

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

**Civil
Case No. 20/742 SC/CIVL**

BETWEEN: Joseph John
Claimant

AND: Reserve Bank of Vanuatu
Defendant

Coram: *Justice Aru*
Counsel: *Mr. C. Leo for the Claimant*
Mr. N. Morrison for the Defendant

JUDGMENT

Introduction

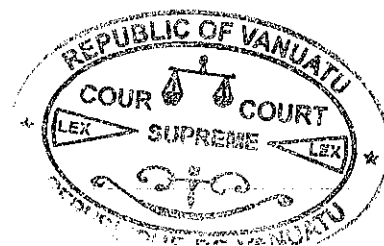
1. This is a claim for breach of copyright under the Copyright and Related Acts No. 42 of 2000 (the Act). Liability has been admitted by the Reserve Bank of Vanuatu (the RBV). The only issue is what level or amount of damages is the claimant entitled to if any.

Background

2. Sometime in 2000 Joseph John, a well-known artist painted a picture of a Ni Vanuatu gathering of villagers with their chief. The painting was an artistic work as defined by the Act. The RBV purchased the artistic work from Mr. John soon after it was created in 2000. It is not disputed that part of that painting was used by the RBV when it minted and issued the 20VT coin. The coin was issued in 2015 and a total of 4, 633, 105 such coins were issued.
3. It is also not disputed that the artistic work was used by the RBV without Mr. John's permission.

Submission

4. The claimant submitted that factors the court should consider when assessing damages were:-
 - Lack of consent by the claimant
 - The defendant acted intentionally and recklessly regardless of the claimant's economic rights over the artistic work.
 - The artistic work was rearranged and as a result lost its value.



- From 2015 to 31 May 2021 which is about 7 years a total of 4, 633, 105 VT20 coins were issued.
5. Mr. Leo submitted that the formula to be applied in calculating the claimants loss must be 4, 633, 105 (number of coins produced) x 7 years (the number of years the VT20 coin was in use). He submits that the resulting figure is VT32, 431, 735 which is what the claimant is entitled to.
 6. The defendant on the other had disputes that the artistic work lost value as a result of the defendant's actions and disputes the formula proposed by the claimant as flawed, illogical and unsupported by any authority.
 7. That claimant's submission is rejected for the following reasons. First the formula for calculating damages suggested by Mr Leo is not provided for in the Act. Secondly that submission is not supported by any case law. Although Mr. Leo refers to the criminal penalties under the Act, there is no evidence that a criminal complaint has been lodged with the Police against the RBV. This is a civil case and no parallels can be drawn with criminal sanctions imposed by the Act. The claimant must prove the damages he claims.

Discussion

8. Section 34 of the Act provides for Civil Remedies and states:-

'(1) The Supreme Court has jurisdiction in respect of civil matters arising under this Act.

(2) The owner of a copyright in a work or the owner of any right protected under this Act may bring an action for an infringement of the copyright or that other right and is entitled to payment by the infringer :

(a) Of damages for the prejudice and loss suffered as a consequence of the infringement ;and

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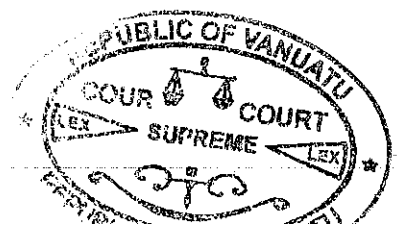
(3) The Court is to determine the amount of damages and may take into account:

(a) the importance of the material and moral prejudice suffered by the owner of the right ;

(b) the amount of the infringer's profits attributable to the infringement .

.....

9. The claimant as owner of the copyright in his work has the onus to prove his entitlement to damages on the balance of probabilities. Section 34 (3) offers guidance as to what I may take into account when determining the amount of damages. It is not mandatory but I may consider the importance of the material and moral prejudices suffered if any by the claimant and secondly the amount of the infringers profits attributable to the infringement.



10. In assessing whether the defendant has made any profit from the infringement, the defendant submits that they have made no profit from the claimant's work other than reproducing some of the characters from the painting on the 20VT coin and issuing 4, 633, 105 of those coins for public use. The claimant has not filed any evidence that the defendant profited from the infringement or that the value in the work has diminished.
11. The work is of some significance and that may be the reason it was purchased by the defendant in the first place. I cannot discount the fact that the claimant's reputation may have been enhanced by the fact that the RBV was using some of his work on the national currency. That is a telling factor which would diminish any award of damages. On the other hand the claimant is a professional artist with a Diploma in Visual Arts and earns his income to support his family from the proceeds of sale of his art work. The materials used in creating his works of art are imported from overseas.
12. The RBV admits that they used part of the claimant's work in producing 4, 633, 105 20VT coins without his consent. They submit that any assessment should be at a lower end of the scale at VT1, 000,000. The claimant has not provided any helpful submissions in calculating damages other than to suggest I multiply the number of years by the number of coins used which is rejected. There has been no profit made by the RBV from the infringement and taking the above factors into account I accept the RBV's submission that the assessment should be at the lower end.

Result

13. The claimant is entitled to damages assessed at VT 500, 000 to be paid by the defendant within 21 days. The defendant to pay the claimant's costs assessed at VT50,000 within 21 days as well .
14. For the purposes of enforcement, a further conference is listed for 27 September 2021 at 2.30 pm.

DATED at Port Vila this 6th day of September, 2021

BY THE COURT

**D. Aru
Judge**

