

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil jurisdiction)

Civil  
Case No. 18/2145 SC/Civil

**BETWEEN:** Li Jian Jun  
Claimant

**AND:** ANZ Bank (Vanuatu)  
Limited  
First Defendant  
Republic of Vanuatu  
Second Defendant

*Date of Hearing:* 28 January 2021  
*Before:* Justice G.A. Andrée Willens  
*Counsel:* Claimant in person  
Mr G. Blake for the First Defendant  
Ms F. Williams Samuel for the Second Defendant (absent)  
*Date of Decision:* 5 February 2021

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**Judgment**

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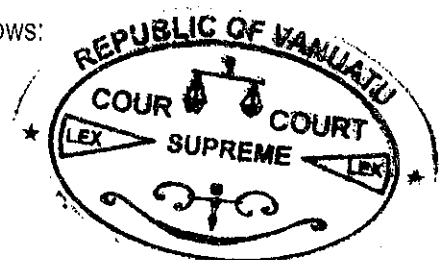
A. Introduction

1. This is a decision dealing with an application for indemnity costs.

B. Background

2. Mr Li's Claim was dismissed in my judgment of 9 October 2020.

3. In the judgment I recorded at the conclusion of my reasoning as follows:



"Costs are due to both defendants. They are to be settled by agreement, or failing that, by taxation. Once settled, the costs are to be paid within 21 days."

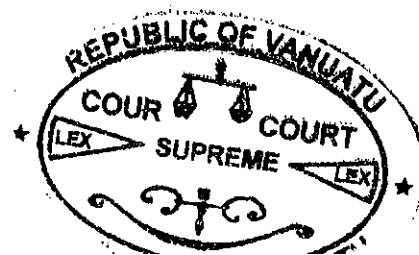
4. It subsequently transpired that the ANZ wished to pursue indemnity costs, a matter I was unaware of during the trial or prior to the judgment being published. Once made aware, I scheduled a conference which Mr Li and Mr Blake attended. I made certain directions and set the matter down to be heard. Counsel who appeared for Mr Li at trial gratuitously offered (having been uninstructed following the publishing of my decision) to serve my directions on Mr Li.
5. Unfortunately, Mr Li did not attend the scheduled hearing. Additionally, despite being advised to do so, he has not instructed counsel to act on his behalf. No written submissions in opposition to Mr Blake's application were filed or served by Mr Li.
6. Accordingly, I have only the submissions filed by Mr Blake on which to base this decision.

C. Discussion

7. The decision in *Kramer Ausenco (Vanuatu) Limited v Supercool Vila Limited* [2018] VUCA 29 established that the Supreme Court can and should recall judgments so as, where appropriate, to afford counsel the opportunity to make specific submissions regarding costs.
8. Awards of costs are discretionary and usually follow the event: *Wass v Knox* [2010] VUCA 24. In this instance that principle means Mr Li is liable to pay ANZ's costs.
9. Mr Blake seeks that the costs be quantified on an indemnity basis as opposed to on the standard basis.
10. Rule 15.5 of the Civil Procedure Rules proscribes the circumstances in which indemnity basis costs can be ordered, as opposed to costs awarded on the standard basis. One of the instances the Rule identifies as being appropriate for indemnity costs to be awarded is where an offer to settle is made but rejected. Indeed, any such offer to settle is a factor the Court must consider when looking at the issue of costs: see Rule 15.11.
11. At trial, and in support of this application, there is evidence that Mr Blake sent a letter dated 2 November 2018 to Mr Li's then counsel, Mr Hakwa, which enclosed a formal offer to settle and which further recorded:

"We note that the proceedings you have filed seek an order for specific performance. Our client is therefore willing to grant your client the opportunity to complete the purchase."

12. That offer was a complete answer to the Claim filed. It was not accepted and instead the dispute was taken to trial where Mr Li was unable to substantiate his Claim. In the words of Justice Geoghegan in *Shamin v QBE Insurance (Vanuatu) Ltd* [2017] VUSC 59 the decision by Mr Li to not accept the offer of compromise was "...an imprudent refusal."

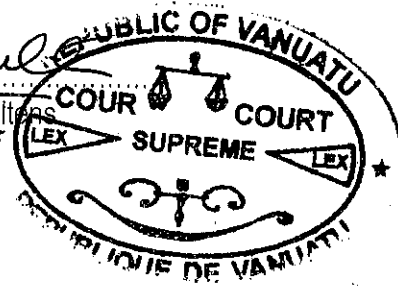


D. Result

13. Mr Li is to pay costs in respect of the whole of this proceeding assessed on an indemnity basis. Once calculated, Mr Li is to pay that sum within 21 days.

Dated at Port Vila this 5th day of February 2021  
BY THE COURT

*Jandra Uel*  
Justice G.A. Andrée Wijffens



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written in a semi-circle, with "COUR" on the left and "SUPREME" on the right. Below "COUR SUPREME", the word "LEX" is written in a smaller font. The seal is flanked by two stars on either side.