

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

Civil Case
No. 21/1500 SC/CIVL

BETWEEN: Moses Bebe & Aaron Lingi, Michael
Siba, Judah Siba, Arthur Nasia and
Tony Hungai

Claimants

AND: Jerome Natu

First Defendant

AND: Harold Vire

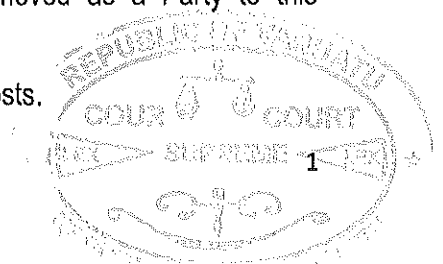
Second Defendant

Date: 17 April 2023
Before: Justice V.M. Trief
Counsel: Claimants – Mr R. Tevi
Defendants – Ms M. Vire

**DECISION AS TO APPLICATION THAT SECOND DEFENDANT BE REMOVED AS A
PARTY AND AS TO FIRST DEFENDANT'S APPLICATION FOR SECURITY FOR COSTS**

A. Introduction

1. By the Claim, the Claimants Moses Bebe, Aaron Lingi, Michael Siba, Judah Siba, Arthur Nasia and Tony Hungai seek an order for the payment of the balance of compulsory acquisition compensation alleged to be owed to them. The Government paid the compensation to the First Defendant Jerome Natu who is the owner of JBN Estate and it was his responsibility to then make payments to the individual Claimants. The Second Defendant Harold Vire is Mr Natu's employee.
2. On 2 March 2023, the Defendants filed the following:
 - i) Application by Second Defendant to be Removed as a Party to this Proceeding; and
 - ii) First Defendant's Application for Security for Costs.



3. On 14 April 2023, the Claimants filed submissions in response. I now determine the Applications.

B. Second Defendant's Application to be Removed as a Party

4. Mr Vire's Application to be Removed as a Party is made on the ground that he is only an employee and minds Mr Natu's office hence he has no status to defend the Claim. Mr Natu as the owner of JBN Estate is the owner of the leasehold properties concerned and is the only correct party to defend his leasehold interests.

5. Mr Vire's Application was opposed. Claimants' counsel Mr Tevi submitted that Mr Vire's presence in the proceeding was necessary to enable the Court to make a fair and effective decision as he was the person who was directly involved in all the payments that led to filing the claim before this Court.

6. The Claim alleges that Mr Vire is Mr Natu's advisor and employee. Mr Natu in his Defence filed on 8 September 2021 said that Mr Vire is his agent and works for him. In Mr Vire's Defence also filed on 8 September 2021, he said that he is an agent of Mr Natu and delivers duties according to Mr Natu's instructions therefore he does not qualify for personal liability.

7. Accepting that Mr Vire is Mr Natu's employee and his agent, there is no pleading set out in the Claim or any Reply to Defence as to why Mr Vire should be held personally liable for any liability established against Mr Natu. As to Mr Tevi's submission that Mr Vire's presence as a party is necessary for the Court to decide the matter, I note that Mr Vire has filed two sworn statements and will be available for cross-examination. Mr Tevi can therefore cross-examine Mr Vire but there is no basis for Mr Vire to remain as a party to the proceeding when no pleading has been made as to why he as Mr Natu's employee and agent should be held personally liable for any liability established against Mr Natu.

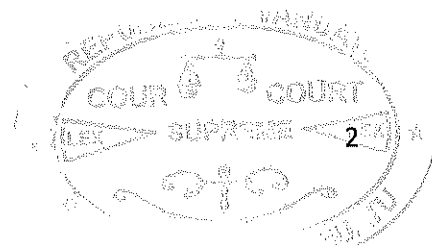
8. For the reasons given, Mr Vire's Application to be Removed as a Party will be granted.

C. First Defendant's Application for Security for Costs

9. Mr Natu's Application seeks VT600,000 security for costs on both his and Mr Vire's behalf on the grounds that the Claimants have no prospect of success and to avoid further expenses and legal costs of pursuing the Claimants for payment of costs. In addition, Mr Natu wishes to end all dealings with the Claimants after this proceeding and the Claimants have been causing unnecessary delay in this proceeding.

10. The Application was opposed. Mr Tevi submitted that the Application did not comply with rule 15.19 of the *Civil Procedure Rules* ('CPR').

11. He also submitted that the justice of the case was against such orders being made as the decision as to the Application would issue on 17 April 2023 and trial was set for 21 April 2023 which is too short for the Claimants to find and pay VT600,000. He submitted that with respect, an application for security for costs should have been made earlier but not when the matter is so close to trial.



12. Rules 15.19 and 15.20 of the CPR provide as follows:

15.19 *The court may order a claimant to give security for costs only if the court is satisfied that:*

- (a) *the claimant is a body corporate and there is reason to believe it will not be able to pay the defendant's costs if ordered to pay them; or*
- (b) *the claimant's address is not stated in the claim, or is not stated correctly, unless there is reason to believe this was done without intention to deceive; or*
- (c) *the claimant has changed address since the proceeding started and there is reason to believe this was done to avoid the consequences of the proceeding; or*
- (d) *the claimant is ordinarily resident outside Vanuatu; or*
- (e) *the claimant is about to depart Vanuatu and there is reason to believe the claimant has insufficient fixed property in Vanuatu available for enforcement to pay the defendant's costs if ordered to pay them; or*
- (f) *the justice of the case requires the making of the order.*

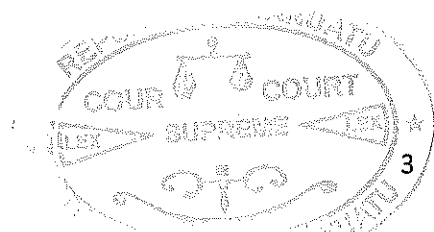
15.20 *In deciding whether to make an order, the court may have regard to any of the following matters:*

- (a) *the prospects of success of the proceeding;*
- (b) *whether the proceeding is genuine;*
- (c) *for rule 15.19 (a), the corporation's finances;*
- (d) *whether the claimant's lack of means is because of the defendant's conduct;*
- (e) *whether the order would be oppressive or would stifle the proceeding;*
- (f) *whether the proceeding involves a matter of public importance;*
- (g) *whether the claimant's delay in starting the proceeding has prejudiced the defendant;*
- (h) *the costs of the proceeding.*

13. None of the circumstances set out in rule 15.19 of the CPR exist in relation to the Claimants. They are not a body corporate and there is no reason to believe they will not be able to pay costs ordered, there is no complaint that their address was not stated in the Claim or that they have changed address, they are not ordinarily resident outside Vanuatu and they are not about to depart Vanuatu.

14. I consider that the justice of the case is against ordering security for costs: rule 15.19(f), CPR. The trial in this matter is days away. If security for costs was ordered, the Claimants would have just 3 days to pay the security sought. That is insufficient time and unfair to the Claimants to be ordered to do so. Such order would be oppressive and would stifle the proceeding: rule 15.20(e), CPR.

15. For the reasons given, the First Defendant's Application will be declined and dismissed.



D. Result and Decision

16. The Application by Second Defendant to be Removed as a Party to this Proceeding is **granted**.
17. The Second Defendant is **removed** as a party to this proceeding.
18. Accordingly, the First Defendant is renamed "Defendant." This will be reflected in future Court Orders.
19. The First Defendant's Application for Security for Costs is **declined and dismissed**.
20. The costs of both Applications are reserved.

DATED at Luganville this 17th day of April 2023
BY THE COURT

.....
Justice Viran Molisa Trief

