission*" agreement.

5. Nevertheless the appellant pursued her claim for 30% of VT92,000,000 against them by a claim in the Supreme Court. The trial judge rejected the claim. He found that there was some form of a commission agreement, but that its terms were too vague to be enforceable and additionally he found that the appellant's conduct leading up to the agreement in relation to her clients amounted to duress and undue influence, so that any such agreement would be unenforceable in any event.

6. This is an appeal from that judgment.

7. It must fail. So much is obvious, as there is no monetary judgment upon which the commission agreement could activate at the present time. The appellant acknowledged that at an early point in her submissions.

8. She is unable to explain why, as a lawyer, she nevertheless brought a claim which had a no proper factual foundation, even to the point of securing a judgment against the respondents in default of defence, and after that judgment was set aside pursuing this appeal and pursuing her claim in the Supreme Court.

9. There are even more grave concerns about the conduct of the appellant. She was unaware, and to the point of the hearing still unaware, of the Rules of Etiquette and Conduct of Legal Practitioners Order No. 106 of 2011 (the Conduct Rules) made under the Legal Practitioners Act [CAP. 119]. Part 9 of the Conduct Rules deals expressly with the question of fees. Not surprisingly, Rule 50 in Part 9 provides that a lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in clause 51. It is not necessary to set out those factors, they largely represent common sense. The appellant was ignorant of the conduct rules, and when some of the factors relating to reasonableness of the fee were put to her she simply had not taken any steps to meet them. Clause 56 in Part 9 deals with conditional fee agreements. Specifically Clause 56(2) says that a conditional fee agreement must be in writing and must address a number of specific matters. The oral agreement of the appellant did not address any of them and was not in writing. Ms Harrison had no understanding that any conditional fee agreement must be in writing and must be in accordance with the Conduct Rules. As noted, she did not even know of their existence.

10. That material provides two further reasons why the appellant's appeal must be dismissed. As we have said the agreement was not in writing. In addition, to the extent that the primary judge imposed any obligation upon the respondents to prove duress and influence, the onus was misplaced. A lawyer suing to recover fees under a contingency fee agreement must be able to show that the contingency fee agreement met the requirements of the Conduct Rules. It clearly did not in any respect. There is no suggestion of the appellant having discussed the nature of a conditional fee agreement, of explaining the prospects of succeeding in the claim, of explaining the extent to which fees on an alternative basis might be quantified, of addressing the

circumstances in which there may be a compromise of their claim and how the contingency fee agreement would then operate, or in any other respect.

11. Indeed, another matter of concern is that in the course of her submissions, the appellant said that the "*commission*" agreement was to the effect that the respondents had agreed to pay her fees in any event if their action were unsuccessful, on a normal basis, and to pay the commission if the respondents' claim resulted ultimately in the monetary judgment. She was simply unable to explain how a contingency fee agreement in those circumstances could possibly be in the interest of her clients, the respondents.

12. As yet another illustration of her professional failing in respect of the claim in the contingency agreement, we note that the Court of Appeal, when setting aside the judgment of VT92,000,000, directed the Republic to pay her legal fees on a properly assessed solicitor/client basis in any event. She submitted a claim to them which they accepted in the sum of VT1,705,990 million respectively. She took the view, in submissions, that she was entitled to keep that amount in any event and to sue for the commission to its full extent as well. In addition, she could not appreciate that that amount of fees represented, in the absence of other material, a fair indication of the value of the fees of the legal services she had provided.

13. There are further concerns about her claim. In the course of submissions, it was pointed out to her that part of her evidence indicated a payment of VT50,000 to her on account of fees to be incurred in the conduct of the claim on behalf of the respondents. She could not explain how that arrangement was consistent with the "*commission*" agreement which she asserted.

14. In all of her documents she sets out her name and then says she is "*of Molbaleh & Taiva Lawyers Limited of Port Vila*". It was clear during submissions that she had the intent to personally receive the commission she was claiming even though she said at one point that she was an employee of that firm, and at another point that she intended to share her commission with that firm in some way. It is not at all clear that her claim was legitimately brought in her name, or that the work she carried out on behalf of the respondents was performed by her in her private and sole practitioner capacity rather than as an employee of Molbaleh & Taiva Lawyers Limited.

15. We also observed, although in the overall picture it is of relatively lesser import, that her claim in the proceeding was inadequately formulated. It was not confined to the important allegations of facts. Where there is said to be "*particulars*" the particulars are meaningless. She was asked to explain them and how they conveyed any useful information to the respondents (or to the Court) and she could not do so.

16. The focus of her submissions was simply that she had conducted the proceedings on behalf of the respondents and she was entitled to her "*commission*".

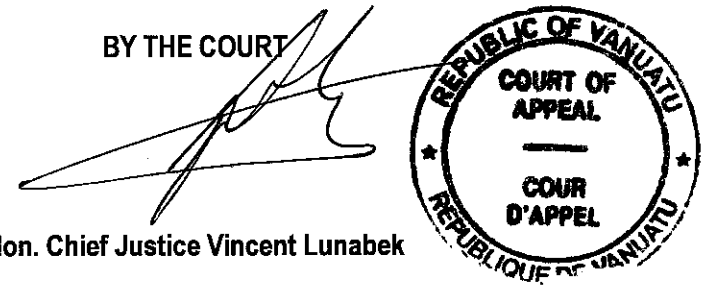
17. Regrettably, we hold serious concerns as to her suitability to be a lawyer practising in Vanuatu. During her submissions, we expressed that general concern to her to invite any particular additional responses. No satisfactory response was provided.

18. Accordingly, the appeal is dismissed. The appellant must pay to the respondents their costs of the appeal which we fix at VT75,000.

19. We also direct that these reasons for judgment be provided to the Registrar of the Supreme Court with the intention that he will refer them to the Law Council with the request that the Law Council consider whether the appellant should be the subject of some disciplinary proceedings arising from her conduct of this matter or whether she is a suitable person to remain as a lawyer practising within the Republic of Vanuatu.

DATED at Port Vila, this 16th day of August, 2024.

BY THE COURT



Hon. Chief Justice Vincent Lunabek