

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

Civil
Case No. 20/2053 SC/CIVL

BETWEEN: Jong Phil Shin and Jung Yeon Yu

Claimants

AND: Republic of Vanuatu

First Defendant

**AND: Vanuatu Investment
Promotion Authority**

Second Defendant

Date of Hearing: 20 August 2021
Before: Justice V.M. Trief
In Attendance: Claimants – Mrs T. Harrison
First Defendant – Mr H. Tabi
Second Defendant - no appearance (in person)
Date of Decision: 31 August 2021

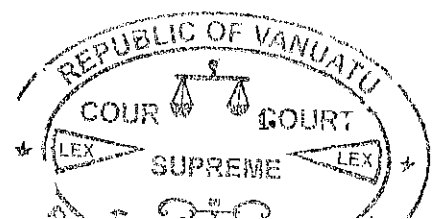
JUDGMENT AS TO QUANTUM OF DAMAGES

A. Introduction

1. The Defendants the State and the Vanuatu Investment Promotion Authority ('VIPA') did not file a defence. Default judgment was entered for an amount to be determined.
2. The State filed sworn statements and submissions contesting the quantum of damages. VIPA has not taken any steps in the proceeding. Having heard counsel and having considered the evidence filed, I now set out my assessment of damages.

B. Background

3. In 2012, the Claimants Mr Jong Phil Shin and his wife Mrs Jung Yeon Yu (also known as Liz Yu) were granted citizenship on the basis of their customary adoptions.
4. By letter dated 16 October 2014, the State gave notice of its intention to revoke the Claimants' citizenship.

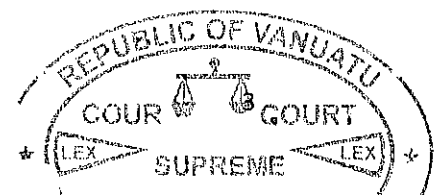


5. Subsequently in 2014, VIPA declined to issue the Claimants an approval certificate because of a letter it had received from the First Defendant.
6. The Claimants had to close their businesses as they could no longer operate them as Vanuatu citizens nor could they do so as foreign investors without VIPA approval. Without a regular income, they could not service their mortgage with the National Bank of Vanuatu.
7. By letter dated 7 June 2017, the State issued formal notice that their citizenship certificates had been revoked on 10 October 2014.
8. As a result, the Claimants lost the following:
 - a) Woorin Motors Limited business repairing vehicles, selling second hand buses, cars and spare parts;
 - b) Restaurant and takeaway business called "Territory Bar and Family Karaoke" located at Korman/Tassiriki area in Port Vila; and
 - c) Leasehold property title no. 11/OE44/022 which was seized by the National Bank of Vanuatu in 2015 pursuant to the mortgage.
9. The Claimant seek orders for general damages, special damages, interest and costs.
10. The State accepts that it revoked the Claimants' citizenship certificates. It contests the quantum of damages sought. VIPA obviously abides the order of the Court.
11. The issues arising are:
 - i) What quantum of damages is payable in relation to the Claimants' business, Woorin Motors Limited? **[Issue 1]**
 - ii) What quantum of damages is payable in relation to the Claimants' restaurant and takeaway business, Territory Bar and Family Karaoke? **[Issue 2]**
 - iii) What quantum of damages is payable in relation to the Claimants' loss of leasehold title no. 11/OE44/022? **[Issue 3]**
 - iv) Are general damages for pain and suffering payable to the Claimants? **[Issue 4]**
 - v) Are special damages payable to the Claimants? **[Issue 5]**
12. I now consider each issue in turn.
- C. Issue 1: What quantum of damages is payable in relation to the loss of the Claimants' business, Woorin Motors Limited?
13. Mr Shin evidenced in his sworn statement filed on 11 August 2020, [**Exhibit C1**], that Woorin Motors Limited was incorporated on 29 August 2008. He stated in his sworn statement filed on 22 April 2021, [**Exhibit C2**], that the Woorin Motors business involved bus sales, spare parts sales and workshop services. The attached

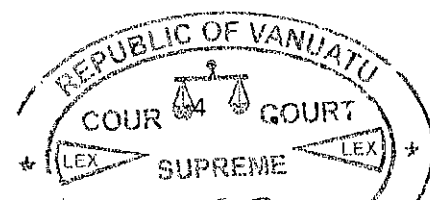


Profit and Loss Account dated 31 December 2014 assert sales of 80 buses making a profit of say VT70 million per year.

14. Denny Virahake Gaua, Secretary General of the Citizenship Office by his sworn statement filed on 29 July 2022, [**“Exhibit D4”**], and Melton Aru, Manager Taxpayer Services of the Department of Customs and Inland Revenue (‘DCIR’) by his sworn statement filed on 3 August 2021, [**“Exhibit D5”**], adduced into evidence the DCIR’s records in relation to the value added tax (‘VAT’) returns filed for Woorin Motors Limited from July 2009 to March 2016. No VAT returns were filed for Woorin Motors Limited after March 2016. The VAT returns for 2014 show total sales and income for the business of VT1,346,000. It follows, as Mr Tabi submitted, that the business’ profit for 2014 must be less than that figure of VT1,346,000 for sales and income.
15. Further, as pointed out by Mr Gaua in his sworn statement filed on 27 July 2021, [**“Exhibit D1”**], section 126(1)(f) of the *Companies Act* No. 25 of 2012 provides that a private company with an annual turnover exceeding VT50 million must file an annual audited financial report with the Vanuatu Financial Services Commission (‘VFSC’). The VFSC’s response to the Court order requiring its disclosure is that the company file for Woorin Motors Limited does not contain any audited financial reports. I conclude therefore that Woorin Motors Limited did not ever have annual turnover exceeding VT50 million.
16. The best evidence before the Court is the DCIR’s records of Woorin Motors Limited’s VAT returns disclosing annual total sales and income as follows:
 - i. 2009 – VT8,120,000;
 - ii. 2010 – VT18,420,150;
 - iii. 2011 – VT18,864,611;
 - iv. 2012 – VT13,178,628;
 - v. 2013 – VT3,480,300;
 - vi. 2014 – VT1,346,000;
 - vii. 2015 – VT3,439,755; and
 - viii. 2016 (Jan-Mar) – VT320,200.
17. Accordingly, I reject the Claimants’ evidence that Woorin Motors Limited’s annual profit was say VT70 million per year. Mr Tabi submitted that the business’ sales and income decreased from 2013, prior to cancellation of the Claimants’ citizenship certificates, and would have been severely hit in 2020 as a result of the Covid-19 pandemic. He submitted that in the circumstances, the Court should allow a maximum of VT1,500,000 per year from January 2015-December 2020 (6 years) for total sales and income, and award VT6,000,000 damages for economic loss in relation to the loss of the Woorin Motors Limited business (as the profit made would have been lower than the total sales and income). I agree. I so order.



18. For past economic loss, interest is payable from the date of the cause of action (October 2014) to the date of judgment at 5% p.a. I calculate that to be VT2,000,000.
- D. Issue 2: What quantum of damages is payable in relation to the Claimants' restaurant and takeaway business, Territory Bar and Family Karaoke?
19. Mr Shin evidenced in [**“Exhibit C2”**] that the Claimants' restaurant and takeaway business called 'Territory Bar and Family Karaoke' made a profit of VT730,000 per month. That would be VT8,760,000 profit per year. On the other hand, the DCIR was requested to disclose all DCIR records for the Claimants' businesses. There is no record that VAT was paid in relation to the Territory Bar and Family Karaoke business therefore I must conclude that its annual turnover was less than VT4 million per year (the minimum threshold provided in the *Value Added Tax Act* [CAP. 247] at which a business must be registered for VAT purposes). Accordingly, I reject the Claimants' evidence as to the profits made by their Territory Bar and Family Karaoke business.
20. Mr Tabi submitted that the only Certificate of Renewal of a Business Name adduced into evidence for Territory Bar and Family Karaoke expired on 30 September 2014 therefore there is no evidence that such business operated or was entitled to operate after 30 September 2014. I do not accept that submission in light of the Claimants' citizenship certificates being revoked in October 2014 which was the true cause of the Claimants' losing their businesses. Accordingly, I will award VT3,000,000 damages for economic loss in relation to the loss of the Territory Bar and Family Karaoke business, again for the six-year period being January 2015-December 2020 for the same reasons given earlier.
21. For past economic loss, interest is payable from the date of the cause of action (October 2014) to the date of judgment at 5% p.a. I calculate that to be VT1,000,000.
- E. Issue 3: What quantum of damages is payable in relation to the Claimants' loss of leasehold title no. 11/OE44/022?
22. Mr Shin evidenced in [**“Exhibit C2”**] that the Claimants obtained a valuation certificate from registered valuer Levi Tarosa for their leasehold property 11/OE44/022 dated 12 January 2015. That certificate estimated the market value of the property to be VT219,700,000.
23. Mrs Harrison submitted that this valuation from Mr Tarosa was the closest in time to the seizure of the property by the National Bank of Vanuatu in 2015 therefore the Court should take into account that the value of the property was VT219,700,000.
24. The valuation certificate stated that the leasehold title number could also be 11/OE44/054 and was to be confirmed. That said, the contents of the valuation report obviously relate to the Claimants' leasehold property at Korman/Tassiriki area even though the lease term and the lease commencement date were incorrectly stated therefore I will treat it as relating to lease title no. 11/OE44/022. However, I will not accept that valuation as an accurate valuation given the several errors made in the lease details and the uncertainty as to what the correct lease title number was.



25. The State adduced two other property valuation reports in relation to lease title no. 11/OE44/022 into evidence:
- i) Property Report from Land Logic dated 7 January 2021 estimating that the present market value of the property was VT40 million (attachment "DVG1" in "**Exhibit D1**"); and
 - ii) Report by Jimmy Sano, Valuer General dated 9 July 2021 estimating the market value of the property was VT52 million (attachment "JS2" to the sworn statement of Jimmy Sano, [**Exhibit D2**]).
26. Finally, the State adduced the following information in relation to lease title no. 11/OE44/022 into evidence through Gordon Willie, Principal Registration Officer of the Department of Lands' sworn statement filed on 27 July 2021, [**Exhibit D3**]:
- i) The Transfer of Lease into Liz Yu's name was registered on 5 June 2012. The consideration for the transfer was VT2 million; and
 - ii) The Claimants granted a Third Party Mortgage to the National Bank of Vanuatu, the various instruments of which were registered between 2011 and 2013, for total principal sum secured of VT53,035,000.
27. Mr Tabi submitted that if the Court rejected the Land Logic valuation of VT40 million then it had before it the Valuer General's valuation of VT52 million.
28. Mr Tabi also submitted that given the Claimants' VT53,035,000 loan monies from the National Bank of Vanuatu were used to develop the property, they should not be awarded damages based on the property value but based at most only on the VT2,000,000 that they spent out of their personal funds as consideration for the transfer of lease title no. 11/OE44/022.
29. I am not persuaded by Mr Tabi's submission because had it not been for the State's actions, the Claimants would not have lost their Woorin Motors and restaurant and takeaway businesses and income, and more likely than not would have continued to service their mortgage therefore continued to own lease title no. 11/OE44/022. Accordingly, I do not accept that the VT2 million consideration paid for the transfer of lease reflects the Claimants' true economic loss. The better measure is the market value of the property at the time that the wrong occurred in 2015.
30. The Claimants are entitled to damages being the market value of the land at the time of the loss of the property and therefore any increase in its value, including from improvements that he made on the land, will fall within the assessment figure: *Bunny v Hopkinson* (1859) 27 Beav. 565; *McGregor on Damages* (17th ed.)(2003, Sweet & Maxwell) at paras 22-018 and 22-019.
31. By the time the Valuer General and Land Logic made their valuations in 2021, the property had been in the National Bank of Vanuatu's possession for 6 years and had not been on-sold. Its market value must have decreased in those intervening 6 years from what it was in 2015. The market in 2021 is also quite different to that in 2015 due to the Covid-19 pandemic. I therefore infer that the market value of lease title no. 11/OE44/022 in 2021 must have been much higher in 2015 than it is in 2021.

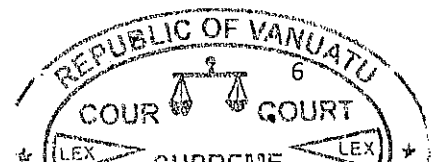
Accordingly, I award VT70,000,000 damages in relation to the Claimants' loss of leasehold title no. 11/OE44/022.

F. Issue 4: Are general damages for pain and suffering payable to the Claimants?

32. Mr Shin stated at paras 13-17 and 22-24 of "Exhibit C1":

13. *Later on we learnt that our citizenships had been revoked because when we approached the Licensing Office for the renewal of our business licence we were told that a letter was issued by the first defendant stating that our citizenship will be revoked and business licence should not be issued.*
14. *We then approached the second defendant for an investor certificate and we were verbally informed that they cannot issue us the certificate because of a letter they received from the first defendant...*
15. *We were badly affected by these decisions as it directly impacted on our loan repayment and the running of our businesses, not to mention our stateless position because when we applied for citizenship in Vanuatu we had to renounce our Korean citizenships first... because at the time Vanuatu did not recognise dual citizenship.*
16. *This led to drastic consequences:*
 - (a) *My wife and I gave up my Korean citizenships, which leave us to*
 - (b) *be individuals without a nationality. We have become stateless individuals due to the abuse of certain legal power. Not to mention that instead of protecting an individual, they have completely left my family and I to lose everything. It was to a point where we could not adapt to our situation since we had no means of gaining any income, nor could we repay our bank loan. Additionally, this action has prevented us from travelling out of Vanuatu to see our family in Korea.*
 - (c) *The complete shutdown of our income and continuous demand of the repayment of the loan have affected our family's mental state. We have been traumatized with all the events that have occurred. The constant fear of being forced out of our home because of one's abuse of power is the definition of injustice.*
 - (d) *Our eldest daughter had to become independent – she is still so young but she had to find her own means to assist her financially – we cannot be there for her as her parents as any parents should be.*
 - (e) *We have to live in a constant fear that we may be forced to leave our home and our belongings. This traumatic stress is constant and continuous.*
17. *My wife and I were so stressed that we could not sleep at all. I locked myself in the house most of the time and was too frightened to leave the house. No individual should feel so unprotected and in fear in a democratic country.*

....
22. *We are still living in our former because of an arrangement made between our lawyer and the bank lawyer until such time they find a prominent buyer. We are destitute and stateless nowhere to go and no money to pay rent.*
23. *Due to the unreasonable actions by revoking two citizenship – we have lost everything. We were never given a legitimate reason, and therefore we have lost our business, our income and our savings. Due to this, I have become an individual without a nationality – I am a stateless human being, my children live in great fear of being forced out of our own home and they were forced to become independent. As a father, I cannot do anything to fix this since I myself am suppressed by the power of certain individual without any explanation. I cannot support my children as they grow.*
24. *Taking citizenship away from an innocent family's life has led to horrific consequences that people did not care to realize.*



33. None of this evidence is contested.
34. The Claimants have proved on the balance of probabilities their pain and suffering from the State's actions. They suffered pain and trauma as they set out in the evidence including importantly, from their having been rendered stateless. They had to renounce their Korean citizenships in order to take up Vanuatu citizenship as Vanuatu did not at the time permit dual citizenship. This undoubtedly continues to cause them pain and suffering. The Claimants are entitled to VT5,000,000 damages **each** for pain and suffering.

G. Issue 5: Are special damages payable to the Claimants?

35. None have been proved. The answer is, "No."

H. Result

36. I accordingly summarise the award of general damages:

(i) Economic loss

Loss of the Woorin Motors Limited business	VT6,000,000
Loss of the Territory Bar and Family Karaoke business	VT3,000,000
Loss of leasehold title no. 11/OE44/022	VT70,000,000

(ii) 5% Interest on the economic loss in relation to:

The Woorin Motors Limited business	VT2,000,000
The Territory Bar and Family Karaoke	VT1,000,000

(iii) Pain and suffering VT10,000,000

37. Accordingly I enter judgment against the First Defendant in the sum of VT92,000,000.

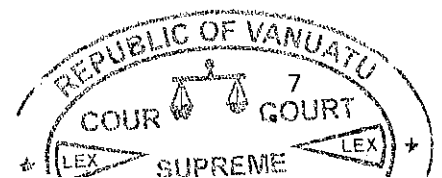
38. Interest will also be payable on the judgment sum until fully paid, at the Supreme Court rate of 5% p.a.

39. The Claimant is entitled to the costs of this action as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

40. There is no order against the Second Defendant.

I. Enforcement

41. This matter is listed for Conference **at 8.30am on 24 September 2021** for the First Defendant to advise the Court: (i) that it has paid the judgment sum and the costs awarded, or (ii) to explain how it intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.



42. For that purpose, this judgment must be personally served on the Defendants and proof of service filed.

**DATED at Port Vila this 31st day of August 2021
BY THE COURT**

VM Tref
Justice Viran Molisa Tref

