

**BETWEEN:** GEORGE BOAR  
Claimant  
**AND:** DON KEN  
Defendant

*Date of Hearing:* 6<sup>th</sup> July 2023  
*Before:* Justice W.K. Hastings  
*Counsel:* Mr W Kapalu for the Claimant  
Mr E Molbaleh for the Defendant

*Date of Delivery of Judgment:* 17<sup>th</sup> July 2023

---

## JUDGMENT

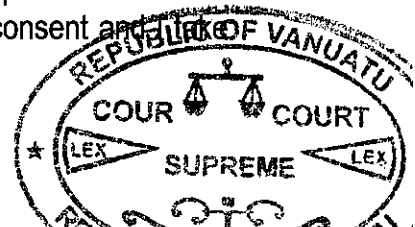
---

### Introduction

1. Mr Boar was a practising lawyer until he was struck off on 25 November 2019. He claims VT 2,605,833 from Mr Ken for unpaid fees for legal work he undertook for Mr Ken before he was struck off. Mr Boar has pleaded that the original amount invoiced was VT 3,165,833, but Mr Ken paid VT 560,000, leaving the amount claimed outstanding.
2. Mr Ken says in his sworn statement that he made 15 payments totalling VT 2,810,000 to Mr Boar without obtaining receipts, starting with a payment of VT 560,000 in March 2015 in respect of Supreme Court Civil Case No 1227 of 2016. Mr Ken pleads that after he signed the agreement of 17 February 2020, he "realised the amount of the agreement was excessive." He tried to talk to Mr Boar about it "but was unsuccessful" which was why he made a "final payment" of VT 1,000,000 in 2020 "and then stopped because the Claimant never issue[d] him with receipts." Mr Ken seeks an order that "the Defendant not pay any monies to the Claimant due to duress and fraud" or in the alternative, an order that the defendant "only pay an outstanding debt of VT 355,833 to the Claimant."

### Evidence

3. There are sworn statements from Mr Boar dated 23 May 2023 and 8 June 2023 both of which annex the agreement of 17 February 2020; from Mr Don Ken dated 8 May 2023; and from Remon Ken, Mr Ken's wife, dated 30 May 2023.
4. Mr Boar was cross-examined. No notice to cross-examine Mr or Mrs Ken was given under r.11.7(4). At the end of the claimant's case, the defendant elected not to present evidence. The sworn statements of Mr and Mrs Ken were, however, admitted by consent and



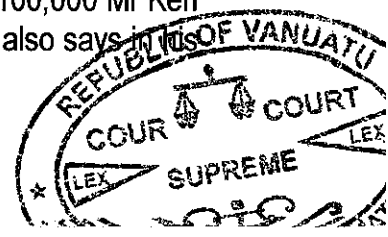
into account that their contents have not been tested under cross-examination. Both counsel asked to make written submissions, Mr Kapalu by 11 July 2023 and Mr Molbaleh by 14 July 2023. Mr Kapalu's submission was received on 10 July 2023; no submission was received from Mr Molbaleh.

5. Mr Boar relies on an agreement dated 17 February 2020 between him and Mr Ken, in which Mr Ken agreed to pay VT 2,605,833 to Mr Boar for work done on Supreme Court Civil Case No 1227 of 2016 (invoices 4/18, 13/18 and 81/19), Magistrate Court Civil Case No 1875 of 2018 (invoices 40/18 and 13/19) and Court of Appeal Case No 3176 of 2018 (invoice 01/20). Although the agreement is written in the future tense, it is plain from the dates of the invoices that the work had already been done and invoiced. The agreement appears to be more in the nature of an agreement to pay outstanding fees or a settlement. There is no dispute that the defendant signed the agreement.
6. Mr Boar annexed an invoice statement as "GB1" to his sworn statement of 23 May 2023. When the information in that statement is combined with the underlying invoices, the particulars are as follows:

Invoice No	Date	For work done	Net amount invoiced	Payment recorded on invoice
4/18	08.03.18	on SC Civil Case 1227 of 2016 between 15.10.17 and 08.03.18	VT 353,333	VT 170,000
13/18	26.03.18	on SC Civil Case 1227 of 2016 between 13.03.18 and 19.03.18	VT 370,000	Nil
40/18	29.10.18	on MC Civil Case 1875 of 2018 between 04.09.18 and 11.10.18	VT 180,000	VT 50,000
13/19	07.02.19	on MC Civil Case 1875 of 2018 between 23.11.18 and 06.02.19	VT 22,500	Nil
81/19	06.12.19	on SC Civil Case 1227 of 2016 between 25.07.18 and 18.11.19	VT 1,322,500	VT 300,000
01/20	31.01.20	on Civil Appeal Case 3176 of 2018 between 18.06.19 and 07.08.19	VT 747,500	Nil
		payments recorded on receipts, but not on invoices:		VT 40,000
			<u>VT 3,165,833</u>	<u>VT 560,000</u>

Payments are noted on invoices, but correlating receipt numbers are not. Receipt numbers are, however, set out in the invoice statement GB1.

7. Under cross-examination, Mr Boar said apart from the initial payment of VT 560,000, the unreceipted payments to which Mr and Mrs Ken refer in their sworn statements were for other work he did for Mr Ken, and are unrelated to this claim. Of the eight numbered receipts in GB1, only one (receipt no. 0676) seems to accord with a payment of VT 100,000 Mr Ken said in his sworn statement he made in September 2017, although Mr Ken also says



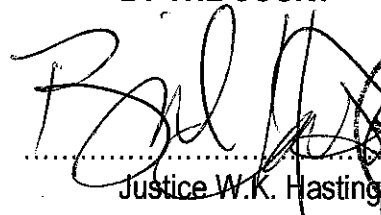
sworn statement that no receipt was issued to him for that payment. The timing of the other payments Mr Ken says he made do not appear to accord with the dates of any of the receipts or invoices in GB1.

### Discussion

8. Receipts are issued to a person paying money to signify the payee has received the money from the payer. If the person paying money wishes to prove they made a payment, they need to obtain a receipt. Without a receipt, the person may be able to prove payment some other way, but it will be more difficult. Here, Mr Ken has sought to prove through his sworn statement and that of his wife, that he made the payments. Neither was cross-examined on their sworn statements and as a result I give those statements less weight. Mr Boar was not challenged in cross-examination on his statements that the payments Mr Ken made were for matters unrelated to the three cases, and that the amount claimed for the work he did on the three cases before he was struck off remains unpaid.
9. It is for the claimant to prove his case on the balance of probabilities. I am left with a claim supported by evidence of invoice statements that show amounts owed and paid, a signed agreement, and no defence evidence beyond two vague and untested sworn statements to the effect that Mr Ken made 15 payments to Mr Boar without obtaining receipts in various places for unspecified work. I have heard no evidence to support fraud or duress pleaded in the statement of defence that might vitiate the contract Mr Ken admits he signed. On the evidence before me, Mr Boar has therefore proved his claim on the balance of probabilities.
10. Judgment is for the claimant in the amount claimed, VT 2,605,833, plus interest at 5% from the date of claim.
11. Costs are awarded to the claimant on a standard basis in accordance with r.15.5(1). If the amount cannot be agreed, Mr Kapalu will file and serve a memorandum setting out what is required by r.15.7 by 21 July 2023 and I will decide costs on the papers.

**Dated at Port Vila this 17<sup>th</sup> day of July 2023**

**BY THE COURT**

  
Justice W.K. Hastings

