

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

Civil
Case No. 21/1827 SC/CIVL

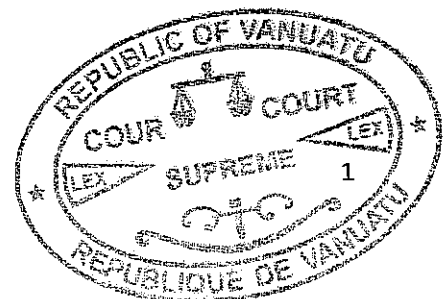
BETWEEN: George Boar
Claimant

AND: Don Ken
Defendant

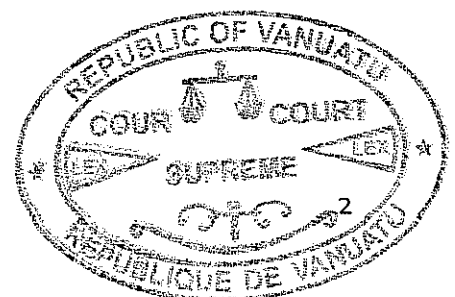
Date: 2 September 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr W. Kapalu
Defendant – Mr E. Molbaleh

DECISION AS TO AMENDED APPLICATION FOR SUMMARY JUDGMENT

1. At the pre-trial conference on 27 August 2024, I stated that I would determine the Amended Application for Summary Judgment before any further orders. I now determine that application.
2. The Amended Claim was filed on 11 January 2024. The Defence entitled, 'Reply' was filed on 9 April 2024. 'Response to the Reply' filed on 15 April 2024.
3. On 11 June 2024, the Claimant filed Application for Summary Judgment on the ground that no sworn statements have been filed to support the Defence and the Defendant has not raised an arguable defence.
4. By Orders dated 14 June 2024, the Application for Summary Judgment was declined and dismissed for the reasons given.



5. On 12 July 2024, the Claimant filed Amended Application for Summary Judgment. The initial Application for Summary Judgment filed on 11 June 2024 had already been declined and dismissed in the Orders dated 14 June 2024. It is therefore misguided to file an Amended Application for Summary Judgment when the application it is presumably seeking to amend has already been dismissed.
6. However, to avoid doubt, I now determine the Amended Application for Summary Judgment filed on 12 July 2024. It seeks orders that the Defendant's sworn statements filed after 21 May 2024 be declared ineffectual and judgment entered for the Claimant of VT2,605,833. Alternatively, that the Defendant provide security for costs.
7. The filing of sworn statements after the time ordered is not a ground for summary judgment. It is also without merit for having sworn statements declared ineffectual. Even if filed beyond the time ordered, the filing of the sworn statements progresses the matter towards trial. That is to be commended so that the parties are closer to having trial and then the Court make its decision as to the merits, than steps be taken on an interlocutory basis focusing on procedural steps and taking up unnecessary time and costs. That ground fails.
8. As to having signed the Costs Agreement of 17 February 2020, the Defendant's pleadings in response are set out in paras 2 and 3 of the Defence ('Reply') filed on 9 April 2024. The knowledge that the Defendant had on signing that agreement is a triable matter. Accordingly, summary judgment cannot be entered.
9. Further, the Claimant raises as a ground in the Amended Application for Summary Judgment the application of the parole evidence rule. That is a question of law to be argued. Accordingly, summary judgment also for that reason cannot be entered: rule 9.6 of the *Civil Procedure Rules*.
10. As for security for costs, the *Civil Procedure Rules* provide for the Court to order security for costs against a claimant. Here, it is the Claimant seeking security for costs against the Defendant. This ground also fails.
11. For the reasons given, the Claimant's Amended Application for Summary Judgment filed on 12 July 2024 is **declined and dismissed**.
12. Each party is to bear their own costs of the Amended Application.
13. The parties have filed the following sworn statements:



- a) For Claimant: of George Boar filed on 23 May 2023 and another one filed on 16 April 2024;
 - b) For Defendant: of Don Ken and of Remon Ken filed on 1 July 2024;
 - c) For Claimant: Respond to Sworn statement of Remon Ken filed on 1st July 2024, filed on 25 July 2024.
14. On 1 July 2024, the Defendant filed proof of service of his two sworn statements on Mr Kapalu.
15. The 6 June 2025 listing is **vacated**.
16. Listing for Trial at **9am on 12 March 2025** at Dumbea Courtroom.

**DATED at Port Vila this 2nd day of September 2024
BY THE COURT**


Justice Viran Molisa Trief

