

**BETWEEN:** SEMI ALVEA  
Appellant

**AND:** RENATA WOKON  
Respondent

*Mr. Saling Stephens for the Appellant  
Mr. Hilary Toa for the Respondent*

## **JUDGMENT**

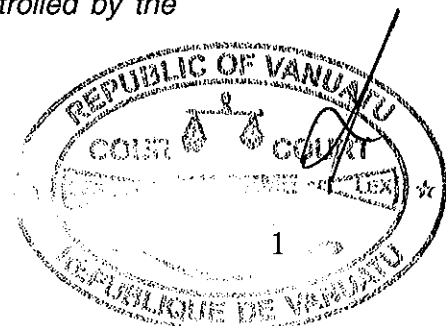
A Notice of Appeal has been filed against the Enforcement of the Efate Island Court Decision relating to payment of monthly child maintenance of VT8,000 for 2 children until each and both attain the age of 18 years. The Efate Island Court made its decision on 2<sup>nd</sup> day of October 2001 after the Appellant admitted that he was the legitimated father of the two children.

The Respondent shall pay the first payment of VT8,000 on or before 30<sup>th</sup> September 2001. The Respondent fails to pay the first child maintenance of VT8,000 to each of the two children as ordered by the Efate Island Court.

An Enforcement Order was made by the Magistrate's Court on 30 June 2005 pursuant to relevant sections of the Child Maintenance Act [CAP. 46]. The Enforcement Order of the Magistrate's Court is set out below:-

*"After hearing both parties, the court makes the following orders:-*

- 1. Semi Alvea to set up a bank account in his name by Wednesday 6<sup>th</sup> July 2005;*
- 2. Semi Alvea to provide the court with details of bank account and a copy of bank standing order to transfer 10,000VT by end of each month to the bank account of Sonia and Sophia (account No. 960583 ANZ Bank, Port Vila);*
- 3. The bank account of Sonia and Sophia will be controlled by the clerk of the Efate Island Court who will;*



- i. *assist the parties and the bank to change the authorised signatory of the clerk.*
  - ii. *will only authorised a withdraw form if both parties indicate that they wish to withdraw to meet expenditure for Sonia and Sophia.*
4. *If one of the parties is not in Port Vila for purpose of Order 3, they must sign a letter informing the clerk of their authorization and provide a telephone number for verification.*
5. *The Court expects the corporation of both parties in the management of the daily cares of the children Sonia and Sophia."*

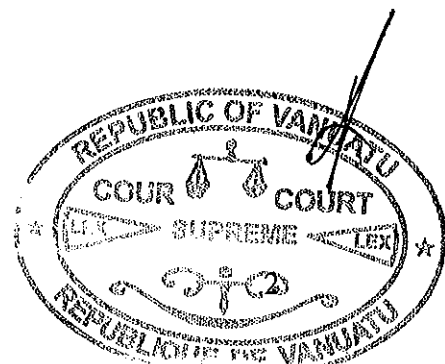
On 17 August, 2005, the Appellant filed a Notice of Appeal against the Enforcement Order of the Magistrate's Court of 30 June 2005. An application to suspend the Enforcement Order of 30 June 2005 had also been filed before the Magistrate's Court.

The Notice of Appeal and the application for suspension were listed for hearing by the Magistrate's Court on 9 March 2006.

On 9 March 2006, the learned Magistrate Bani, among other matters, stated a case before the Supreme Court under section 17 of the Judicial Services and the Courts Act No. 54 of 2000 and Rules 16.22 (1) (b) of the Civil Procedure Rules 2002.

The learned Magistrate stated the following case:-

1. Whether or not an appeal can be lodged against an enforcement order as in the present case?
2. If the answer to (1) above is in the affirmative, then whether the Magistrate's Court is the appropriate forum for an appeal lodged against Enforcement Orders made by a Magistrate having supervisory jurisdiction over an Island Court?



3. Whether a supervision Magistrate should have specific powers under his or her nomination instrument to entertain enforcement proceedings of an Island Court?

At the outset, the third question is not appropriate for the purpose of the appeal in this case. There is no need to answer it as any given answer does not assist the parties and the justice of this case.

It is also to be noted from the start that the Appellant accepted that he was the legitimated father of the twin children, namely Sonia and Sophia.

Consequently, the Island Court made findings and ruling to this effect and ordered the Appellant to pay the child maintenance of VT8,000 per month for the 2 children until they each attain 18 years of age pursuant to the relevant provision of the Child Maintenance Act [CAP. 46].

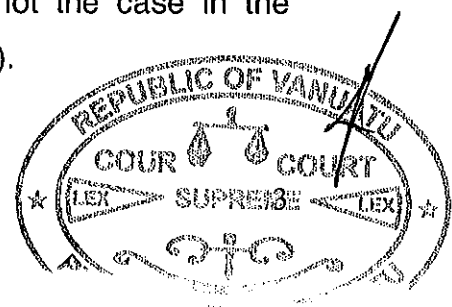
There is no challenge to that decision. The Appellant failed to comply with that decision. The Respondent mother applied for the decision to be enforced by the Magistrate's Court in accordance with Part 2 – Enforcement of Maintenance Order and Rule 9 of the Island Courts (Civil Procedure) Rules 2005.

The then learned Efate Island Court supervising Magistrate, John Obed Alilee, issued the Enforcement Order of 30 June 2005 which is now appealed against.

It is difficult to apprehend how enforcement proceedings can be attacked on other than procedural grounds when the original judgment is beyond challenge.

It is correct to state that where a party is dissatisfied with an enforcement order, the proper course to take is to apply to the same forum Court for variation of such an enforcement order.

The Appellant has no right of appeal in the enforcement process of an Island Court unless the original judgment is challenged. This is not the case in the present case. I answer to the first question in the negative (no).



In relation to the second question, it is repeated that there is no appeal against an enforcement order as of right unless the substantive judgment is under challenge. The process is then to stay the enforcement proceedings and to challenge the substantive judgment. If the substantive judgment is made by an Island Court on the basis of vested jurisdiction under the warrant issued by the Chief Justice under section 1 (1) of the Island Courts Act [CAP. 167], like in this instant case, the Magistrate's Court.

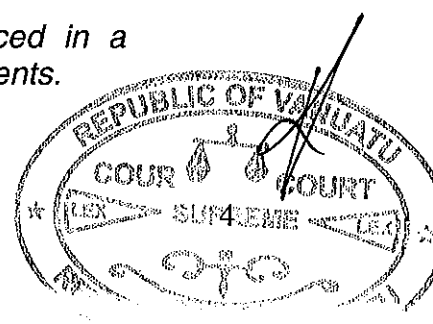
It is to be noted that the Magistrates Courts have jurisdiction pursuant to section 5 (1) of the Maintenance of Children Act [CAP. 46]. If the substantive judgment in relation to the matters covered under section 5 (1) of the Act [CAP. 46], is made by the Magistrate's Court, the enforcement proceedings will be undertaken by a Magistrate's Court as in any ordinary matters of the Magistrate's Court and any appeal against the substantive Magistrate's Court judgment lies in the Supreme Court.

In the present case, the Appellant appeal against the Enforcement Order of the Magistrate's Court dated 30 June 2005 on the basis that he sought variation of the maintenance orders issued by the Efate Island Court on 2 October 2001 and it is advanced that the learned Efate Island Court Supervising Magistrate failed to consider the basis of his application and submissions. The variation order sought and its grounds are set out below:

"That the orders of the Efate Island Court dated 2 October 2001 be varied to exclude a monetary figure by inserting an order for maintenance in kind."

The grounds are:-

- 1. The Applicant is not engaged in any paid employment whose income was assessed before the Order for payment of child maintenance at VT8,000 per month.*
- 2. The children the subject of the order of the Court lives with the applicant's parents who are paying all expenses related to their welfare.*
- 3. The children the subject of the order are placed in a kindergarten school paid for by the applicant's parents.*



4. *The applicant have provided a safe house for the children the subject of the said orders since they were born.*
5. *The order for monetary payment of VT8,000 per month by way of child maintenance is unrealistic, unworkable and impracticable under the circumstances.*

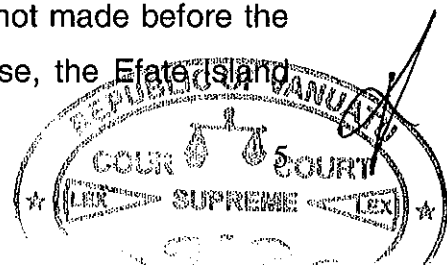
After hearing the Appellant and the Respondent, the then Efate Island Court Supervising Magistrate issued the Enforcement orders of 30 June 2005, which is now under appeal.

The Appellant said the then learned Efate Island Court Supervising Magistrate failed in the following respect:-

1. to consider and/or give any weight at all to the statement, submissions and application by the Appellant to vary the orders of the Island Court dated 2<sup>nd</sup> October 2001;
2. to exercise proper and reasonable discretion when issuing the orders it did on 30<sup>th</sup> June 2005, as one of the twin namely Sophia is not living with the Respondent to justify issuance of the said orders.
3. to provide sufficient opportunity to the Appellant to be heard on an application to vary the orders dated 2<sup>nd</sup> October 2001 prior to issuing of the orders dated 30<sup>th</sup> June 2003.

In the present case, the jurisdiction to hear the notice of appeal if it is substantiated is the Magistrate's Court. However, because of the length of delays and in the interest of justice, I decide to deal with the case stated and also the appeal. Counsel for the Appellant and the Respondent have been advised of the length of the delays and agree to the course taken.

I have heard submissions from the Appellant and the Respondent respective counsel. I consider their submissions. I have read the relevant provisions of the Child Maintenance Act [CAP.46]. I do not see any misapprehension of the law by the said Efate Island Court in its decision of 2 October 2001. I observe that the application for variation of the Order of 2 October 2001 was not made before the Efate Island Court who made it on the said date. In this case, the Efate Island



Court is empowered to make such an order on the basis of its vested warrants under section 1 (1) of the Island Courts Act [CAP. 167]. Section 5 (2) of the Child Maintenance Act [CAP. 46] provides that the power to make an order under this section shall include the power to vary the same on the application of either of the parties. The application for variation of the Order of 2 October 2001 was made before the then Efate Island Court Supervising Magistrate whose function it is to enforce any decision of that Court or any variation of that decision made by that Island Court pursuant to section 5 (2) of the Child Maintenance Act [CAP. 46].

In any event, grounds 1 and 3 of the appeal have no merits. They fail as they are baseless.

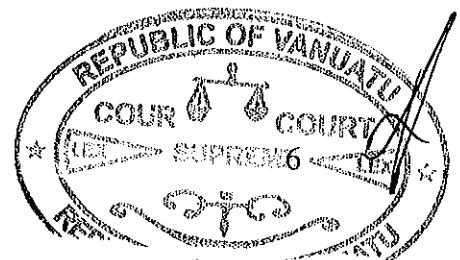
Ground 2 is not a good ground for an appeal. The Appellant is the father of the twin girls. The Appellant has a statutory duty to maintain his children. Whether the child lives with the Respondent, or a relative of the Respondent does not alter the Appellant's statutory responsibility as the father of the twin girls to provide for their maintenance as provided by law.

The three grounds of the appeal fail. The appeal is dismissed accordingly.

The following orders and directions are made:

## **ORDERS AND DIRECTIONS**

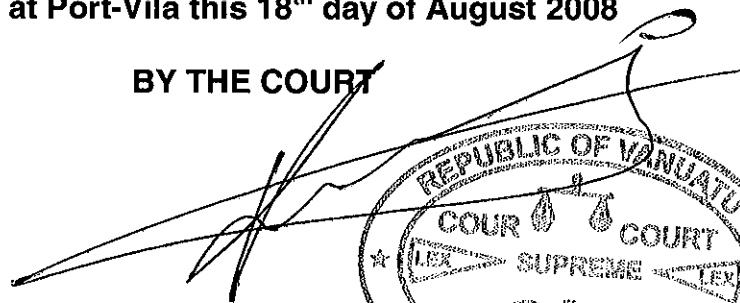
1. That despite the case stated process, and because of the delays and in the interest of the twin children, this Court shall dispose of the case stated and the appeal.
2. That the appeal is dismissed.
3. That the Appellant, Mr. Semi Alvea, shall comply with the Efate Island Court Order made by the then Efate Island Court Supervising Magistrate dated 2<sup>nd</sup> October 2001 for payment of the child maintenance of the twin girls.



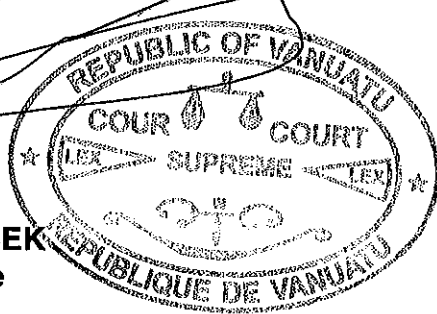
4. That an amount of VT637,000 covering the period 31 September 2001 to 31 July 2008 is to be paid by the Appellant, Semi Alvea, into the bank account held in trust for the two children, Sonia and Sophia through the Efate Island Court Clerk.
  
5. That a conference is set at the Supreme Court in Port Vila on Wednesday 3 September 2008 at 8.00 o'clock for the Appellant to inform the Court as to how he shall pay the outstanding amount of VT637,000 towards the maintenance of his two (2) children, namely Sonia and Sophia.

**DATED at Port-Vila this 18<sup>th</sup> day of August 2008**

**BY THE COURT**



**Vincent LUNABEK**  
**Chief Justice**



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text around the seal includes "REPUBLIC OF VANUATU" at the top, "COUR SUPREME" in the center, and "REPUBLIQUE DE VANUATU" at the bottom. There are also the words "LEX" and "COURT" on either side of the central emblem.