IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

APPEAL CASE No. 2 of 1998

CHRISTIAN ROGER de ROBILLIARD

Appellant

HUDSON & CO.

Respondent

Coram : Hon. Justice John von Doussa

Counsel : Appellant in person
Mr R Sugden for the Respondent

Date : 8 January 1998

JUDGMENT

This is an appeal from an order of a Magistrate by Mr Christian Roger de Robilliard who is the defendant in proceedings commenced in the Magistrates' Court by Hudson & Co as plaintiffs. Mr de Robilliard is normally resident in Sydney, Australia, where he practices as a barrister.

The background of the matter is as follows. On 9 October 1997 a writ of summons was issued in the Senior Magistrates' Court at Port Vila, Civil Case No. 141 of 1997, with a statement of claim endorsed for 500,000 VT (that is about $A6,250). In addition there was a claim for interest to the date of judgment and costs. The statement of claim said that the claim was for professional legal services rendered by Hudson & Co. to Mr de Robilliard between May 1996 and 6 November 1996, in respect of which a bill of costs had been rendered in May 1997. It was pleaded that

the services were rendered at an agreed rate of 17,000 VT per hour. The summons had a return date of 7 November 1997.

On 7 November 1997 the matter came on before a Magistrate. Mr Sugden appeared for the plaintiff. There was no appearance of the defendant. Mr Sugden applied to proceed ex parte. The Magistrate stood the matter over until later in the day, pointing out there was no proof of service on the file. The case resumed late that afternoon. A law clerk in the office of Hudson & Co. was called by Mr Sugden, namely Mrs Leiwia Leikarie Dick, and she gave evidence that she had personally served a sealed copy of the summons on Mr de Robilliard outside the Court House on 13 October 1997 at about 1500 hours. The Magistrate's notes indicate that she expressed her satisfaction with the evidence of service but stood the matter over for hearing at a later date directing that because no document acknowledging service was signed by Mr de Robilliard, there should be a formal affidavit of service on the Court file. Such an affidavit was subsequently filed by Mrs Dick.

The hearing resumed on 9 December 1997. Background information about the claim was given to the Magistrate including information as to the basis upon which the summons included a claim for damages in respect of the loss of use of money, that is, for interest from the date when the bill was rendered. The Magistrate made a calculation and entered a sum for interest which represented 12 per cent per annum during the relevant period. In the result, judgment in default of appearance was entered for 500,000 VT on the claim plus 30,000 VT interest to the date of judgment.

Costs of 42,450 VT were also added. The order of the Court noted that the judgment itself would carry interest at the rate of 12 per cent per annum thereafter.

On 10 December 1997 Mr Sugden faxed a copy of the order of the Court to Mr de Robilliard at his barrister's chambers in Sydney. A copy was also posted to Mr de Robilliard that day, although it would not have arrived until some time later.

By 5 January 1998 the judgment debt had not been paid, nor had any action been taken by Mr de Robilliard to set aside the default judgment.

On 5 January 1998 there was a special sitting of the Court of Appeal in Vanuatu, and Mr de Robilliard appeared on the first morning of the sitting to indicate that he might be instructed by one of the parties involved. Shortly afterwards an application was made by Mr Sugden to the Magistrates' Court for an appointment to seek an ex parte order under Order 21 of the Magistrates' Courts (Civil Procedure) Rules 1976 (which have continued to operate in Vanuatu since Independence). That Order is headed "Arrest of Absconding Defendant". Mr Sugden also applied to have an unsatisfied judgment summons issued against Mr de Robilliard and made specially returnable at an early date.

The matter came on ex parte before a Magistrate on 6 January 1998. Mr de Robilliard had not been informed of the hearing and consequently was not present. Orders were made by the Magistrate including orders necessary to facilitate the issue of an unsatisfied judgment summons against Mr de Robilliard returnable on 12 January

1998. The order purporting to be made under Order 21 in material respects read as follows:

"ORDER

UPON READING the Affidavit of **ROBERT EDGAR SUGDEN** and upon the Plaintiff's Oral Application it is ordered that:-

1. The Defendant not leave Vanuatu until he has paid the sum of VT572,450 plus additional costs of this Application and the Judgment Summons filed herein of VT 37,000 into Court or until further Order.

2. That the Defendant surrender his passport and all of his travel documents to the Court until further Order."

That order was served upon Mr de Robilliard during the afternoon of 6 January 1998 and his passport was removed from him. Mr de Robilliard wished to challenge the ex parte order and also to dispute that he was indebted to Hudson & Co. To that end he made application to the Magistrates' Court to have the default judgment and the orders of 6 January 1998 set aside.

An urgent hearing before a Magistrate was arranged by the Registrar and the hearing proceeded for some hours on 7 January 1998. In support of his application to the Magistrates' Court Mr de Robilliard filed an affidavit which put in issue the validity of the service of the originating writ upon him, which denied that moneys were owing to the plaintiff, and which complained that in any event the order should not have been made ex parte as he had told Mr Sugden early on 6 January 1998 that he would be applying to set aside the default judgment. Mr de Robilliard deposed that he had assets in the jurisdiction namely legal costs due to him exceeding VT 2 million. He also offered various undertakings to the Magistrate including undertakings to return to Vanuatu as necessary to defend the claim and to prosecute a counter claim that

Mr de Robilliard said he proposed to institute. Mr de Robilliard stressed that he was an officer of the Court and as such his undertaking should be treated as a matter of some weight in the exercise of the Magistrate's discretion. These matters obviously failed to move the Magistrate to set aside either the order of 6 January 1998 or the default judgment.

At the conclusion of the hearing the default judgment was not set aside and the Magistrate also refused to set aside the ex parte order. The Magistrate gave two reasons why he exercised his discretion not to set aside the ex parte order. They were "(1) that both parties must return on 12 January 1998; (2) that there is an order made on 9 December 1997 within this Court's jurisdiction and as such it must be complied with. Until such order is complied with or until such time as fresh proceeding commences the order will remain in force".

The Magistrate then ordered that both parties return to Court on 12 January 1998 at 8.30 am and that "the order of 6 January 1998 be continuously extended until further ordered".

Mr de Robilliard filed a notice of appeal against the orders of the Magistrate. The Registrar of the Court deemed the matter to be one of urgency as Mr de Robilliard was desirous of regaining his passport and of returning to Sydney to attend to professional commitments which he has in that State. Accordingly the matter was set down for hearing this morning before a Judge and I was assigned to hear it.

Upon discussion between the Bench and Mr de Robilliard six topics of appeal have been identified. Mr de Robilliard has presented argument on each topic. I shall deal with these in turn.

The first topic contends that the learned Magistrate had no power to make either of the orders contained in the Order of 6 January 1998.

Mr de Robilliard has argued this aspect of the appeal on the premise that the application was made under Order 21 of the Magistrates' Court (Civil Procedure) Rules. Order 21 contains provisions of a kind that some years ago were common in Common Law countries. In more recent years absconding debtor legislation has undergone review in many jurisdictions but Order 21 has not been subject to review since Independence. Materially, Order 21, rule 1, provides that if in any suit for an amount of $20 or upwards a defendant is about to leave the New Hebrides the plaintiff either at the institution of the suit or at any time thereafter until final judgment may apply to the court for an order against the defendant that security be taken for his appearance to answer any judgment which may be passed against him in the suit. Rule 2 materially provides that if the court after making such investigation as it may consider necessary shall be of opinion that there is cause for believing that the defendant is about to leave the New Hebrides and by reason thereof the execution of any decree which may be made against him is likely to be obstructed or delayed the court may issue its warrant to bring the defendant before the court to show cause, if any there be, why he should not give good and sufficient bail for his appearance. The order goes on to make provision for bail being given and, in rule 5, for committal in

the event of default of bail being given where ordered. Rule 7 provides that expenses incurred for the subsistence in prison of any person arrested and committed under this Order shall be paid in advance through the court by the plaintiff in the action and the court shall determine whatever allowance it shall think fit for the reasonable and sufficient subsistence of such person having regard to his status and way of life. Any amount so disbursed may be recovered by the plaintiff in the action as costs in the cause if the court shall specifically so order.

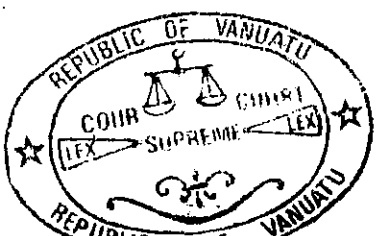
Mr de Robilliard has taken the Court to those provisions and argued, first, that the use of those provisions to make the Order of 6 January 1998 infringed his fundamental rights, as a person within the territorial limits of Vanuatu, contrary to Article 5 of the Constitution of the Republic of Vanuatu. Article 5 recognises fundamental rights and freedoms of the individual, and in particular rights to liberty, freedom of movement, and the protection of property: see Article 5(1)(b), (i) and (j). It is argued that by restraining Mr de Robilliard from leaving the jurisdiction those fundamental rights are infringed. So far as the protection of property is concerned it is argued that if he is required to remain within the jurisdiction he will be deprived of his opportunity of earning a living particularly in Australia where his main practice exists, and the deprivation of the right to pursue his living would in itself amount to an invasion of his fundamental right to the protection of property.

I do not accept the submission that the order under appeal constitutes an impermissible infringement of the fundamental rights of Mr de Robilliard protected by Article 5. Article 5 must be read and applied in a way that pays due regard to the

rights and freedoms of others and to the legitimate public interest in public order. That is a specific qualification imposed by Article 5 itself.

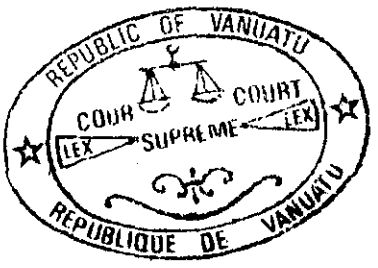
In determining the manner and extent to which a court order restricts rights and imposes obligations on a person, the terms of the particular court order are of crucial importance. The relevant Court order which is now under challenge is that made on 7 January 1998. That order varied the Order made on 6 January 1998 so that although the restrictions imposed on Mr de Robilliard by the Order of 6 January 1998 "until further order", continued to operate, the matter will come on again on 12 January 1998 for a hearing of the judgment summons. The effect of the order of 7 January 1998 is to make it clear that the restraints initially imposed by the Order of 6 January 1998 are only to operate in the short term until the hearing of the judgment summons when the matter will be reconsidered. At that hearing the means and ability of Mr de Robilliard to pay the judgment and to give security for payment if security were ordered will be investigated. The order made on 7 January 1998 does not address what restrictions might continue to apply to Mr de Robilliard if upon examination it is found that he is insolvent or for some other reason is unable to give security. It is not a proper interpretation of the order to assume that it will require Mr de Robilliard to remain within the jurisdiction indefinitely unless security is put up or payment is made even if he is financially unable to do so.

In my view the Order of 7 January 1998 was imposed as a short term, interim, measure to protect the rights, freedoms and property of another, namely Hudson & Co. and also to protect the proper administration of the civil legal system. The



Order is intended to ensure that Mr de Robilliard attends Court on 12 January 1998, that is next Monday, so that his means and ability to pay or to give security can be investigated. In my view, even though the Order presently has the practical effect of preventing his free movement out of Vanuatu, such a short term restriction strikes a reasonable and fair balance between his rights, and those of Hudson & Co. and the administration of the civil legal system. Whether in a particular case an order made under Order 21 impermissibly infringes upon fundamental rights, and in particular the freedom of movement, must depend on all the circumstances of the case and the nature of the restrictions imposed by the order. Whilst Order 21 is intended to provide security somewhat akin to Mareva injunction it is conceivable that an order might be framed in a way that would amount to a breach of fundamental rights. One of the factors that would be highly material would be the actual effect that the order was likely to have upon the particular individual concerned and the duration of the order. For example, if the order restrained the defendant from leaving Vanuatu until security were given, and it was clear on sound evidence that the defendant had the financial capacity to give that security, it could hardly be said that the defendant's free movement was unreasonably restrained. In the present case it is most significant that the order is only intended to operate for a very short period.

It is further argued by Mr de Robilliard that there is nothing in Order 21 that justifies orders of the kind that were made. He argues that the express provisions of Order 21 authorise the ordering of security, the arrest of a person to bring that person before the court to show cause why security should not be ordered, and in the event that security is ordered and not given, for the imprisonment of that person. However, there is no



provision authorising an order preventing departure from Vanuatu, or the surrender of a passport. Assuming for the moment that Order 21 is the relevant source of power, in my view Order 21 has to be read with the provisions of Section 29 of the Courts Act which makes provision for inherent powers of all Courts in Vanuatu. Section 29 provides that subject to the Constitution, any written law and the limits of its jurisdiction, a Court shall have such inherent powers as shall be necessary for it to carry out its functions. In my view in the exercise of those inherent powers it is open to a Magistrate to order some less draconian measure than the arrest of a defendant to bring about the intent of Order 21. In this case an interim order was made ex parte, requiring Mr de Robilliard not to leave the jurisdiction. That was a sensible order to enable the Court then to consider whether security should be ordered. The order requiring delivery up of the passport and the travel documents was an order made ancillary to the order not to leave the jurisdiction and in aid of due compliance. It is not necessary for the purposes of deciding this case to determine whether Order 21 would authorise an order requiring a defendant to remain within the jurisdiction until security of an amount was given where that amount was plainly beyond the financial means of the defendant. That is not the situation before me.

I have so far assumed that Order 21 is the relevant provision which should be considered as the source of power for the Magistrate's orders. This was the basis on which Mr de Robilliard argued the appeal. It will be noted, however, that rule 1 makes provision for a plaintiff to apply for an order requiring a defendant to provide security "at the institution of the suit or at any time thereafter *until final judgment*" (emphasis added). It is arguable that Order 21 is intended to operate as a pre-

judgment procedure, whereas, in this case, a judgment had already been entered. However, even if Order 21 is to be interpreted as a pre-judgment procedure, the inherent power of the Court arising under s 29 of the Courts Act would justify the orders made in this case, as an interim measure to ensure Mr de Robilliard's attendance at Court on 12 January 1998 for the hearing of the judgment summons.

Further, Mr de Robilliard argued that the order made on 6 January 1998 should not have been made without there being some undertaking extracted from the plaintiff as to damages in the event that the order was not appropriate having regard to the final outcome, and should not have been made unless there was some order that the plaintiff make provision for the subsistence of Mr de Robilliard whilst he remained within the jurisdiction. Reference was made to rule 7 of Order 21 by way of an analogy to support that argument. I reject that submission. Order 21 makes provision for giving security by someone about to leave the jurisdiction. It imposes no requirement in the nature of an undertaking for damages. In the circumstances of this case the order was to operate short term and I think it was appropriate for such an order to be made without requiring any undertaking as to damages. Again, it is not necessary to determine whether some security for damages should be extracted from a plaintiff who seeks an order to operate for a longer term against a defendant either under Order 21 or otherwise. It is probable if an order were sought for a longer term requiring a defendant to remain within the jurisdiction until the completion of protracted litigation that a court would require some undertaking or security for damages to be given by a plaintiff to provide for the event that the plaintiff ultimately failed.

I therefore dismiss the first topic raised on the appeal.

The second topic is that the order of 6 January 1998 should not have been made ex parte. Secondly, even if it were made ex parte the onus of proof resting on the plaintiff was not discharged, and thirdly, that in any event there was no ground to make out the order. The Court of Appeal in Vanuatu has expressed its disapproval of a practice that seems to have been current of making ex parte orders where there is no real need to proceed ex parte. To do so is to invite two hearings where one should be sufficient. In the present case Mr de Robilliard was within the jurisdiction and it was obvious to all that he was going to remain here for another day or two. In my view it would have been better had he been given notice of the proposed application, and all the matters that were later argued on review by the Magistrate could have been argued in the first instance. If any costs were awarded in respect of the ex parte application against Mr de Robilliard I think this Court should withdraw that order. However, it is not apparent to me that any costs were ordered, and Mr Sugden himself has acknowledged before this Court that he should not be awarded costs of the ex parte hearing.

Notwithstanding this expression of disapproval about the procedure that was adopted, it is a procedure which is common in absconding debtor type situations and it does not invalidate the orders that were made. As to the discharge of the onus of proof, the affidavit evidence put forward by Mr Sugden justified the Magistrate making an interim order of the kind that was made to ensure that the defendant in the proceedings

came before the Court so that the application for security could, in due course, be properly considered. On the third point, namely that there was no ground to make the Order, Mr de Robilliard has argued that he could have been sued in New South Wales as he is mainly resident there and Mr Sugden apparently comes from Australia. If he had been sued in that jurisdiction problems about him absconding would not have arisen. Those facts are right, but they do not mean that there was any error in the course taken by Mr Sugden. Mr Sugden is presently a resident in Vanuatu. He is partner in the firm Hudson & Co. which has practised for many years in Vanuatu. The legal liability asserted was incurred in Vanuatu, and it is entirely proper that the laws and procedures of Vanuatu should be applied to enforce that liability.

It is also contended by Mr de Robilliard that as he is a legal practitioner in Australia, and as he asserts to be a legal practitioner in this jurisdiction (a topic on which I pass no view), his undertakings should have been accepted that he would pay the liability if it were eventually established, and that he would come back within the jurisdiction as and when required to defend the action and to prosecute the counter claim that he proposes. There was evidence before the Magistrate that the debt had been outstanding from May 1997, when the account was rendered. There was also evidence that an arrangement for payment had been made, or at least Mr Sugden understood that it had been made, but the payment did not eventuate. Indeed, having a judgment, they were entitled to seek to enforce the judgment, but even if the judgment were set aside, in my view they were entitled to exercise their right to seek security. Given the history of this matter, the Magistrate did not err in rejecting the defendant's personal undertakings as sufficient in lieu of security.

I therefore dismiss the second topic argued in support of the appeal.

The third topic is that the default judgment was invalidly entered. The point pursued here is that there is a dispute about service. The affidavit filed before the Magistrate by Mr de Robilliard disputed service of the summons. However, it is now clear, and Mr de Robilliard acknowledges, that he was given a piece of paper by a clerk outside the Court on 13 October 1997. He says however, his mind was on another court case, for which he had come to Court, and that the piece of paper was put in an outside pocket of his briefcase and he did not again direct his mind to it. In my view those matters, which were not before the Magistrate on 9 December 1997, do not go to the validity of the judgment that was entered. The fact is that the summons was served. The matters advanced by Mr de Robilliard are factors that go rather to whether the application to set aside the judgment should be allowed on the footing that Mr de Robilliard did not bring his mind to bear upon the issues at an earlier date. But even then, the critical question on setting aside the judgment must remain whether reasonable grounds for defence have been shown, and whether terms can be imposed that make it appropriate to set aside the judgment.

It is further argued that the judgment was invalidly entered because it included a component of damages, namely interest. The interest claim is probably to be treated as a liquidated demand, but in any event it is clear from the notes of the Magistrate that she brought her mind to bear on the fact that interest needed to be established and was satisfied that it was appropriate to enter judgment in respect of the interest.

The final ground advanced under the invalidity topic is that no evidence has been produced of a demand having been made before action. With respect to Mr de Robilliard, I think he has misunderstood or misconstrued relevant documents. There was a letter which he tendered on the appeal (exhibit B), dated 30 May 1997 from him to Mr Sugden which plainly indicates that he understood that a demand for the fees had been made. That was quite some time before the proceedings were issued. In any event, the absence of a demand before action does not invalidate the summons or a judgment entered thereon. At most it may be a reason for depriving the plaintiff of some of the costs of the default judgment. Topic three in my view fails.

Topic four is that there are strong grounds to set aside the default judgment. In support of that contention grounds of proposed defence have been produced to the Court and the letter, exhibit B, has been tendered showing that matters raised in the proposed defence were raised as long ago as 30 May 1997. It is also argued that the time for payment has not yet arrived because the agreement for the rendering of legal services were subject to a condition that the fees would not be paid until the Attorney-General paid Mr de Robilliard some costs in respect of action no. 91 of 1996. Without going through the intended grounds of defence at length they raise allegations of negligence in the performance of services by Hudson & Co. and a failure to carry out instructions. The proposed grounds of defence do not in so many words dispute the actual amount of the bill. That of course does not mean that there may not be an entitlement to raise a set-off or a counter claim against those fees in consequence of negligent performance being established. I have to say, however, as I pointed out to

Mr de Robilliard in the course of argument, that if one is to stand back and look objectively at the facts now before the Court this case has all the hallmarks of a debtor unable to pay trying to evade and avoid payment of the debt. A summons was served, and the debtor later says that he did not understand what the document was. A default judgment was entered and notice given to the defendant, yet no action was taken to set aside the judgment until a step was taken by the plaintiff to enforce it, and only then has a complaint been raised before the Court about the quality of the services that were rendered.

Nevertheless as Mr de Robilliard feels strongly that there is no debt due he ought to be given the opportunity to defend the claim. Whether he brings a counter claim is a matter for him. If he brings a counter claim that exceeds the jurisdiction of the Magistrates' Court it will be a matter for the proper officers of the Court to decide whether the whole action should be removed into the Supreme Court. The information before the Court indicates that if the judgment is to be set aside, it is an appropriate case to impose terms, and those terms should be that security for the payment of the outstanding legal fees and interest thereon be given. There should also be an order for the payment of costs thrown away by reason of the entry of the default judgment.

The fifth topic raised by the notice of appeal is that the learned Magistrate did not take into account sufficiently Mr de Robilliard's offered undertaking that he would return to prosecute the case, and did not pay sufficient regard to the fact that he has returned on other occasions notwithstanding obvious adversities that he would meet when he arrived. In my view the Magistrate was entitled to exercise the discretion in the way

that he did and I think it was appropriate for the plaintiffs to seek security having regard to the history of the matter and to the fact that Mr de Robilliard is not permanently a resident in the Republic of Vanuatu.

The sixth topic is that the time for execution of the judgment has not yet run. It is said that inadequate notice of the judgment had been given after the entry of the default judgment and before the issue of the judgment summons. Order 34 of the Magistrates' Rules, rule 4 imposes a requirement, unless otherwise ordered, for 14 days notice to be given before a writ of execution is issued. In my view a judgment summons is not a writ of execution. In any event there was an application made to the Magistrate for a special order to make the judgment summons returnable on 12 January 1998. There is nothing in this topic.

I consider the orders that were made on 6 January 1998 were appropriately made having regard to the fact that they were intended only to run until there had been an examination of the means and ability of Mr de Robilliard to meet the judgment. However, I consider that leave should be given to set aside the judgment, but on terms. If the judgment is set aside, plainly the terms of Order 21 will then have application. This is relevant in considering the terms upon which leave to set aside the judgment should be granted.

For these reasons the following orders will be made:

1. Leave to the appellant to set aside the judgment of 9 December 1997 upon condition that the sum of VT.700,000 be paid into Court as security for the

plaintiff's claim and costs of this action to date, payment to be made within 14 days.

2. Order that the order of 6 January 1998 as amended and confirmed by the Learned Magistrate on 7 January 1998 remain in place until further order to the intent that if security is not given in the meantime under paragraph 1 the attendance of the parties at Court on 12 January 1998 shall be for the purpose of investigating the means and ability of Mr de Robilliard to give the security ordered in paragraph 1.

3. In the event that the Magistrate after examination of Mr de Robilliard's means and ability is satisfied that Mr de Robilliard is not able to give the security, or any other sufficient security to cover the judgment debt if the judgment is not set aside, the Magistrates' Court will then review the terms and effect of the orders requiring Mr de Robilliard to remain in the jurisdiction, and to surrender his passport and travel documents.

4. Liberty to apply on 2 hours notice to me today or tomorrow in relation to paragraphs 1, 2 and 3 hereof.

5. In the event that the judgment entered on 9 December 1997 is set aside, I fix the costs thrown away in connection with the entry of judgment and the judgment summons as VT.45,000.

6. In respect of the costs of the hearing before the Magistrate on 7 January 1998, and the costs of this appeal I order that the appellant pay the respondent Hudson & Co. the sum of VT.100,000.

7. The costs fixed in the preceding 2 paragraphs at VT.45,000 and VT.100,000 respectively are included in the sum of VT.700,000 security referred to in

paragraph 1 hereof. In the event that the security is paid into Court I direct the Registrar:

(a) to pay out the sum of VT.145,000 forthwith to Hudson & Co. in satisfaction of the costs referred to in paragraphs 5 & 6 hereof;

(b) to invest the balance at the ANZ Bank to the credit of the parties of this action to abide the further order of a judge.

8. In the event that the judgment of 9 December 1997 is set aside pursuant to leave already granted, I direct that Mr de Robilliard file a defence and any counter claim he proposes within 14 days thereafter. I further direct that Civil Action 141 of 1997 be relisted before a Magistrate 21 days after the judgment is set aside, or so soon thereafter as is convenient to the Magistrates' Court.

9. Liberty to apply generally to a judge of this Court on 2 days notice.

Postscript

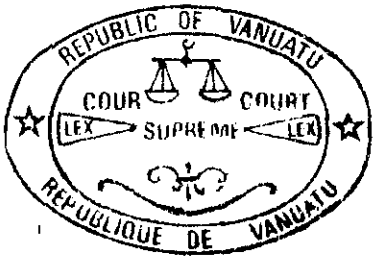
Pursuant to the leave to apply, the parties appeared again before me on 9 January 1998. After considering proposals submitted by Mr de Robilliard to secure the position of the respondent the following further orders were made:

1. Vary order made on 8 January 1998 as follows:

(i) Vary amount of security to be paid into Court to VT.740,000 and extend time for payment into Court to 28 days from today.

(ii) Vacate paragraph 2 of the order and set aside the orders of the Learned Magistrate made on 6 & 7 January 1998.

(iii) Vacate paragraphs 3 & 4 of the order of 8 January 1998.



2. Note the undertaking given before me in Court today by Mr de Robilliard as a putative officer of the Supreme Court of the Republic of Vanuatu and an officer of the High Court of Australia that security will be given in accordance with paragraph 1 of the order of 8 January 1998 as amended by this order.

3. In the event that the said security is not given, Mr de Robilliard shall forthwith file in this Court an affidavit of means and ability to pay the judgment in Civil Action No. 141 of 1997 and the costs awarded in that action, and in these proceedings.

4. In the event that the said security is not given, direct that Mr de Robilliard give 7 days notice in writing to Mr Sugden at Hudson & Co. of his intention to next return to Vanuatu, and appear within 2 business days of his next return to Vanuatu before the Magistrates' Court in Port Vila for examination on a judgment summons in Action No. 141 of 1997.

5. Vary paragraph 6 of the order of 8 January 1998 by increasing the costs of the appeal to be paid by Mr de Robilliard to VT.140,000 and vary paragraph 7(a) by substituting VT.185,000 for VT.145,000.

6. Vary paragraph 8 of the order of 8 January 1998 by directing that the proceedings be relisted in the Magistrates' Court as soon as practicable after 1 March 1998 and after not less than 10 days notice by fax to Mr de Robilliard at his Chambers in Sydney, Australia.

7. Direct that Mr de Robilliard's passport and travel documents be forthwith returned to him.

Judgment delivered at Port Vila

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John W von Doussa J.

REPUBLIC OF VANUATU
COUR SUPREME COURT
TEX TEK
REPUBLIQUE DE VANUATU