



IN THE SUPREME COURT
HELD IN PORT VILA
REPUBLIC OF VANUATU

CIVIL CASE NO. 63 OF 1989

(Civil Jurisdiction)

BETWEEN: TRETHAM CONSTRUCTIONS
LIMITED

Plaintiff

AND: SUNRISE LIMITED

Defendant

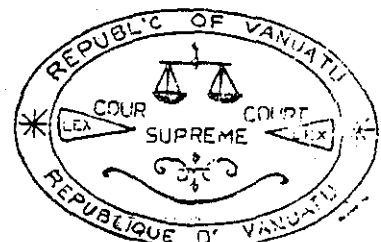
Mr. SILAS HAKWA for the Plaintiff.

Mr. GENSBURGER in person for the Defendant.

JUDGMENT OF TAXATION FOR COSTS.

This is a Taxation for Costs in the Civil Case No. 63 of 1989 between Tretham Constructions Limited (the above named Plaintiff) and Sunrise Limited (the above named Defendant). On the 9th of May 1995, Mr Justice Rowan Downing delivered the judgment in this case and made the following order:

1. There shall be judgment on the claim in the sum of Vatu 478, 663.
2. There shall be judgment on the Counter Claim in the sum of Vatu 1, 032, 123.
3. The Bank Guarantee given by the Plaintiff and Messrs Trevor and Terry Hannam dated the 9th of May 1990 shall be discharged.
4. The Defendant shall pay the Plaintiff costs including all reserved costs of the proceedings. The Plaintiff shall pay the Defendants the costs of and incurred consequent upon the drawing of the counterclaim (assessed upon the fee scale then applicable) which time is assessed by the Court as being referable to the presentation of the counterclaim. The difference between such costs shall be set - off. Such costs are to be taxed failing agreement. It is noted that no order for costs is made in respect of the Arbitration proceedings.



5. There shall be a stay upon the execution of the judgement of 30 days.

It appears that both parties were not agreed to the costs. On 10 July 1995, Mr Silas Hakwa on behalf of the Plaintiff, filed a Notice of Taxation for costs.

On 19 July 1995, both parties appeared before the Chief Registrar in chambers, sitting as Taxing Officer. The hearing was adjourned to 24 July 1995 pending further negotiations between both parties.

On 24 July 1995, Mr Hakwa presented to the Chief Registrar, with the consent of the defendant, a document with the signatures of both parties indicating their final position.

This taxation of the costs will be conducted following the party and party basis as requested by Silas Hakwa, counsel for the Plaintiff.

It is worth mentioning that party and party basis, is, unless some special order is made, the ordinary basis for the taxation of the costs which an unsuccessful litigant has to pay to his opponent. On this basis, there shall be allowed all costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed. And as Malins V. C. put it:

"Any charges merely for conducting litigation more conveniently, may be called luxuries, and must be paid by the party incurring them" (in Smith Vs Buller (1875) L. R. 19 Eq. at p. 475).

For all practical purposes, on a taxation on the party and party basis, there will be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have will be resolved in favour of the paying party.

As a matter of convenience, I will first deal with the Plaintiff's claim for costs, then the Defendant's and finally the set - off if there is any.

PLAINTIFF 'S CLAIM FOR COSTS.

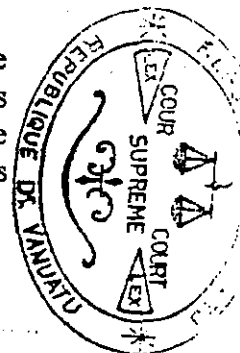
1. Legal fees.

A. TO GEOFFREY GEE & CO

At the beginning of this case, the Plaintiff used the services of Mr Geoffrey Gee & Co up until 17 March 1993. The costs due to Geoffrey Gee & Partners are in Vatu 1,048,000 (as attached in Annex 1 of the Bill of Costs submitted by the Plaintiff's Counsel).

Mr Gensburger, on behalf of Sunrise Limited, the above named defendant Company, disputed the amount of Vatu 1,048,000 due to Geoffrey Gee & Partners and contented that Geoffrey Gee & partners reduced the fees to Vatu 750,000. I have before me the Note of Costs dated 17 March 1992 prepared and sent by Geoffrey Gee & Partners to the Plaintiff.

The Defendant produced before me the copy of the same document. I scrutinise these papers carefully and I note that Geoffrey Gee and Partners agreed to reduce their costs to 750, 000 Vatu as maintained by the Defendant. It appears that there is no signature at the end of the copy of Notes of Costs due to Geoffrey Gee & Co which was submitted by the Plaintiff before the Court for Taxation.



The same paper presented by the Defendant bears the signature of John Malcolm of Geoffrey Gee & Co with the following:

" But given your dissatisfaction lets say 750, 000" plus disbursements the total amount due is 779, 000 vatu.

Geoffrey Gee & Partners shall be entitled to 779,000 vatu for their costs and I so allow them such amount of vatu 779, 000.

B. TO GEORGE VASARIS & CO.

An amount of Vatu 11, 500 has been debited to George Vasaris and Co as the fees regarding Bank Guarantee to Tretham Limited.

The amount of Vatu 11, 500 referred to above should not be allowed. This is not part of legal fees incurred in relation to the costs of the action.

C. TO SILAS HAKWA & ASSOCIATES.

As from 17 March 1993 until the Taxation Hearing , Silas Hakwa acted for the Plaintiff.

The itemised costs due to Silas Hakwa (on Annex 3 of the Plaintiff's Notice for Taxation of Costs) is in Vatu 3, 178, 000. It should be noted that with the consent of Mr Silas Hakwa, an amount of Vatu 40, 000 should have been reduced from the costs due to Silas Hakwa & Associates to compensate the Defendant for part of the morning of 3/4/95 when Mr Hakwa failed to appear in Court.

Thus, the costs due to Silas Hakwa & Associates are in Vatu 3, 138, 000 plus 5, 000 vatu for the costs of Silas Hakwa's appearance before the Chief Registrar on 19/05/95 for the hearing of the Taxation totalling an amount of Vatu 3, 143, 000 so Mr Silas Hakwa will be allowed an amount of Vatu 3, 143, 000 for his costs.

2. Witnesses expenses and costs.

The Plaintiff submitted the expenses and costs for the following witnesses.

P. Moody.

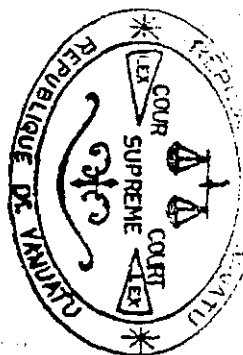
I agree with the defendant when he rightly pointed out that the judge disallowed the claim by the Plaintiff being for the fees for the engineer. Thus, the fees of Vatu 25, 000 of P. Moody should be disallowed. (See judgment of 9 May 1995 paragraph 6 at p.7).

G. Feast.

I am prepared to allow the amount of Vatu 270, 000 vatu claimed by witness G. Feast and I so allow. (see Memorandum of Fees date 30 March 1995 forwarded by Atelier D'Architecture James Ferries & Partners Ref. 172/95 MG87012).

R. Frouin.

I think it is reasonable to allow 30, 000 vatu to witness R. Frouin for his attendance in Court. (see Invoice No. 24989. Re. Vate Electrics).



T. Hannam.

Trevor Hannam claimed for 1, 580, 000 vatu (being for 158 hours at 10, 000 per hour). It appears that T. Hannam did not appear 158 hours in the witness box to give evidence. Thus, this is not reasonable for him to claim such amount which covers not only the time he spent personally in the course of instructing his counsel, but also it seems it covers the period as from the beginning of the action until the end.

I am not prepare to allow such costs for the Plaintiff. He did not appear in Court as litigant in person. Moreover, as he put it, he spent some time personally in Court. If he did that, the defendant claimed he did the same with the same amount of time. The Plaintiff should not be allowed such costs neither should the defendant.

As to Vatu 14,000 for Court Fees claimed by the Plaintiff, I have not the privilege to be assisted or forwarded with any evidence of payment made in this respect. I therefore, decide to disallow it.

The Plaintiff claimed also for 150,000 Vatu being for the ANZ Bank Bond fees paid by him.

As the Bank guarantee given to the Plaintiff and Messrs Trevor and Terry Hannam on 9th May 1990 was discharged, the Bond fees claimed by the Plaintiff on that basis should be disallowed.

3. Plaintiff's expenses and Disbursements.

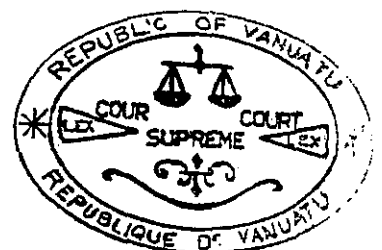
The Plaintiff claimed for his own expenses. No order has been made by the judge in respect of these items. It should be noted that no party is entitled to recover costs from any other party without an order of the Court. However, it is reasonable to allow some of the items submitted with the respective receipts of payments such as photocopying of Vatu 300 (see receipt No. 5002559) and the search fees of Vatu 3,000 (see receipt No. 5002659).

As to the costs of interest on 4 million vatu claimed by the Plaintiff there was no order made by the judge in that respect. The amount of Vatu 2,000,000 for interest on 4 Million Vatu deposited as bank guarantee should be disallowed.

As to return of Performance Bond (of Vatu 395,000) the judge disallowed it in the penultimate paragraph of the judgement.

As to the amount awarded to the Plaintiff, both parties agreed that an error was made as to the initial amount of Vatu 478,663, and that the correct figure should be 467,663 Vatu and I thus, allow that sum of Vatu 467,663 with the consent of both parties.

The Plaintiff's claim for costs allowed is totalling an amount of Vatu 4, 692, 963.



SUMMARY FOR THE PLAINTIFF'S CLAIM FOR COSTS ALLOWED.

1. Legal fees.	
To Geoffrey Gee & Co.....	779, 000
To Silas Hakwa & Associates.....	3, 143, 000
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Sub Total 1	3,922,000
2. Witness Expenses and Costs	
G. Feast	270, 000
R. Frouin	30, 000
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Sub Total 2	300, 000
3. Plaintiff's own Expenses and Disbursements	3,300
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Sub Total 3	3,300
4. Amount awarded to Plaintiff	467, 663
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Sub Total 4	467, 663
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GENERAL TOTAL 1 + 2 + 3 + 4	4, 692,963

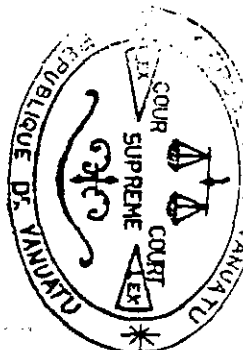
THE DEFENDANT'S CLAIM FOR COSTS.

A. Legal Fees

The Defendant submitted that the legal fees related to the counterclaim is totalling Vatu 6, 642, 355.

Further he admitted that the claim is about all costs for 1989 - 90 up to 1995.

As per Judgement , the costs in relation to Arbitration proceedings should have been disallowed. The defendant is entitled to the costs of and incurred consequent upon the drawing of the counterclaim and the period of 3 days in Court and the preparation in respect thereof...



The costs of drawing the counterclaim should be 1, 000, 000 vatu. As to 3 days in Court, it should be mentioned that 1 hour in Court represent 20, 000 vatu. 3 days in Court on the basis of 8 hours hearing per day would be 20, 000 x 8 x 3 = 480, 000 vatu. I will allow 520, 000 vatu for preparation.

B. Defendant Expenses.

The defendant did not submit any evidence as to his own expenses.

As I disallow the Plaintiff's expenses. I will do the same for the defendant. Thus, the defendant's expenses will be disallowed.

C. Survey Department Fee for levels in West ground paid by the defendant on 20 May 1995.

Both parties agreed that the Vatu 13, 420 be paid in for this survey fee and I so allow the defendant that amount of Vatu 13,420.

D. The defendant claimed compensation for part of the morning of the hearing of 3 April 1995 when Mr Hakwa failed to appear in Court.

Both parties agreed to 40, 000 vatu for compensation. This amount is allowed and will be deducted from the costs due to Mr Hakwa. (see point 1.C. to the Plaintiff's claim).

E. It is agreed between the Plaintiff and the Defendant that as the hearing on 14/02/94 had to be adjourned because Registrar of Companies advised that the Plaintiff had not paid his registration fees in arrears for several years, the defendant claimed compensation of vatu 20, 000. I will allow it as agreed to by both parties.

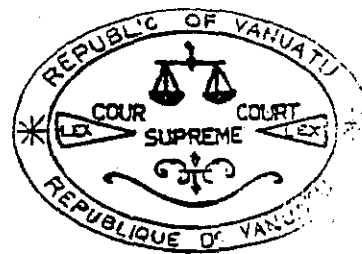
F. Amount awarded to Defendants.

As observed and agreed by both parties in the judgement of 9 May 1995 at page 6 (lines 18 to 27), the defendant was awarded liquidated damages calculated as 1/250 of 15, 800, 000 per calendar week from 21st February 1989 and 26 April 1989.

This means counting from Sunday 26th April 1989 to Sunday 23rd April , Making 8 whole weeks (but not 7) with a total of vatu 505, 600 (but not 442, 400) with a difference of vatu 63, 200.

Therefore, the correct amount to be awarded to the defendant should be 1, 095, 323 vatu but not the amount of vatu 1, 032, 123 as appeared in the judgement. The defendant should be allowed 1,095,323 Vatu. As both parties agreed, I allow the defendant such amount of Vatu 1,095,323.

The defendant's claim for costs allowed is totalling an amount of Vatu 3,128,743.



SUMMARY FOR THE DEFENDANT'S CLAIM FOR COSTS ALLOWED.

A.	Legal Fees (Costs of drawing counterclaim)	1, 000, 000
	(3 days in Court)	480, 000
	(preparation)	520, 000
		<hr/>
		2, 000, 000
B.	Survey Fees	13, 420
C.	Compensation to the defendant as the hearing on 14 February 1994 has to be adjourned due to the Plaintiff negligence not to pay his registration fees in arrears of several years.	20, 000
D.	Amount awarded to Defendant	1, 095, 323
	General Total A + B + C + D	<hr/>
		3, 128, 743

SET - OFF

As per the judgement referred to above, the difference between the Plaintiff's claim for costs of the action and the Defendant's claim for costs in relation to counterclaim shall be set - off.

Thus, the Plaintiff is allowed for his costs an amount of

Vatu 4, 692, 963

and the defendant is allowed for his costs an amount of


Vatu 3, 128, 743

Difference is

Vatu 1, 564, 220

The Defendant shall pay the difference of such costs of Vatu 1, 564,220.

DATED AT PORT THIS 17th Day of October 1995.



LUNABEK VINCENT
Chief Registrar

