

BETWEEN: Family Tangraro

Claimant

AND: Bellevue Estates Limited

First Defendant

AND: The Government of the Republic of Vanuatu

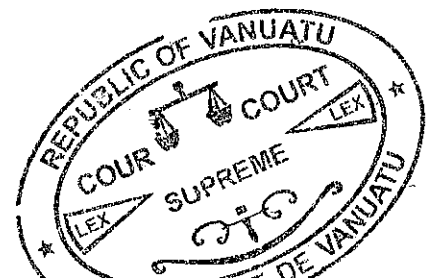
Second Defendant

Date of Hearing : 19th October 2020
Date of Decision: 19th October 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Jack I Kilu for the Claimant
Mrs So'oletaua Motuliki and Mr John Malcolm for First Defendant
Mr Sammy Aron for the Second Defendant

DECISION

1. This matter was fixed for trial hearing today by order dated 25th August 2020 when the Court ordered that-
 - (a) The Second Defendant to file and serve their defence and statements by 25th September 2020.
 - (b) The First Defendant to file and serve other sworn statements by 5th October 2020.
 - (c) The claimant to file and serve replies by 19th October 2020.
 - (d) The matter fixed for 3 days trial commencing on 19, 20 and 21 October 2020 at 9:00am.
 - (e) The claimants pay VT 45.000 for 3 days trial and the First Defendant to pay the other part of VT 45.000 within 7 days prior to trial.

2. When the case was called at about 9:30am today Mr Kilu informed the Court he had filed an application to stay the proceeding on 13th October 2020 and the First Defendant had filed its objections on 16th October 2020. Mr Kilu however asked that the application be adjourned for hearing to another date.



3. Mr Kilu then proceeded to ask for an order that the trial hearing fixed for the week be adjourned to another date on grounds that-
 - (a) The State has not complied with the orders of 25th August 2020 by not filing a defence and sworn statements,
 - (b) The First Defendant has filed a supplementary sworn statement and
 - (c) The claimants and defendants have not paid their trial hearing fees.

4. Mrs Motuliki objected to an adjournment of trial. Counsel explained the reasons for late filing of the supplementary sworn statement of David Russet and that it was only a supplementary statement which did not add anything extravagant to the previous statements filed by Mr Russet.

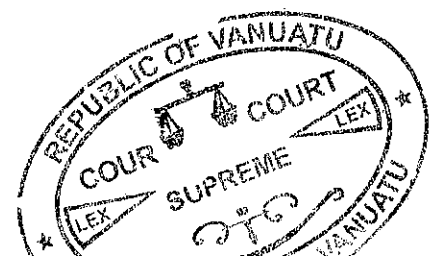
5. Mr Aron explained the State has not filed a defence because there is no cause of action pleaded in the claim against the State. Counsel indicated that the State would abide by any Court order except as to costs. On the adjournment of trial, Mr Aron maintained the same approach.

6. On the application for stay of proceeding, Mr Aron applied orally for an order striking out the claim and proceeding on grounds the claimant has no standing. The State sought costs in the sum of VT 15.000.

7. Mrs Motuliki supported the strike out application and sought indemnity costs in the sum of VT 1.000.000.

8. Mr Kilu objected to the costs sought by the State and by the First Defendant on an indemnity basis. Counsel submitted costs should be claimed on the standard basis.

9. I considered the applications and decided that the application seeking an adjournment of trial should be declined. Further, I decided the second application by the claimant seeking the stay of this proceeding pending the hearing and determination of Civil Case No. 862 of 2020 should be declined as well. However I decided I should allow the application by the State to strike out the claimant's claim and proceedings.



10. I now provide reasons for those decisions as follows-

Application for Adjournment

Both the claimant and the First Defendant failed to pay the trial fees of VT 45.000 each as ordered by the Court in paragraph 5 of the Orders of 25th August 2020.

11. The grounds given by the claimant that the State did not file any defence as required by the order in paragraph 1 is adequately explained by Mr Aron. I accepted that the claim does not disclose any reasonable cause of action or at all against the State as Second Defendant. In the reliefs sought the only order sought against the State is for the cancellation of the leases being challenged. And the State has taken the reasonable step to remain neutral and to simply abide by any order of the Court, except as to costs.

12. The complaint by Mr Kilu about the late filing of the supplementary sworn statement of David Russet is untenable and was rejected. I accepted Mrs Motuliki's submission that the statement adds nothing new to what is already in evidence in Mr Russet's previous sworn statements.

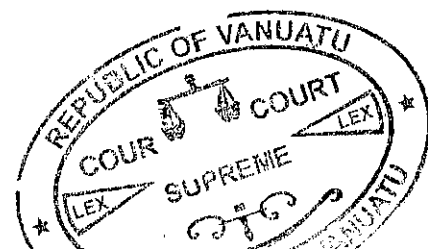
13. Mr Kilu in his response appeared to raise the lack of service on him of the First Defendant's defence. Counsel made this complaint previously but the Court, based on the statement of Kupa Turis filed on 30th April 2020 was unable to accept this ground as a good reason to adjourn the trial.

14. Then there is the failure to pay trial fees by the claimants to which Mr Kilu conceded. There was no sufficient excuse or reason why the trial fees were not paid. It is simply another delaying tactic for the claimant to buy time.

Application for Stay of Proceeding

15. Mr Kilu sought to adjourn the hearing of this application because he had just served it on the defendant.

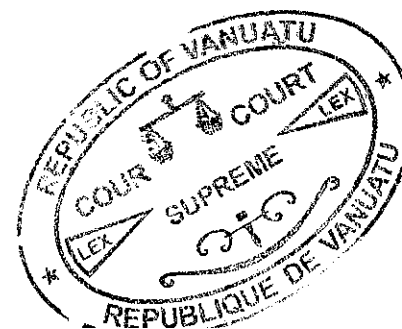
16. I refused to adjourn the application for hearing to another date. It was a simple and straight forward application filed on 13th October 2020. The First Defendant filed its response and objections to the application three days later on 16th October 2020. That was sufficient for the Court.



17. The State did not file any responses but their position has been made clear in the matter so it did not warrant any adjournment.
18. The application itself complicated the trial. It was mis-conceived and unnecessary for Mr Kilu taking the course that he took by seeking an adjournment of trial. He might have succeeded in seeking an adjournment based on the alleged failures to comply with the Court's directions of 25th August 2020. The Claimant could not have it both ways.
19. But more importantly are the issues of standing and conflict of interest. These issues involve and concern the third application by State.

Application for Strike out of Claim and Proceeding

20. Mr Kilu in the course of responding to the First Defendant's submissions in relation to the application for stay of proceeding said this proceeding arose out of the fact the named representatives Kalsaf Simeon and Kalsaf Kalosil took sides and filed conflicting and contradicting evidence.
21. That submission alone begs the question as to who should bring this proceeding. Further Mr Kilu indicated he does not represent the two named representatives but another lawyer is representing them. There are problems with that argument as well. First there is no notice of beginning to act by another lawyer and second, Mr Kilu himself has not filed any notice of ceasing to act for these two named representatives. It is clear therefore Mr Kilu may be acting in the conflict of interest in the proceedings.
22. With those issues, the standing of the claimant is called into question, giving rise to the State making an oral application seeking orders to strike out the claim and proceeding. The First Defendant supported the application.
23. I had no difficulty accepting and allowing the application. The claimant has no standing and therefore for that reason his proceeding and claims are frivolous. Accordingly the claim and proceeding of the claimant are struck out.



24. Further, Civil Case No. 862 of 2020 is clear indication that the standing of the persons named as claimants are still questionable.

25. As for costs I accepted the state was entitled to costs fixed at VT 15,000. This will be paid by the claimant within 21 days from the date of this decision.

26. The First Defendant argued the trial should proceed but they too did not pay the trial fees of VT 45,000. And they conceded they filed a late supplementary sworn statement. It is for those reasons their request for indemnity costs was declined and costs were simply awarded on the standard basis as agreed or taxed by the Master.

DATED at Port Vila this 19th day of October 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

