

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

CIVIL CASE No.16 OF 2008

BETWEEN: ANNA SANDY C/-Shell Company Area,
Luganville, Santo
Claimant

AND: SILAS VARI C/- Aore Island, Sanma
Province, Santo
Defendant

Coram: Mr Justice Oliver a. Saksak

*Counsel: Mr Christopher Tavoia for the Claimant
Mr Saling Stephens for the Defendant*

Date of hearing: 11th June 2009

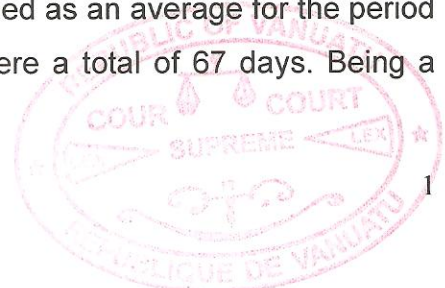
Date of judgment: 3rd November 2009

JUDGMENT ON QUANTUM

1. The Claimant's claims are for damages for –
 - (a) Loss of business earnings for the sum of VT1,980,000;
 - (b) Repairs and services done to the vehicle – VT58,170;
 - (c) Interest at 5%, and
 - (d) Costs.

2. The losses claimed are for the periods from-
 - (a) 18th January 2007 to 7th April 2007; and
 - (b) 9th August 2007 to 16th June 2008.

3. Loss of earnings for each day is VT6,000 claimed as an average for the period from 18th January to 7th April 2007. There were a total of 67 days. Being a



Seventh Day Adventist the Claimant did not claim for Saturdays when the vehicle did not operate.

And for the period from 9th August 2007 to 16th June 2008 there were a total of 263 days. Except for Sabbath days, Christmas, Family and New Years Days, the vehicle operated as a business for six days per week.

4. The Claimant's claims are supported by the sworn statement of the Claimant sworn and filed on 30th April 2009. She confirmed its contents on 11th June 2009 and was cross-examined by Mr Stephens.
5. Liability was and is not in issue. The only issue is the amount.
6. The Defendant relied on his sworn statement dated 8th June 2009 which he confirmed on 11th June 2009 and was cross-examined by Mr Tavoaa.

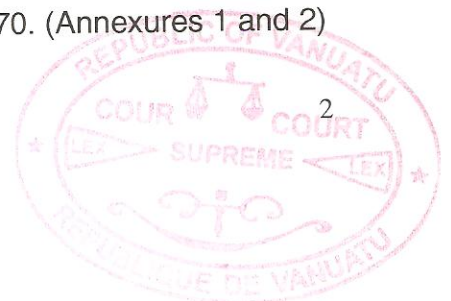
6.1 The Defendant's evidence show that-

- (a) On 31st March 2008 he paid to Asco Motors the sum of VT42,162 being for services done to the vehicle. (Annexure A)
- (b) On 10th October 2007 he paid Asco Motors the sum of VT150,660 for services done to the vehicle. (Annexure B)
- (c) On 31st August 2007 he paid Asco Motors the sum of VT111,759 for services done to the vehicle. (Annexure C)

In total the Defendant had paid the sum of VT304,581 for repairs and/or service done on the vehicle by Asco Motors while the vehicle was in his custody.

7. The Claimant's evidence was that-

- (a) On 22nd April 2008 she paid to Asco Motors the sum of VT42,240 being costs for parts namely battery and spider kit. Additionally for service done to the vehicle by Asco Motors she paid the sum of VT15,930 also on 22nd April 2008. The total sum being VT58,170. (Annexures 1 and 2)



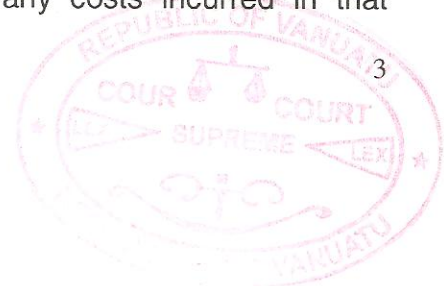
- (b) The Claimant paid Business Licence for the year 2008 the sum of VT11,667 to the Government on 11th June 2008. (Annexure 3)
- (c) She paid VT25,313 on 27th May 2008 to AFA Ltd being for insurance cover as the first instalment. On 16th September 2008 she paid the last instalment in the sum of VT25,343. In total, she paid the sum of VT50,656 for insurance policy. (Annexures 4, 5 and 6)
- (d) On 30th May 2008 she paid the Government the sum of VT14,000 being for road tax. (Annexure 7)
- (e) Her Business Record (Annexure 8) shows an average daily earning of VT6,000 from 16th June 2008 to 15th April 2009.

Her total miscellaneous expenses were VT64,656. The Claimant has not claimed separately for these.

8. The Defendant argued and submitted that-

- (a) In assessing quantum the Court should consider and take into account:
 - (i) The sum of VT304,581 he paid to Asco Motors for service, repairs and parts while the vehicle was in his custody; and
 - (ii) The sum of VT400,000 (the balance of the purchase price of the vehicle) forfeited and off set by the Court to cover outstanding repair costs.
- (b) The claims of the Claimant were frivolous, vexatious and without legal basis and should be dismissed with costs on grounds that the repair costs were incurred as a direct result of the Claimant's actions.

9. The Court does not accept the submission by the Defendant that the claims of the Claimant are frivolous, vexatious and without legal basis. Further the Court does not accept the repair costs and service charges were the direct result of the Claimant's actions. It is however correct to say that from the evidence before the Court both the Claimant and the Defendant had custody of the vehicle at one time or another and therefore, any costs incurred in that



relevant period should be the liability and the responsibility of the party who had custody of the vehicle at the time.

10. The Court accepts however the submissions by the Defendant that in considering quantum I should consider and take into account the sum of VT400,000 forfeited and offset against repair costs, and VT304,581 paid by the Defendant to Asco Motors for service and repair charges. The nett losses of the Defendant in this matter can be ascertained by adding VT400,000 with VT304,581 making a total of VT704,581. In fairness to the Defendant the Court will take this total sum into account when determining the amount of damages to be awarded.
11. In the Court's opinion it was fair and proper for the Defendant to have paid VT304,581 to Asco Motors for service and repair charges while the vehicle was in his possession. If there were any other service and repair charges for which the Defendant should be liable for, then these are covered by the VT400,000 forfeited balance of the purchase price of the vehicle as ruled by the Court in Civil Case No.22 of 2007.
 - 11.1 This means in effect that the additional sum of VT58,170 claimed by the Claimant as service and repair charges for the periods 27th May and 16th September 2008 are covered by the VT400,000 and as such they should be disallowed. And I so rule.
 - 11.2 Further the miscellaneous expenses of the Claimant namely (a) Insurance (VT50,656) and (b) Road Tax (VT14,000) although not claimed for by the Claimant, are also covered by the VT400,000 and were they claimed for, would be disallowed.
12. Adding the figure of VT58,170 (paragraph 11.1) to the figure of VT64,656 (paragraph 11.2) we arrive at the total of VT122,826. This amount is therefore deducted from VT400,000 leaving the balance of VT277,174. This figure must therefore be deducted from the amount of damages awarded for loss of business earnings to the Claimant. The sum of VT277,174 are added to the sum of VT304,581 referred to in paragraphs 10 and 11 above making a total of VT581,755.



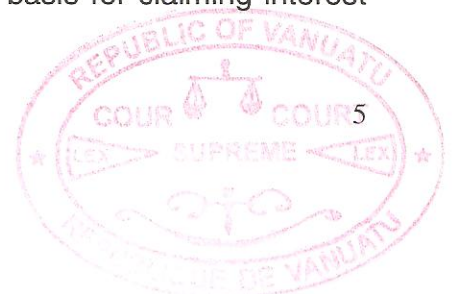
13. From the Claimant's evidence (Annexure 8) the Claimant has clearly shown her records of daily earnings. The top earnings were VT17,000 and the lowest earning was VT2,000. The average in the opinion of the Court from the business record would have been VT9,000 but the Claimant has claimed VT6,000 and the Court accepts it is a very reasonable sum and will therefore allow it.
14. The Claimant has claimed losses for two separate periods namely (a) 67 days for periods from 18th January 2007 to 7th April 2007, and (b) 263 days for the periods from 9th August 2007 to 16th June 2008.

In the Court's opinion the only periods the Claimant can claim for are the periods from 18th January 2007 to 17th March 2008. These are the periods the Defendant had possession, custody and management of the vehicle it being registered under his name. In my calculation disallowing for Sabbath days and three holidays being Christmas, Family and New Years Days, the total number of days would be 335 days in all. And by a multiplier of 335 days x VT6,000 per day we arrive at a total loss of VT2,010,000.

- 14.1 The periods from 18th March 2008 to 16th June 2008 should be disallowed by the Court. The vehicle was in the custody of the Court pending determination of its legal status and ownership. Under these circumstances it is appropriate that no allowance should be granted in respect of loss to business. And I so rule.
15. In the final analysis there is judgment entered in favour of the Claimant in the sum of VT2,010,000 being for loss of earnings for 335 days from 18th January 2007 to 17th March 2008 awarded at VT6,000 per day.

However there will be a deduction of the sum of VT581,755 from VT2,010,000. The balance is VT1,428,245 owing to the Claimant against the Defendant. The Claimant is entitled to recover this amount from the Defendant.

16. The Claimant claimed interests at 5%. There is no basis for claiming interest and it is disallowed.

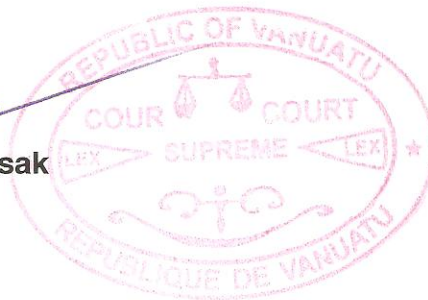


17. As for costs, it follows that the Defendant being the losing party must pay the Claimant's costs of and incidental to the proceeding to be agreed or taxed by the Masters.
18. That is the judgment of the Court.

DATED at Luganville this 3rd day of November 2009

BY THE COURT


Oliver A. Saksak
Judge



(Civil Jurisdiction)

BETWEEN: PASCAL PAUL

Appellant

AND: SLQ ASSOCIATES LIMITED

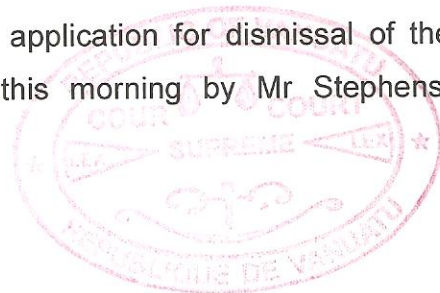
Respondent

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Christopher Tavoia for the Appellant
Mr Saling Stephens for the Respondent/Applicant

JUDGMENT

1. On 13th August 2009 the Court granted leave to the Appellant to file and serve his appeal out of time. And he was allowed 14 days to file and serve an amended Notice of Appeal and Grounds. In addition, he was required to file and serve Appeal Books and Submissions within the same 14 days.
2. On 29th September when the matter was next called for conference the appellant had not complied with those previous directions. He sought an extension by 7 days and the Court again granted him those 7 days to file and serve Appeal Books with Submissions. The appeal was fixed for hearing by that order for today 11th November 2009.
3. Today Mr Tavoia tells the Court about his efforts and difficulties in trying to locate his client in order to get necessary instructions and comply with the given directions. The Court is told all his efforts have been in vain.
4. Mr Tavoia acknowledges there is an application for dismissal of the appeal which has been filed only this morning by Mr Stephens. Unfortunately he has no instructions.



5. The Court has heard Mr Stephens Submissions in respect to the Application seeking dismissal of the appeal with ancillary orders. The Application is supported by the sworn statement of Stephen Quinto which is taken as read.
6. The Application stands unchallenged. The Appellant has not shown any seriousness on his part to prosecute his appeal. This appeal merely amounts to a frivolous and vexatious action intended perhaps to deny the Respondent from enjoying the fruit of his judgment in the Magistrate's Court. It must be dismissed and with costs against the appellant. He has by commencing this appeal, put the Respondent to unnecessary legal costs.
7. The formal orders of the Court are:-
 - (a) Civil Appeal Case No. 1 of 2009 is hereby dismissed.
 - (b) The Appellant will pay the Respondent's costs of and incidental to this proceeding to be agreed or taxed.
 - (c) The Sheriff of Court is hereby authorized to advertise for sale by public auction a vehicle belonging to the Appellant currently in the custody of the Court Modeled JAC and Registered No. 6063 to recoup monies owing to the Respondent from the Appellant within 14 days from the date of this order.
8. That is the judgment of the Court.

DATED at Luganville this 11th day of November 2009.

BY THE COURT


OLIVER A. SAKSAK
Judge

