

BETWEEN: JAMES SAKARI
Claimant

AND: GOVERNMENT OF THE REPUBLIC OF VANUATU
Defendant

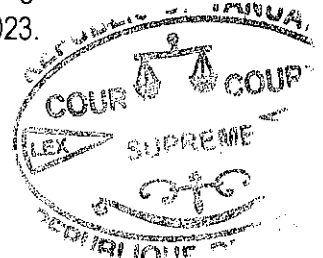
Date of Hearing: 11th October 2023
Date of Judgment: 12th October 2023
Before: Acting Chief Justice
In Attendance: The Claimant in person- unrepresented
Mr Freddie Bong for the Defendant

JUDGMENT

1. I heard two applications together. The first application filed on 7th August 2023 by the defendant seeks an Order to strike out the claimant's claim with costs on an indemnity basis in the sum of VT 550,000.
2. The second application was filed by the claimant on 8th August 2023. It is an application seeking an order to set aside the defendant's strike out application of 7th August, and of the defence filed on 7th August 2023 as well.
3. The claimant filed a sworn statement in support of his application on 14th August 2023 to show that despite the service of the claim on the Attorney General on 20th June 2023 and again on 4th August 202 with the Request for Default Judgment and its supporting sworn statement, the defendant failed to file and serve any response and defence within the periods of 14 and 28 days as required by the Civil Procedure Rules. For that reason the claimant submitted that the strike out application and the defendant should be struck out.
4. Mr Bong for the defendant argued and submitted that the defence of the defendant pleads matters to which the claimant has no chance of success.
5. Mr Bong relied on the sworn statement of Ily Fredy filed on 10th October 2023 in which Judicial Review Case 1268 of 2017 and Civil Case 661 of 2018 are disclosed.
6. The claimant is not and was not a defendant in JR 1268 of 2017 but he was one of the persons named as Third Defendants in CC 661 of 2018.
7. In CC 661/2018 the claimant is named with Blue Gum Holdings Limited as Second Defendants.



8. On 20 December 2019 the Court issued its judgment recording the Leases 11/OC34/052 and 11/OF23/081 were cancelled and reverted back to the State.
9. Further the Court recorded at [10] that:
"The First Defendant is to reimburse each of the affected Defendants all their associated costs incurred in the registration and/or granting of the leases."
10. Mr Bong submitted that as there were no appeals against those decisions in JR 1268 of 2017 and CC 661 of 2018 and that the periods of appeal have long expired, and the Court having declared the decision of the Minister at the time to be unlawful, there was no duty of care owed by the State to the claimant. Further counsel submitted the claim and proceeding was an abuse of process and should be struck out with costs.
11. Mr Bong submitted further that the claimant was raising the same subject matters raised in relation to the creation and registration of lease Title 11/OC34/053 which he ought to have raised in CC 611/2018 but did not, and as such he is estopped under the principle of Anshun estoppel established in Henderson v Henderson [1843] ER 917.
12. I accept Mr Bong's submissions. The claimant was obliged to raise these issues as a counter-claim in CC 611/2018 but did not and he did not lodge any appeal against the judgment of the Court dated 20 December 2019. He is therefore estopped from raising those matters in this new and separate proceeding more than 2 years later.
13. Therefore should the defence of the defendant be struck out? The answer is no. it is a good defence.
14. Should the defendant's application to strike out the claimant's claim be dismissed? The answer is no.
15. Should the Court have entered default judgment against the defendant? The answer is no for obvious reasons. First the claim and Request for Default Judgment were not properly served. The claimant's evidence is that he served by email. There is no evidence that the email was received. There is a service process requiring that Court documents served are received and the recipient is to sign to show the documents are actually received.
16. Further there was no evidence by the claimant that he had any difficulty serving his claim and documents such that he should require or need service by way of substituted service as normally occurs when a defendant is out of the jurisdiction. This is not such a case. Even if it was, the claimant should have obtained leave to serve the claim by substituted service. Rule 5.5 is clear that a claim cannot be served by pre-paid post or by fax or email.
17. Finally should the claimant's claim and proceeding be struck out as an abuse of process? The answer is yes.
18. If the claimant has any claims at all, it is in relation to paragraph 10 of the judgment dated 20th December 2019. This is not pleaded in the claim that he filed on 20th June 2023.



19. The result is the application by the claimant to strike out the defendant's application or a strike out and its defence is declined and dismissed.
20. The defendant's application to strike out the claimant's claim and proceeding is allowed. The claim and proceeding are struck out.
21. The defendant is entitled to costs of VT 150,000 payable within 28 days, by 11th November 2023.

**DATED at Port Vila this 12th day of October 2023
BY THE COURT**


Hon. OLIVER A SAKSAK
Acting Chief Justice

