

(Civil Jurisdiction)

BETWEEN: JULES ADE

Claimant

AND: SANTO MEAT PACKERS LIMITED

Defendant

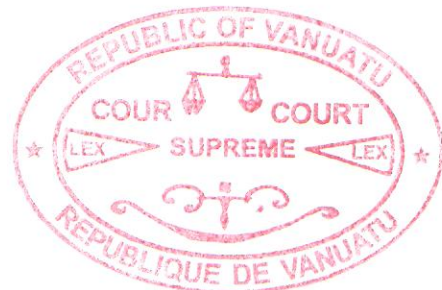
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Marisan P. Vire for the Claimant
Mr John Malcolm for the Defendant

ORDER

WHEREAS:-

- (1) Counsel for the Defendant raised objections to paragraphs 9, 10 and 12 of the Claimant's sworn statement dated 24th March 2009 on the basis that they contained hearsay evidence.
- (2) The Court accepted the objections and ruled that the Medical Certificate annexed as "JA1" is hearsay evidence without the doctor issuing it being called as expert witness and being cross-examined, rendering the document inadmissible.
- (3) Counsel for the Claimant sought leave of the Court to suspend the hearing and to grant leave to amend the claim pursuant to Rule 4.11 of the Civil Procedure Rules.



- (4) Counsel for the Defendant objected to the grant of leave on grounds that the Claimant had gone half-way into the trial hearing of his case, and further submitted the normal step to take would be to apply for a non-suit on a without prejudice basis.
- (5) Counsel for the Claimant preferred the second option by verbally applying for a non-suit.

NOW THEREFORE IT IS ORDERED THAT –

- (1) Leave to amend be declined.
- (2) The action by the Claimant be non-suited without prejudice to the Claimant's right to file and serve fresh claims and on the condition the Claimant pays the Defendant's costs thrown away to be agreed or taxed by the Court.

DATED at Luganville this 27th day of April 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

