

(Civil Jurisdiction)

BETWEEN: MARTIN MAHE

Claimant

**AND: BILL STEPHEN
BARTHELEMY NGWELE
STEVE STEPHEN**

Defendants

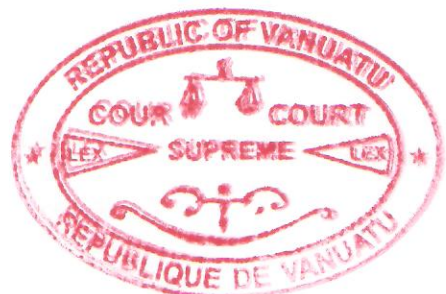
Mr Justice Oliver A. Saksak

Mr Eric Molbaleh for Claimant/Respondent
Mr Less John Napuati for Defendant/Applicant

Date of Hearing and Decision: 17th December 2010

DECISION

1. The Court heard an application to strike out the entire claim of the Claimant today. A formal application was filed on 13th December together with a sworn statement in support.
2. Mr Molbaleh sought an adjournment on the basis that due to late service he had insufficient time to take instructions and respond appropriately.
3. The main ground of the application was a legal one whether this Court had jurisdiction to adjudicate the matter when the amount claimed was only the sum of VT463.333. The second ground was whether the Claimant had standing to bring the claim.



4. The Court agreed with Mr Napuati that the issue was a simple one and did not require time to be given for counsel to take instructions. Accordingly, leave for an adjournment was refused.
5. As for the issues, it is common ground that the Magistrate's Court jurisdiction in civil matters involves monetary values up to only One Million (VT1.000.000). The relief sought in the claim is for VT463.333 with interests of 5% thereon. However, in the aggregate that does not bring the total to VT1.000.000. As such, it was within the jurisdiction of the Magistrate's Court and it should have been filed and heard there and not in this Court.
6. The second issue is a factual one. The Court was drawn to annexure 2. It is an extract of the vehicles registration book. It records the owner as Credit Corporation, not the Claimant. That is enough to persuade the Court to agree with Mr Napuati that the Claimant does not have standing to bring this claim.
7. Accordingly, the Court allowed the application and struck out the whole claim of the Claimant in its entirety.
8. Mr Napuati asked for costs. The Claimant gave an undertaking as to costs when he applied for ex parte orders on 10th December 2010. He must now be bound by that undertaking. Costs are allowed in favour of the Defendants being costs of and incidental to the action on the standard basis to be agreed or taxed.
9. The Defendant filed defences and counter-claims. Counsel informed the Court that in light of the stricke out of the Claimants' claims, the counter-claims are also withdrawn.



10. All previous orders issued by this Court are vacated.
11. The Claimant may institute fresh action properly pleaded and including all parties who have interests in the matter in this Court, or maintain his claim in the amount claimed but file it in the appropriate Court.
12. The Defendants may also institute a separate action against the Claimant if they have any valid cases against him, but they must refrain from taking actions which amount to taking the law into their own hands.

DATED at Port Vila this 17th day of December 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

