

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

Constitutional Case No.01 of 2012

BETWEEN: TRIDENT HOLDINGS LIMITED

Applicant

AND: REPUBLIC OF VANUATU

Respondent

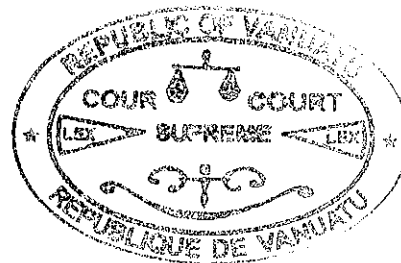
Coram: Mr Justice Ronald Young

*Appearances: Mr Napuati for the Applicant- No appearance
Ms Jennifer Warren for the Respondent*

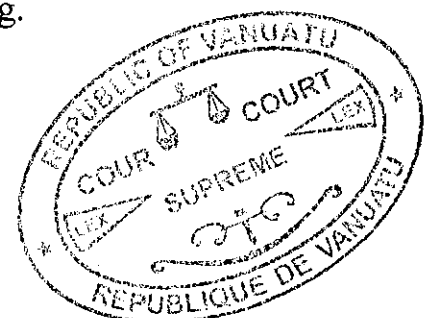
Date: 3rd December 2014

JUDGMENT

1. The Republic of Vanuatu applies for an order striking out these proceedings. Counsel for the respondent appeared in support of the application. Counsel for the applicant did not appear. He left a message with the Court Registry office that he had suffered a death in the family and could not appear. Trident Holdings Limited did not file any response to the Republic's application with supporting affidavit seeking to strike out the proceedings. Given the background set out briefly in this judgment I decided to proceed and hear the Republic's application.
2. In January 2012 Trident Holdings filed a constitutional application pursuant to Article 6 and Article 53 (2) of the Constitution. The case was heard in the Supreme Court and judgment given on 16th July 2012.



3. Trident appealed and the appeal was heard before the Court of Appeal in October 2012. Before the completion of the Court of Appeal hearing the parties held a mediation. The essential orders were subsequently agreed that the appeal would be allowed and the vessel the subject of the hearing would be cleared from customs and able to leave port.
4. The parties dispute and in particular Trident's claim for damages for compensation was referred back to the Supreme Court. The dispute referred back to the Supreme Court in particular whether Trident's claim could be dealt with through a constitutional petition and if so, what if any compensation or damages should be paid. Costs were also left to be resolved.
5. Eventually this matter came before Von Doussa J at a directions hearing in the Supreme Court. A summary of the hearing and the orders made are recorded in a memorandum by the Court.
6. Counsel for both parties had by then agreed that the issue of whether the claimant had used the correct procedure (the Constitutional Petition) was no longer live.
7. The issue was whether the applicant could establish that its rights arising under Article 6 of the Constitution had been breached by the respondent and if so the damages the applicant said it suffered and if so the respondent denied any breach and disputed any damage had occurred. The parties agreed they could use the evidential material filed in the original Supreme Court hearing at the further hearing.



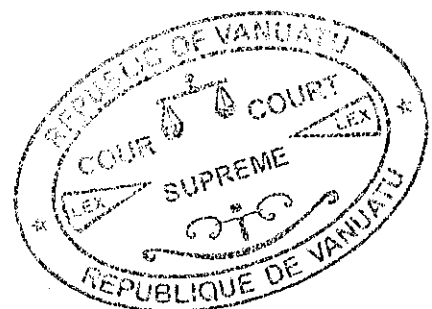
8. The memorandum from Von Doussa J noted however that the Applicant had not filed any evidence to prove any loss should a breach be established. The Judge noted that the evidence of a forensic accountant would be required to establish any loss. The Judge therefore made orders requiring that any further evidence as to liability be filed by 24th June 2014 and by 18th July 2014 the applicant should file its evidence in support of its claim for damages or compensation.

9. The applicant did not file any evidence relating to its damages claim by the required dated. The matter came back before Von Doussa J on 25th July a week after the applicant was due to file its evidence. Counsel for the applicant didn't appear at the conference although he had been advised by telephone by the Court one hour before the conference that it had been listed that day. After adjourning the matter for listing for trial on a date to be advised the Judge made the following orders...

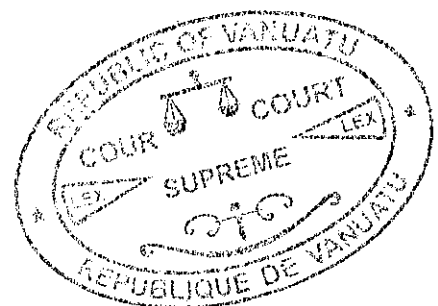
3(b) if the applicant has not complied with the directions given on 3rd June 2014 by Wednesday 20th August 2014 the respondent is at liberty to file an application under rule 18.11 with supporting sworn statement to have the constitutional application strike out.

3(c) the applicant is to pay the respondent by not later than 20th August 2014, wasted costs fixed at VT10.000 for today's conference.

10. Despite those orders, no evidence relating to damages or compensation has been filed by the applicant. No reason has been given for the failure. No wasted costs payment of VT10.000 has been made.




11. On 25th November 2014, the respondent filed in Court and served on the applicant's lawyer an application to strike out the claimant's constitutional application together with a supporting affidavit.
12. The applicant has not responded to that application.
13. I arranged for the application to strike out the claim to be called before me at 9:00am 3rd December 2014. A few minutes before the hearing was due to commence, Counsel for the applicant advised the Court that he could not appear that day because there had been a death in the family. I proceeded to hear the application by the defendant to strike out the proceedings.
14. I am satisfied that this proceedings should now be struck out. Trident is had ample opportunity to file evidence relating to its claimed loss. It has not done so. There would be no point in holding a trial based on the evidence already filed regarding liability, It given there is no evidence of loss. Even if a breach of the Constitution was established no compensation would be payable.
15. Trident have already obtained the release of their vessel and so beyond the dispute about the circumstances which gave rise to the vessel seizure and any compensation or damages payable no further issues remains between the parties.



16. For the reasons given therefore the application to strike out will be granted and these proceedings are struck out. The Republic is entitled to cost on that application and the hearing today which I fixed at VT15.000.

Dated at Port Vila this 3rd day of December 2014

BY THE COURT


~~RONALD YOUNG~~
(Judge)

