

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
HELD AT PORT VILA
(Civil Jurisdiction)

Civil Case No.96 of 1996. 14/05/11

BETWEEN: HARRIS LYLE CASHMAN
(Plaintiff)

AND: CASHMAN HOLDINGS LIMITED
(Second Plaintiff)

AND: LORRAINE WILMA PRESCOTT
(First Defendant)

AND: PACIFIC SECURITY INVESTMENTS
LIMITED
(Second Defendant)

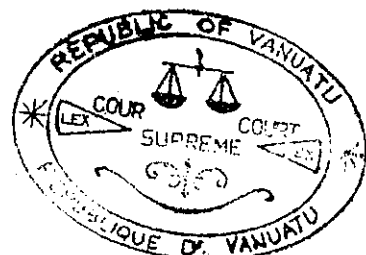
AND: KENT SECURITIES LIMITED
(Third Defendant)

AND: JONATHAN GLEN LAW (as Trustee for
Andenes Trust)
(Fourth Respondent)

AND: ANZ BANK (VANUATU) LIMITED
(Fifth Defendant)

Coram: Mr Justice Oliver A. SAKSAK

Mr Jonathan Baxter-Wright for the Plaintiff
Mr Mark Hurley for the Fifth Defendant.



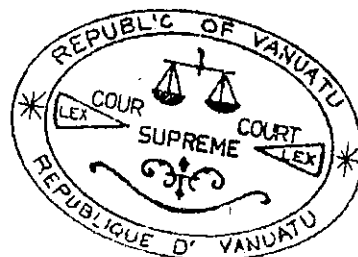
JUDGMENT AS TO COSTS

This is an application by way of a Notice of Motion filed pursuant to Order 55 of the High Court Rules 1964. The application was heard in chambers on 29th October 1997 in which counsel for the Fifth Defendant sought two Orders as follows:-

- 1) That the first and Second Plaintiffs pay the Fifth Respondent's costs of and incidental to complying with the orders for production of documents dated 23 September 1996 in the sum of VT320.000 within 14 days.
- 2) That the First and Second Plaintiffs be ordered to pay the Fifth Defendant's costs of the proceedings of 29th October 1997 as agreed or taxed.

Two affidavits both by Mr Hurley were filed in support of the application. The Plaintiff in his defence to the application filed an affidavit on 28th October 1997.

The brief facts of the case are that the Plaintiff in the course of gathering information for the purpose of making application to the Supreme Court of British Contambia for a grant of probate requested information from the Fifth Defendant relating to the accounts and balances of the Second Defendant. He did this by letter dated 3rd April 1996. There was no response from the Fifth Defendant and the Plaintiff through his solicitor, a Mr Andrew G. Sandiland sent a follow-up letter with the same request for statements of accounts on 14th May 1997. No response was received from the Fifth Defendant and the Plaintiff filed proceedings pursuant to the Bankers Books Evidence Act 1879 seeking production orders. On 12th June 1996, the Court granted the orders sought. One of the Orders of the Court was to the effect that the Applicant/Plaintiff pay the Respondent/Defendant its reasonable costs of complying with the other orders directed at them.



Following that order the Defendant claimed through their solicitor the sum of VT40.000 in March 1997 which in June 1997 increased to VT420.000 as combined costs. In July 1997 the Defendant followed up payment for the combined sum of VT320.000. This is the final amount being claimed.

The Defendant's argument is simple. They say that they have complied with production orders and therefore are rightly entitled to costs as ordered by the Court. They say their costs are reasonable.

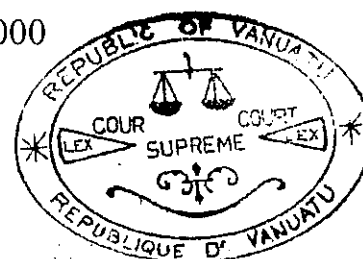
The Plaintiff on the other hand argues that the costs claimed are not reasonable. He submits that the costs have been incurred as a result of their own making. He argues that being a signatory to the Bank Accounts in relation to which he requested statements he was entitled to copies of the statements. It did not require a Court Order to sanction the production of those documents and it did not need the engagement of the Bank's solicitors. He argues that had the Defendant Bank responded positively to his requests in the beginning, no legal proceedings would have ensued and thus no costs would have been incurred. The Plaintiff concedes that he is liable to pay some costs but that it does not have to be the Bank's Solicitor's costs. He tells the Court that he himself has incurred incredible costs as a result of pursuing this matter.

The issues for the Court to determine are:-

- (a) Whether or not the costs claimed in the sum of VT320.000 reasonable ?
- (b) If not, what should be reasonable costs which the Plaintiff must pay ?

The sum of VT320.000 claimed in costs are combined costs made up of :

- (i) Direct legal costs - VT173.600
- (ii) Management/Staff time
20 hours at VT5.500 per hour - VT110.000
- (iii) Photocopy - VT36.000



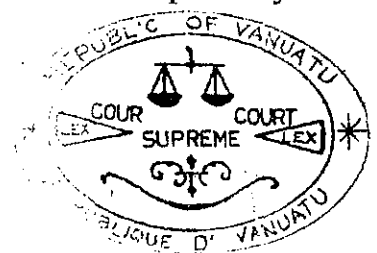
Adding these together they total up to VT319.600. This is inconsistent with the sum claimed. Indeed it seems this inconsistency existed in June 1997. In annexure "K" of Mr Hurley's affidavit the sum claimed for production was VT250.000 and the solicitors costs was VT170.000. Adding these, it comes up to VT420.000. It seems to me that the legal fees at that time should have been only VT70.000 instead of VT170.000. Despite these inconsistencies the Court accepts that the correct amount of combined costs is VT319.600.

The Court has first to consider the inclusion of legal costs and whether it is costs reasonably incurred by the Defendant in the course of complying with the production orders of the Court.

The Plaintiff's evidence shows that he personally wrote to the Defendant Bank on 3rd April 1996. When he received no response he instructed his solicitor who wrote to the Defendant on 14th May 1996. The moment that happened it amounted to the Plaintiff's invitation that the Defendant's solicitors be engaged and that the matter be dealt with through and by solicitors. That being so, the Plaintiff cannot now say that it was not necessary for the Defendant Bank to engage solicitors. The moment that the Defendant Bank's solicitors received and carried out instructions, costs begun to be incurred.

Here the solicitors costs is VT173.000. Is this reasonable ? Mr Hurly annexes two Bills of costs to his affidavit of 27th October 1997. One is dated 27th December 1996 in which he claims the sum of VT104.000 as legal costs.

Of this sum VT100.000 is claimed for work done on nine (9) different occasions beginning on 28th June 1996 and ending on 10th October 1996. For comparison, the Court asks what would another solicitor in Port Vila have claimed. The going hourly rate at Port Vila is VT20.000 on a party/party basis. The Court takes judicial notice of this rate. Base on this rate the appropriate amount of costs and assuming that work on each occasion took 1 hour, then it would mean 9 hours of work multiplied by VT20.000. The total would therefore be VT180.000.



The Second bill of costs is dated 9th July 1997 for a total amount of VT69.600. Of this sum VT65.000 is claimed for work done on 12 occasions beginning 7th January 1997 to 24th June 1997. Again assuming on each occasion that work took 1 hour, it would mean 12 hours of work multiplied by VT20.000 per hour. The total would be VT240.000. In total the costs would be VT420.000. But this is not what is being claimed. Only VT173.000 is claimed which is less than 50 per cent. This in my Judgment is more than a reasonable legal costs which should be paid. But there is another issue to consider. The Plaintiff alleges that the Defendant had breached the Court Order of 12th June 1996. In paragraph 2 of that Order it is ordered :-

“That ANZ Bank (Vanuatu) Limited produce to Messrs Clayton Utz Solicitors before 4.00 p.m. Thursday 13th June 1996.”

It is clear from evidence that no documents were produced on Thursday 13th June. Had that been done, there would not have been a need for another order which was obtained by the Plaintiff dated 3rd September, 1996.

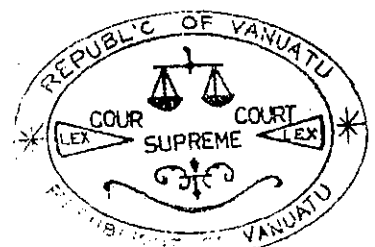
The Order of 3rd September 1996 was in respect of production of documents for the period which had the Plaintiff claimed in the first orders, there would not have been the need for a second order had the Defendant complied. Non-compliance meant that further instructions had to be given to solicitors and further actions taken which involved costs. All this was not necessary.

It is therefore my Judgment that the Bank's solicitors are entitled only to costs for the following periods :-

- (1) 28/06/96 - The Court allows Vt20.000 per hour or part thereof.
- (2) 19/08/96 - Allows VT20.000 per hour or part.
- (3) 03/09/96 - Allows VT30.000 per hour.

Costs claimed for the following periods 05/09/96; 16/09/96; 18/09/96; 23/09/96; 24/09/96; 10/10/96 are disallowed.

The total legal costs allowed as reasonable is therefore VT70.000.

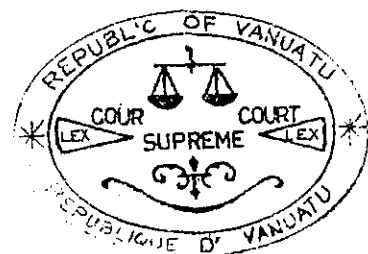


Evidence shows that it was only on 12th June 1997 that a complete set of documents were delivered. That is exactly one year (12 months) after the Court Order of 12 June 1996.

There was another matter that delayed production of documents. The Defendant produced some documents and asked for costs for such production to be paid by the Plaintiff. This was the cause of numerous correspondences exchanged between solicitors from the period of 1st January until 10th July, 1997. Had the Plaintiff paid costs as demanded by Defendant's solicitors, no actions would have been necessary and no costs incurred. The Plaintiff concedes that he must pay some costs but not all. The costs incurred by solicitors from the period from 7th January 1997 to 24th June 1997 were in my judgment therefore are reasonable and will allow them accordingly. The total amount is VT65.000. The overall legal costs allowed is therefore VT135.000.

Finally as to administrative and photocopy costs, it has been shown in evidence that the whole exercise involved photocopying of 537 pages of documents. The Defendant claims VT36.000 for photocopying costs. This is estimated at the costs of VT68 per page. Indeed the actual cost would have been VT36.516 but the Defendant is claiming VT36.000. This is a reasonable cost. Comparing the price of photocopy of Court documents as fixed by the Court Fee Rules [CAP.122] we see that the cost per page is VT150. If that was the rate the Defendant Bank had to charge the Plaintiff costs would be VT80.550. That being the case, I would allow costs in respect of photocopying at the sum of VT36.000.

For Management and Staff charges the sum of VT110.000 is claimed. The Plaintiff says that this is not reasonable because the Defendant have had the benefit of funds invested in the relevant accounts for some time. That is true and the Court accepts that argument but on the other hand the funds invested have been earning interest to the benefit of the owners of those funds. That being so benefit is equivocal, but in my judgment the Plaintiff has been unfairly threatened as a result of the considerable delay. In the circumstances only VT55.000 will be allowed for Management and Staff time.



In summary therefore in respect of costs, the Court assesses them as follows:-


	<u>Claimed</u>	<u>Taxed off</u>	<u>Allowed</u>
a) Direct Legal Costs:	VT173.600	VT38.600	VT135.000
b) Management/Staff:	VT110.000	VT55.000	VT55.000
c) Photocopy:	VT36.000	NIL	VT36.000
	_____	_____	_____
Total	<u>VT319.600</u>	<u>VT93.600</u>	<u>VT226.000</u>

It is therefore Ordered that:-

- 1) The Plaintiff pays a total of VT226.000 to the Defendant's solicitor before 15th December 1997.
- 2) There be no order as to costs.

Dated at Port Vila, this *21st* day of November 1997.

BY THE COURT


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Oliver A. SAKSAK
JUDGE

