

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

**Civil Case No. 2 /2011**

**BETWEEN:**            **PAUL LIVO**  
                                 Appellant

**AND:**                   **NATHANIEL DORIRI, STEPHENO**  
                                 **TASSO & STEVE TASOO**  
                                 Respondents

*Hearing:*                **7 November 2011**  
*Before:*                **Justice RLB Spear**

**In attendance:**

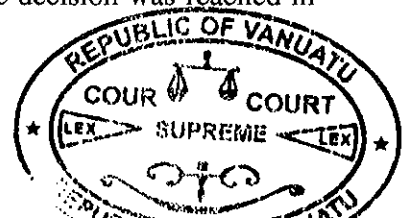
*Appellant:*             **Less John Napuati**  
*Respondents:*        **Chris Rarumae**

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**JUDGMENT OF THE COURT**

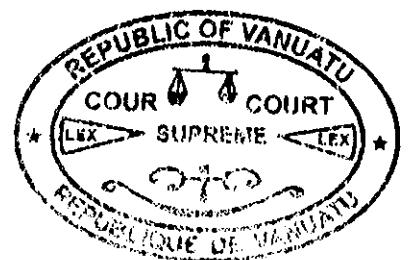
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1. This appeal was brought to address a matter of fundamental importance that cannot be left unchecked.
2. The learned Magistrate confirmed in his decision that he had reached his decision without the benefit of written submissions from the defendant (the appellant in this Court).
3. This case concerned a claim for damages arising out of a motor vehicle accident. The hearing of the case took place in August 2011 and it was then left for counsel to file written submissions pursuant to directions given by the learned Magistrate. The reserved decision was delivered on 21 December 2011. It states specifically in the judgment that the decision was reached in



the absence of written submissions for the defendant (in the Magistrates' Court).

4. Counsel are in agreement that the appeal must be allowed. Mr Napuati confirms that he indeed filed the written submissions for the defendant and that he served a copy on Mr Rarumae all within the time table set by the learned Magistrate. Mr Rarumae confirms that he was duly provided with a copy of Mr Napuati's written submissions.
5. In those circumstances, the judgment of the Magistrates' Court cannot be allowed to stand given that, for reasons that neither counsel can understand, the written submissions from Mr Napuati obviously did not reach the learned Magistrate.
6. It may be timely to record an observation about the practice of hearing the evidence in the case and then adjourning for written submissions to be filed but not spoken to. There are always difficulties if a Court attempts to resolve matters solely on the basis of written submissions and without the opportunity to engage with counsel in respect of their submissions. If that approach had been adopted by the learned Magistrate in this Court, this oversight or mistake (whatever it was) would have been avoided. The preferable course, where written submissions are to be received following the conclusion of the evidence, is to adjourn the for the hearing of those submissions rather than simply to leave it for the written submissions to be filed without further ado.
7. Magistrate Court case number 59 of 2009 is accordingly called up into this Court, the decision of the lenient Magistrate dated 21 December 2010 is quashed and the case is referred back to the Magistrate Court to be heard a fresh before another Magistrate.
8. There are no costs in this Court.



BY THE COURT

