

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

**Civil
Case No. 457 of 2019**

BETWEEN: THE NATIONAL BANK OF VANUATU
Applicant

AND: WILLIAM NEIROVE
Respondent

Date of hearing: 11th February, 2020

Delivered: 11th March, 2020

Before: *The Master Cybelle Cenac-Dantes*

In Attendance: *Abel Kalmet counsel for the Applicant,
the Respondent absent and
unrepresented*

JUDGMENT

Headnote

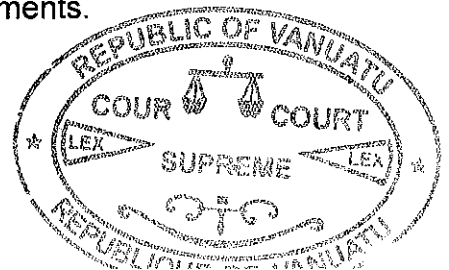
Taxation of Costs - standard costs - hourly rate increased

A. INTRODUCTION

1. The Application before the court is for the taxation of a Bill of Costs filed on the 10th February, 2020 by the Applicant following the filing of a Notice of Discontinuance on the 10th December, 2019 by the Respondent.

B. Applicant's Case

2. The Bill having been served on counsel for the Respondent and the Respondent having made no offer of settlement or filed any objection or appeared in court to proffer any objection, the court proceeded to tax the Bill of only 3 listed items, together with VAT and disbursements.



3. The nature of the work and the time amounts being acceptable to the court these were approved without difficulty, but counsel having not provided his receipts as proof of disbursements,¹ the court reserved its judgment on the point, awaiting compliance. Counsel has since done so, and with disbursements proved of VT2,300, I so award.
4. Mr. Kalmet claimed a rate of VT20,000 per hour although he was unable to support it with any recent case law uplifting the standard hourly rate under taxation from VT10,000 to VT20,000. Nonetheless, I make the award of VT20,000 per hour and elucidate my reasons below:

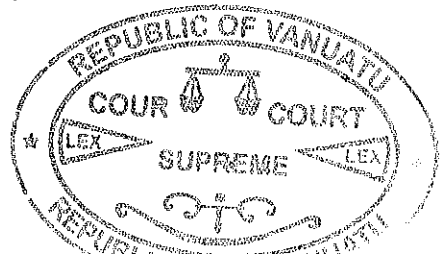
C. Reasons

5. I have reviewed the succession of cases on taxation culminating in the Appeal Court judgment in **Hurley and the Law Council**.²
6. Although this is a Bill for taxation of standard costs and the leading Court of Appeal case of **Hurley** was addressing the issue of indemnity costs, there are points of discussion in the said case which I believe to be relevant, as the Judges spoke to the proper approach to be taken in the issue of costs, and the considerations that were apparent in leading them to decide on the standard hourly rate of VT10,000.
7. In the said case the Judges leaned heavily in favour of the ruling in **Hudson and Sunrise**.³ The taxing officer in that case posited the view that the VT10,000 hourly rate was fairer and more just for a poor litigant who might otherwise be deprived of access to the courts due to the high cost of litigation. While I agree with the reasons in both these cases, I think it is now appropriate to review the hourly rate of charge exclusively assigned for taxations.
8. There will always be a chasm between the fees paid to a lawyer due to the specialist and highly skilled nature of their work and wages paid to an unskilled worker. The important point is to attempt to strike a balance between what is fair and reasonable to be paid to a successful litigant as some compensation for legal costs incurred without there being too wide a margin between what has paid and what is to be received. On the other hand, the court must be mindful of the unsuccessful party who, although obligated to pay the legal fees of the successful party is not expected to completely indemnify that party to such an extent that it amounts to an ultimate penalty, even beyond his loss. It is therefore a balancing act for any taxing officer to find a measure by which a fair and just hourly rate for standard costs can be established.

¹ PT. 15.7.5 of Jenshel's annotated Civil Court Practice, p. 200; Daniel v Supenatavul Tano Island Land Tribunal [2009] VUSC 105

² Hurley v Law Council of the Republic of Vanuatu [2000] VUCA 10

³ Hudson & Co. v Sunrise Limited [1996] VUSC 2



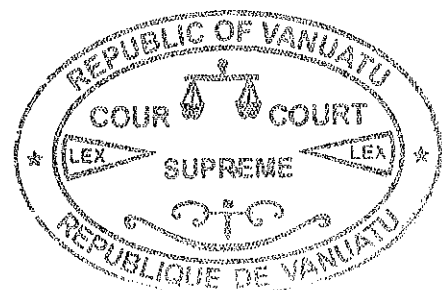
9. In my consideration of this Bill, and indeed any Bill that may end up before this court, is the purpose of costs. The principle that costs not only acts as a stick but also a carrot, in an attempt to promote reasonable litigation practices,⁴ is the reason why it continues to remain a matter of discretion for a court, exercised on the twin conditions of reasonableness and proportionality.
10. The taxing office in **Hudson and Sunrise** was focused on ensuring that there was not an over inflation of costs to the detriment, not just of the paying party but a poor paying party, which would have the effect of keeping any impecunious litigant in the future from pursuing justice on account of such costs. This reason is well founded in the overriding objective of the court rules and therefore, one of the primary goals of any court is to control the cost of litigation.
11. For a court to begin to tax bills on standard costs, at a rate which is out of all proportion to the earning standards of a country would be unreasonable and no aid to justice for the masses.
12. The literature tells us that while previous decisions are useful, they cannot dictate particular costs in particular situations, as their usefulness needs to be confined to how suitable they are in drawing attention to the significance of particular factors.⁵
13. Therefore, **Hurley** in the Court of Appeal becomes significant in the taxation of any Bill of Costs in so far as it sets the barometer for how standard costs are to be measured, and the factors that need to be taken into consideration.
14. It has always been a founding principle of recovery of costs that these costs are not a profit for the receiving party but simply a partial compensation for what he/she was obliged to pay his lawyer. For the paying party, it is not meant as a punitive payment.⁶ Additionally, *"the rate of pay for professional services must be reasonable by reference to the relevant market for comparable services."*⁷ The commercial rate per hour for a lawyer in 1999 was approximately VT20,000. The court takes notice that the current hourly rate stands between VT40,000 at the lower end and VT50,000 at its highest, which is at least half or more than half the rate 20 years ago.
15. Standard costs being subject to the twin tests of reasonableness and proportionality, the burden of satisfying the court on both these counts rests on the receiving party, with any doubt being resolved in favour of the paying party.
16. In deciding to increase the hourly rate of charge I do not see this as overturning a judgment of the Court of Appeal as I am bound by them. In my reading of that judgment, I do not believe that the court expected that its

⁴ Zuckerman A., Zucherman on Civil Procedure, Principle of Practice p. 999

⁵ Ibid, p.1012, para. 26.38

⁶ Ibid, p.1021, para.26.59

⁷ Ibid, p.1022, para.26.61



finding would stand ad infinitum. The court in its infinite wisdom would be sensible of the fact that *"hourly rates are not static and will adjust over time to keep pace with inflation and costs."*⁸

17. I say this because the Justices were careful to provide a reasonable measure or bench mark by which a comparison of the current hourly rate could be made against the increase being argued for. They determined that the *"singular social and economic indicator"* that would allow them to assess an hourly rate that was fair and reasonable was to be based on the Minimum Wage and Minimum Wage Board (Amendment) Order.⁹

18. The court assessed the monthly income of an ordinary Ni-Vanuatu working 22 days in the month for 8 hours a day to be VT16,000 per month. This they said would purchase only 40 minutes of legal consultation even with the pooling of resources by the relatives of indigent litigants. In light of this, the court felt that VT10,000 was *"an appropriate and reasonable rate to be applied in an assessment of party and party costs."*

19. With that in mind, it is clear to this court that the Court of Appeal viewed the matter of party and party costs, not as a fixed mark but something amorphous, capable of shifting if *"new arguments or persuasive relevant evidenceshould prevail.....subject always to the ability of counsel to make submissions on the unique circumstances of a case."*¹⁰

20. In following the reasoning of the Court of Appeal I shall do no more than to use their indicator to assess a reasonable hourly rate in this matter.

21. The minimum wage of Ni-Vanuatu workers has increased incrementally over the last 20 years from a starting point of VT90 per hour at the time of the **Sunrise case** and the **Hurley case**.

22. The current position in Vanuatu pursuant to the Minimum Wage and Minimum Wages Board Order has increased the hourly rate of an ordinary Ni-Vanuatu from approximately VT90 to VT220 per hour.¹¹

23. This is still based on a 22 working day month at 8 hours per day, giving a total monthly wage of about VT35,200.

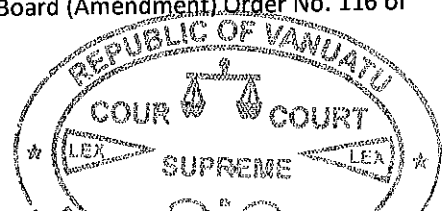
24. Since the decision of **Hudson and Sunrise** in 1996 and **Hurley and the Republic** in 2000, almost 24 and 20 years respectively, there has been an increase to the Wage Bill of workers by over 145%. It would be only fair therefore that this increase also be reflected in the standard costs due to a winning party.

⁸ Regona v Director of Land Records [2008] VUSC 80, p.7

⁹ No. 5 of 1995

¹⁰ Supra, n.2, p. 5

¹¹ Minimum Wage Act [CAP 182], Minimum Wage and Minimum Wages Board (Amendment) Order No. 116 of 2019 and commenced on the 5th September, 2019.



25. I am therefore of the considered opinion that an appropriate uplift of VT20,000 for the hourly standard cost rating since the cases of **Sunrise** and **Hurley** would be warranted.

D. Result

My order is as follows:

1. That costs taxed in favour of the Applicant inclusive of VAT and disbursements at VT46,000.
2. That a copy of this judgment is to be served on the Respondent by the Applicant.
3. That costs to be paid within 14 days of receipt of judgment.
4. That should the Respondent fail to pay by the allotted time this matter will be listed for an Enforcement Conference.
5. That a status update is listed for the 31st March, 2020 at 9 a.m.

BY THE COURT

MASTER

