

(GT/08)
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(Civil Jurisdiction)

BETWEEN: RACHEL VATARUL, JOHN
TAVUTI, JOSEPH TAVUTI,
WILLIE TAVUTI and PAUL
TAVUTI of Mavea Island,
Santo

Claimants

AND: DAVID PATU LIVO of
Mavea Island, Santo

First Defendant

AND: THE DIRECTOR OF LAND
RECORDS

Second Defendant

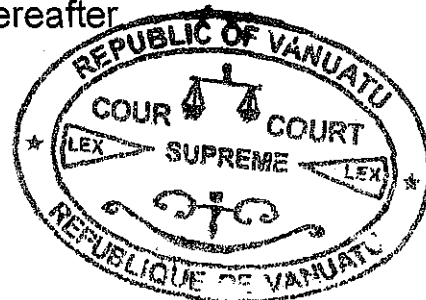
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

No Appearance for or by the Claimants
State Law Office for the Second Defendant
Ridgway Blake Lawyers for the First Defendant

Date of Hearing: 4th May 2007
Date of Decision: 4th May 2007

DECISION

This case started before a judge in Port Vila. It was transferred to Santo on 10th May 2006 with clear directions that the Claimant was to file and serve its amended claim within 21 days. The defendants were to file and serve their responses within 21 days thereafter.



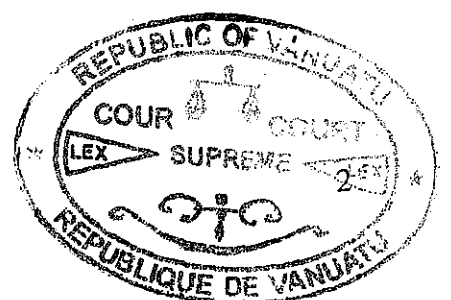
The ball of the game was and has always been in the Claimant's Court. They have not set it rolling. And it has been some 12 months to date.

The matter was first listed before this Court on 11th September 2006 by Notice dated 3rd July 2006. On 11th September no parties attended Court. The matter was adjourned by order and fixed for 9th October 2006 for the Claimant to show cause why the case should not be struck out.

For some reasons not available on record the matter was not heard on 9th October 2006. The matter was unattended to until 22nd February 2007 when a further Notice was issued out of the Court Registry in Santo calling the case for show cause on 15th March 2007.

On 15th March 2007 the Court noted letters by Mr Jack Kilu seeking an adjournment due to Court commitments in Vila. The Solicitor General also wrote requesting that the Second Defendant be excused from the hearing on 15th March. The Court adjourned the hearing by order of 15th March 2007 to 4th May 2007 at 9 O'clock a.m.

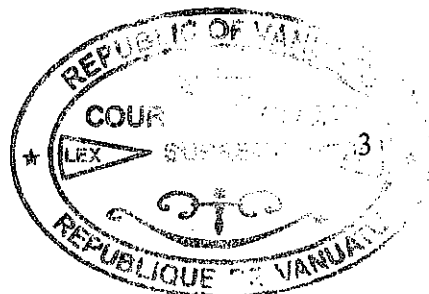
- On 2nd May 2007 Miss Christina Thyna filed a Notice to Begin Acting for the First Defendant in this matter.



At 9 O'clock this morning the case was called. The Claimants nor their counsel were in Court. The Court notes the Solicitor General's letter of 3rd May 2007 informing the Court that no legal officer from the State Law Office was available to attend the hearing today. However he pointed the Court to the written submissions filed by the State Law Office and the sworn statement of Mr Frederick Gilu of 3rd May 2007. They submit that pursuant to Rule 9.10(1)(a) and (b) of the Civil Procedure Rules No. 49 of 2002 the Claimants have failed to take steps to ensure that their case continues. Further that they have failed to comply with a Court order namely of 10th May 2006. The Court notes that the orders of 10th May 2006 were in fact first issued on 27th March 2006. When the Claimant did not file and serve his amended claim, the Court re-issued the order on 10th May 2006. So there have been failure to abide by orders of the Court two times by the Claimant.

Miss Thyna sent a letter by fax dated 4th May 2007 indicating that she and Mr Kilu have agreed to request an adjournment on the grounds that –

- (a) She has not been served with a copy of the claim in the proceedings.
- (b) She has not been served with an amended claim as directed by orders of 10th May 2006.
- (c) She would require time to serve a defence and sworn statements.



- (d) Mr Kilu has not received further instructions to proceed with the matter since last conference.

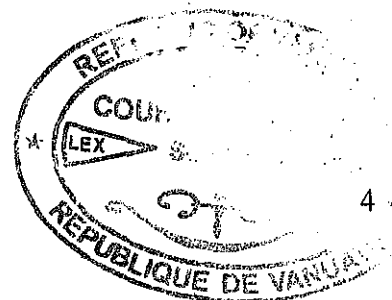
She therefore requests an adjournment to 13th June 2007 at 9 O'clock.

Her letter was received only at 2.05 p.m today. The Court sat at 9 O'clock. The grounds stated in Miss Thyna's letter indicate firstly that the Claimants have not yet served their claim on the First Defendant since they filed the claim on 17th August 2005. Secondly the Claimants have not complied with Court Orders. And thirdly the Claimant's Counsel has no instructions to proceed with the matter. These show a serious lack of want of prosecution of their claim. There will therefore be no adjournment.

The Court therefore accepts the submissions made by the State Law Office that pursuant to Rule 9.10(1)(a) and (b) of the Rules the Court may strike out the claims of the Claimants.

Today this matter is listed for a hearing. Pursuant to Rule 9.10(3)(b) the Court has direction to strike out the proceeding where the Claimant does not appear to show cause. On the basis of the sworn statement of Mr Gilu and pursuant to Rule 9.10(1)(a) and (b) this Court now exercises its discretion to strike out this proceeding in its entirety.

The formal Orders are that:-



- (1) Civil Case No. 137 of 2005 be hereby struck out in its entirety.
- (2) There be no order as to costs.

DATED at Luganville this 4th day of May 2007.

BY THE COURT



OLIVER A. SAKSAK

Judge

