

BETWEEN: RONGO DEKI

Appellant

AND: MOLI PAKORO

Respondent

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Saling N. Stephens for Appellant
Ms Jane Tari for Respondent*

Date of Hearing: *18th August, 2014*

Date of Judgment: *4th September, 2014*

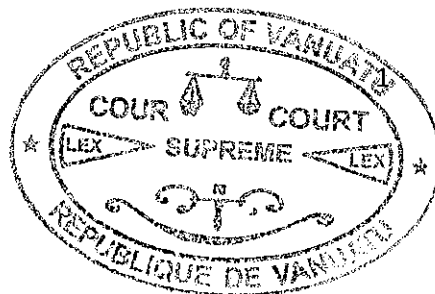
JUDGMENT

1. Rongo Deki appeals against the decision of the Magistrate's Court dated 23rd August 2013 which dismissed his application to appeal out of time and reaffirmed to orders dated 6th September 2009, and ordered the appellant to pay the costs of the proceedings.

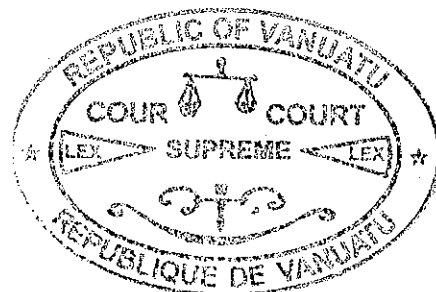
2. The grounds advanced were that the Court below erred –
 - (a) In law when it issued default judgment dated 15th May, 2008 without hearing evidence as to quantum;

 - (b) By awarding an unliquidated sum of VT358,500 in breach of Rule 9.2(1) of the Civil Procedure Rules; and

 - (c) By failing to take into consideration of give any weight to the evidence and legal submission of the appellant in the Court below.



3. The respondent filed a claim for damages initially for the sum of VT315,000 on 24th January 2008 following threats made by the appellant to damage the public transport vehicle operated by the respondent at the time. As a result of those verbal threats the vehicle stopped operating for 10 days and caused loss of business of VT20,000 per day, a total of VT300,000. During those 10 days the respondent travelled to Luganville to seek legal advice and assistance. He claimed VT100,000 for emotional stress and VT3,200 for return costs of transport for a total of 6 trips, and for lunch for 3 days for 2 persons at VT1,800. That brought the total to VT315,000.
4. The respondent filed evidence in support of his claims by sworn statement dated 8th February 2008. He filed witness statements from Chief Sale Daniel and Marieta Pakoro on 8th February 2008 and from Leo Pakoro and Jole Boevilvil on 11th February 2008.
5. The claim was served on the appellant who instructed Vire Lawyers who responded on 30th January 2008 that the appellant was disputing all claims.
6. No defence was filed by the appellant at any time thereafter.
7. The appellant relied on the legal synopsis filed on 20th June 2014 and the case of LMC v. Saksak CC 43 of 2012 but provided no copies to the Court.
8. The respondent filed written submissions on 3rd July 2014 and cited the cases of Laho Ltd v. QBE Insurance [2003] VUCA 26, Maison Du Vanuatu v. VCMB [2011] VUSC 26; William v. Ezra [2013] VUCA 33 and Arnhabath v. Marbledust Ltd [2013] VUCA 130.
9. I have considered the appeal grounds in light of those submissions and the cases referred in the following manner –
 - (a) Ground 1 – It is alleged by the appellant the Magistrate Court erred in law when it issued default judgment on 15th May 2008 without hearing evidence. This is a bare allegation without facts. The appellant never filed any defence challenging the amount claimed which was a fixed amount of VT315,000. The appeal is dismissed on this ground.



(b) Ground 2 – It is alleged by the appellant that Rule 9.2(1) of the Rules was breached. The alleged breach is not particularized. The Claimant initially claimed for a fixed sum of VT315,000. In default of a defence the Court awarded VT358,500. The amount of VT58,500 was for expenses of the Claimant. These were personal costs of the Claimant (Respondent). Under Rule 9.2(4)(c) the Magistrate Court had discretion to award such costs in addition to the initial amount claimed. In my judgment there was no error. The appeal is dismissed on this ground.

(c) Ground 3 – It is alleged by the appellant the Court did not give weight to the evidence and legal submissions of the appellant in the Court below. The Court is unable to find any submissions by the appellant in the Court below. As regards evidence, the appellant did not file any defence and evidence in support of those defence. This ground is misconceived and the appeal is dismissed on this ground as well.


10. There is no challenge to the Magistrate's decision to refuse leave to appeal out of time.

11. This appeal is therefore dismissed. The Orders of the Court below are confirmed.

12. The Respondent is entitled to his costs of the appeal on the standard basis as agreed or be taxed by the Court.

DATED at Luganville this 4th day of September 2014.

BY THE COURT


OLIVER A. SAKSAK

Judge.

