

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

Civil
Case No. 23/904 SC/CIVL

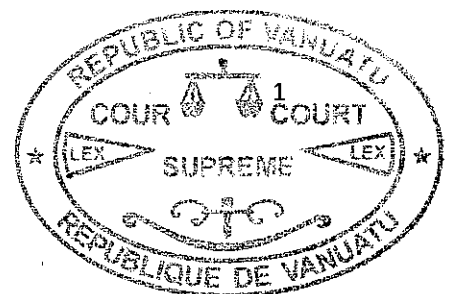
BETWEEN: Robert Galibert & Jeannie Galibert
Claimants

AND: Gilbert Masi
Defendant

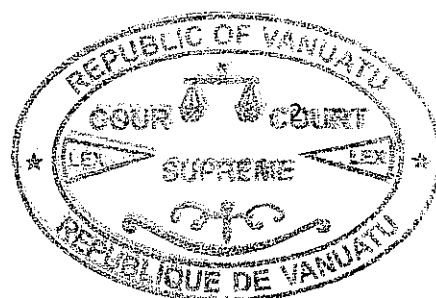
Date: 31 March 2025
Before: Justice V.M. Trief
Counsel: Claimants – Ms L. Bakokoto
Defendant – Mr J. Mesao

DECISION AS TO ASSESSMENT OF DAMAGES ON THE COUNTER CLAIM

1. On 14 October 2024, the Court entered default judgment on the Counter Claim and directed the parties to file sworn statements as to the assessment of damages. This is the decision as to the assessment of damages payable.
2. It was pleaded in the Counter Claim that the Claimants Robert Galibert and Jeannie Galibert (who are siblings) are the owners of Toyota bus registration B17208 (the 'bus'). And that the Claimants handed the bus over to the Defendant Gilbert Masi to operate it from 2019-2023. However, the bus was involved in two major accidents therefore the total costs of repairs and to keep the vehicle roadworthy (including the cost of Mr Galibert paying a debt collector VT47,000 and defending a Magistrates' Court proceeding VT215,000) during that period was VT4,348,523. It was also alleged that during the same period, Mr Masi received VT1,983,000 from Mr Galibert as repayment as agreed.



3. The relief sought is an order that the Claimants pay back Mr Masi VT815,070 expenses for repairing the bus after the two accidents, an order for them to reimburse Mr Masi VT47,000 paid to the debt collector, and to reimburse Mr Masi VT215,000 the costs of defending the Magistrates' Court proceedings totalling VT1,077.070 plus interest and any other order that the Court deems fit.
4. Mr Masi must prove what damage he has suffered.
5. Mr Masi relied on two sworn statements to prove the Counter Claim: his own sworn statement filed on 7 June 2024 and his wife Angela Naio's sworn statement filed on 7 June 2024.
6. **Mr Masi** deposed that in 2019, he and Mr Galibert orally agreed that Mr Masi would repair the bus and then operate it to recoup the repair expenses. After repairing the bus, Mr Masi returned to New Zealand to work in the RSE scheme leaving Angela to manage the bus business. But Mr Galibert at times would seize the bus and during times of drinking alcohol, would demand money from Angela and take the bus, resulting in two separate accidents.
7. **Angela Naio** deposed that she is Mr Masi's wife. She confirmed Mr Masi and Mr Galibert's oral agreement in 2019 for Mr Masi to repair the bus then operate it to recoup the repair expenses and to make regular payments to Mr Galibert for the use of the bus. She attached many documents to her sworn statement containing information as to the bus repair costs, payments to the debt collector, assistance to Mr Galibert for his Magistrates' Court proceedings and payments to Mr Galibert.
8. What has been proved?
9. It is clear that from 2019 to June 2023, Mr Masi paid for repairs for the bus, and he and Ms Naio operated the bus, to recoup the repair costs. Ms Naio adduced into evidence receipts for the repairs, totalling VT656,160. However, the rest of the repairs and other expenses claimed are missing most of the receipts.
10. It is also clear from the evidence that part of their oral agreement was that Mr Masi and Ms Naio would make regular payments to Mr Galibert for the use of the bus. However, there is no evidence as to what amount they agreed that Mr Masi and Ms Naio would pay to Mr Galibert and how often payments would be made.
11. There is also no evidence of Mr Masi and Ms Naio's total income from the bus.



12. Without evidence of Mr Masi and Ms Naio's total income from the bus, it is impossible for the Court to make findings as to what repair expenses and other expenses Mr Masi has already recouped from the bus income and what expenses remain outstanding that the Court should order the Claimants to pay him.
13. In addition, without any evidence as to the terms of the parties' oral agreement about the amount of Mr Masi's regular payments to Mr Galibert, and how often payments would be made, the Court cannot make any findings as to these. These amounts (if found, which they have not) could then be deducted from Mr Masi's total bus income (which cannot be found) to calculate the outstanding balance that the Court should order the Claimants to pay him.
14. For the foregoing reasons, the Defendant has not proved the damage he has suffered. Accordingly, the quantum of damages payable on the Counter Claim is assessed as nil.
15. Costs are to lie where they fall.

**DATED at Port Vila this 31st day of March 2025
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

