

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

Civil Appeal Case No. 2081 of 2017

**BETWEEN: GEORGE WARAHESI**  
Appellant

**AND: NELSON MOLI ALA**  
Respondent

*Hearing: 14<sup>th</sup> September 2017*  
*Before: Justice Chetwynd*  
*Counsel: Ms Tari Aru for the Appellant*  
*Respondent in person*

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## **JUDGMENT**

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1. This is an appeal from the Magistrates' Court order striking out the claim in Civil Case 41 of 2015. On 3<sup>rd</sup> July 2017 the Magistrates' Court issued a notice requiring the claimant in that case to show cause why the claim should not be struck out pursuant to Rule 9.10(3) of the Civil Procedure Rules. Rule 9.10(3) allows a court to strike out a claim if no step has been taken in the proceedings for 3 months.

2. The background to this case involves a civil claim for breach of a contract for the sale of a motor vehicle. The appellant/claimant agreed to sell a vehicle to the respondent/defendant. The vehicle was collected, registered and used by the respondent/defendant but he failed to pay the purchase price. Proceedings were issued and on 29<sup>th</sup> September 2015 both parties appeared before the Magistrate. The respondent/defendant agreed he owed the purchase price and there was some discussion about exchanging a piece of custom land to cover the debt. An oral application was made for summary judgement but the Magistrate, quite rightly, asked for an application to be made in accordance with Rule 9.6 of the CPR. The appellant/claimant was given 14 days to do that. An application for summary judgment together with a sworn statement was filed but not until 25<sup>th</sup> April 2017 some 18 months plus after the order to do so.

3. The application seems to have been made in response to a notice issued by the Magistrate for a mention hearing listed for 3<sup>rd</sup> March 2017. There is no note to indicate whether that hearing took place or what happened during it. There is no indication on the file to show what happened to the application for summary judgment. No notice of hearing was ever issued. A possible explanation is that it was not put on the correct file because the application carried the wrong case number, 39 of 2015 instead of 41 of 2015. For whatever reason, no action was taken by the Magistrates' Court in respect of the application for summary judgment.

4. What did happen next was the issue of the notice dated 3<sup>rd</sup> July requiring the appellant/claimant to show cause why the claim should not be struck out. The notice was incorrect, but only by a small margin. No step had been taken by the appellant/claimant from 25<sup>th</sup> April 2017. If the Magistrate had waited a couple more



weeks the notice could not have been faulted. It was for the appellant/claimant to pursue the date for a hearing of the application and to serve a copy of the application and sworn statement on the respondent/defendant (see Rule 9.6(4)(b) and (c)).

5. Another problem then occurred. Counsel for the appellant/claimant was required to appear before the Court of Appeal in Port Vila. She wrote to the Magistrates' Court but unfortunately gave the wrong dates for her appearances. She also missed off the civil claim 41 of 2015 in her list of cases requiring adjournment. Whilst the Magistrate might have had "judicial notice" of counsel's absence in Port Vila no application for an adjournment of the application to show cause listed for 18<sup>th</sup> July was made by the appellant/claimant. The inevitable happened and the claim was struck out.


6. I am going to allow the appeal. Technically the notice to show cause dated 3<sup>rd</sup> July 2017 was invalid because a step had been taken in the proceedings within the preceding 3 months. However, much of the fault lies with the appellant/claimant for not complying with the order of 29<sup>th</sup> September 2015. I understand that there were negotiations going on but even so failing to do anything for some 18 months is not acceptable. In the circumstances I will not make any order for costs. The case will be remitted to the Magistrates' Court so the application for summary judgment can be heard. A copy of the application, the supporting sworn statement and appropriate notice of hearing will need to be served on the respondent/defendant. Today before me he confirmed his liability for the debt. In order to save costs he can, once served, write to the Magistrates' Court consenting to summary judgment. If he does that before any hearing of the application the Magistrate can deal with it on the papers. The matter can then proceed to enforcement if necessary.

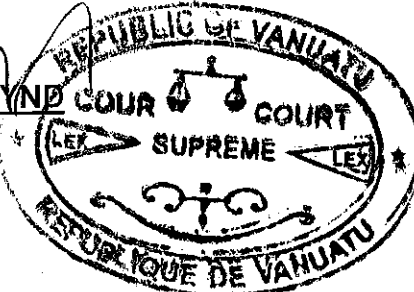
ORDER

1. The Appeal is allowed and the case is remitted to the Magistrates' Court for the hearing of the application for Summary Judgment;
2. There shall be no order for costs.

**DATED at Luganville this 14<sup>th</sup> day of September 2017.**

**BY THE COURT**

  
D. CHETWYND  
Judge



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it says "COUR SUPREME COURT" with a scale of justice above the word "SUPREME". There are two small stars on either side of the word "SUPREME".