

(Civil Jurisdiction)

BETWEEN: NIGEL HILL

Plaintiff

AND: KPMG

First Defendant

AND: BILL HAWKES

Second Defendant

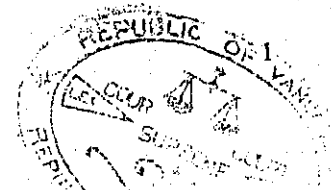
Juris Ozols & Associates for the Plaintiff
Ridgway Blake for the First and Second Defendants

JUDGEMENT

I have the benefit of listening to both counsels and also considering the tendered affidavits on whether this case can be stayed pending the finality of the case in Canada.

Both counsels stated that the action in Canada is similar to this cause of action before me and the only difference is that in the cause in Canada, Bill Hawkes is not a party to the proceeding.

In argument advanced by Garry Blake that KPMG in Vanuatu is a different legal entity to KPMG in Canada as KPMG in Vanuatu is in partnership with other five partners which involves their dealings in Vanuatu. Whereas Juris Ozols argued that KPMG is worldwide.



On the basis of the argument advance, I am not satisfied as to whether they are two separate legal entities or they are the same.

On the Plaintiff's affidavit as tendered by the counsel for the Plaintiff, stated that KPMG applied to the Court in Canada to stay the proceedings in Canada and let the litigant litigate the case in Vanuatu. From the affidavits as tendered, KPMG filed a Notice of Motion dated the 4th October 1996 seeking that the Plaintiff's action in Canada is stayed and that the case is litigated in Vanuatu as stated earlier. That application by KPMG was dismissed on the 22nd April 1997 by the Court in Canada. Then KPMG appealed the decision to the Court of Appeal and again, it was dismissed. Then, KPMG, again seek leave to the Supreme Court to appeal the decision which was dismissed by the Supreme Court. At the completion of this process the matter has now been set for trial in Canada.

While this process was taking place in Canada the Plaintiff filed the similar cause of action in Vanuatu Supreme Court against the same Defendant KPMG and in addition to that, Mr. Bill Hawkes, a resident in Vanuatu. The reason being that the Plaintiff was in fear that the final decisions in that trial may favor KPMG for the matter to be litigated in Vanuatu. Therefor, by playing safe, he instructed his counsel to take up the matter in Vanuatu and the matter is stayed pending the outcome of the case in Canada. So in other ways the cause is now on foot in Canada.

In view of what has taken place in Canada courts and by filing the same cause of action again in the Vanuatu Supreme Court amounts to duplicity. It is the duty of this court to protect its process being abused and by taking step to protect this, it is only proper for this court to either:

- 1- strike out the matter here in Vanuatu for duplicity and let the Plaintiff litigate his case in Canada, or,
- 2- proceed with the matter in Vanuatu as separate to the cause of action in Canada, of which the cause of action in Vanuatu will be against KPMG Vanuatu and Bill Hawkes.

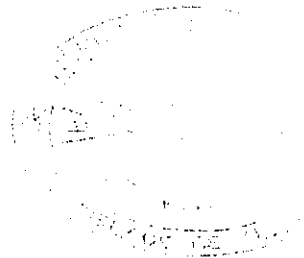
For me to accept my first ruling, that is to strike out the matter for duplicity, than this will hinder the Plaintiff to proceed with this matter in Vanuatu. This is due to time limitation under the laws of the Republic of Vanuatu and this will end the case between the parties in the Supreme Court of the Republic of Vanuatu.

Now all along in the proceedings in Canada as per Affidavit, the issue of jurisdiction and the proper forum convenient in disposing of this cause in my view were all in favor of the Plaintiff. For these reasons the cause in Canada is now on foot and that should end the matter there. If the Plaintiff was in fear that if the trial court in Canada rule in KPMG favor on the issue of KPMG in Canada as a

different legal entity to KPMG Vanuatu, then the proper forum to decide the cause is only in the Court of the Republic of Vanuatu . In other way the matter should have been brought in the first place before the Court in the Republic of Vanuatu of which the alleged cause arose and what more, all the parties in the proceedings were residents in the Republic of Vanuatu at that time. The approach as taken by the Plaintiff is in my view, one of a "lucky approach". That is to say, if the Plaintiff succeeded in his claim in Canada's Court, then as stated in his affidavit, he will drop the case against the Defendants in this cause in the Supreme Court of Vanuatu, but if he fails then he will proceed with this case against the two Defendants.

This approach should not be encourage by the Court in Vanuatu being the court of original jurisdiction for any contract, acts, omission, or representation to properly deal with the matter, unless it is barred by contract or convention of any sort of which the matter can be taken up in another country in accordance with the contract or convention. Further, if the matter is now taken up in Canada than the defendants, that is KPMG and Bill Hawkes of Vanuatu, will be placed in a much more disadvantage situation to proceed to defend themselves in the cause now against them . They have a right also in asking the Court for the matter to be proceeded with in Vanuatu rather than Canada, which they have.

In striking the balance on the application, I come to conclude that the situation created by the Plaintiff in this matter allows that the proper




forum to deal with the matter is in the Supreme Court of the Republic of Vanuatu.

And therefore, I prefer the second option that the matter here in Vanuatu is proceeded with in the Supreme Court of the Republic of Vanuatu against the two defendants separately from the one in Canada. And therefore, I do not grant the Applicant's application to stay this cause for proceedings in the Supreme Court of the Republic of Vanuatu, and the matter shall be proceeded with in Vanuatu in accordance with the laws and rules of the Republic of Vanuatu.

And this is my ruling in this matter.

Cost in this matter is cost in the cause.

DATED AT PORT VILA this 12th day of March 1999.


R. MARUM MBE
Judge



Mr. Juris Ozols for Ozols & Associates
Mr. Garry Blake for Ridgway Blake