

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

Civil  
Case No. 19/2678 SC/CIVL

BETWEEN: **Nicon Limited**  
Claimant

AND: **Light Ship Limited**  
First Defendant

AND: **Stephen Quinto and Nicola Quinto**  
Second Defendants

Date: 31 March 2025

Before: Justice V.M. Trief

Counsel: Claimant – Mr M. Hurley

Defendants – Ms L. Raikatalau, for Mrs M.N. Ferrieux Patterson

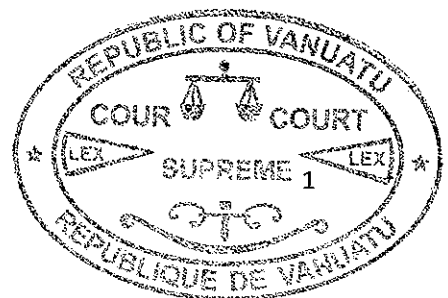
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### DECISION AS TO PERIOD OF INDEMNITY COSTS

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A. Introduction

1. The Claimant Nicon Limited ('Nicon') commenced this action seeking payment of an unpaid invoice and alternatively, judgment on a *quantum meruit* basis. By judgment dated 1 December 2022, I entered judgment for Nicon on its *quantum meruit* claim, for VT886,042 plus interest of 5% per annum from 10 February 2015 until the judgment sum is paid in full: Nicon Ltd v Light Ship Ltd [2022] VUSC 210.
2. Following the parties' submissions as to costs, I determined the costs of the proceedings as follows in the costs decision dated 28 February 2023, Nicon Ltd v Light Ship Ltd [2023] VUSC 18 (the 'costs decision') at [26]:



26. *The Defendants are to pay the Claimant's costs of the proceedings on a joint and several basis as follows:*

- a. *on the standard basis until 22 February 2022; and*
- b. *on an indemnity basis from 23 February 2022, being the date of rejection of the terms of Nikon's offer set out in its 22 February 2022,*

*such costs to be paid as agreed, failing which they are to be assessed by the Master. Once settled, the costs are to be paid within 28 days.*

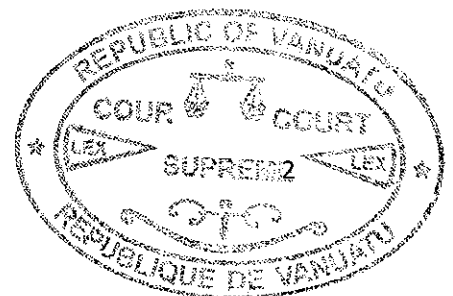
3. At the assessment (taxation) of costs hearing before the Deputy Master on 27 June 2024, Ms Raikatalau submitted that the indemnity for costs referred to in [26](b) of the costs decision should end either at the date of the judgment (1 December 2022) or the date of the costs decision (28 February 2023). On the other hand, Mr Hurley submitted that the reading of [26](b) of the costs decision must be read as the indemnity rate from 23 February 2022 until the assessment of costs are determined.
4. Consequently, the Deputy Master directed the parties to seek clarification from this Court as to the period in which the indemnity costs order at [26](b) of the costs decision is to apply.
5. Counsel repeated and elaborated on those submissions in the Defendants' submissions filed on 28 January 2025 and the Claimant's submissions filed on 28 March 2025. Those submissions were filed alternately in Enforcement Case 24/1058 and the present proceedings.

B. Consideration

6. The "costs of the proceeding" referred to in [26](b) of the costs decision must logically include all costs from 23 February 2022, that being the wording in that paragraph.
7. In addition, rule 15.16 of the *Civil Procedure Rules* ('CPR') provides as follows:

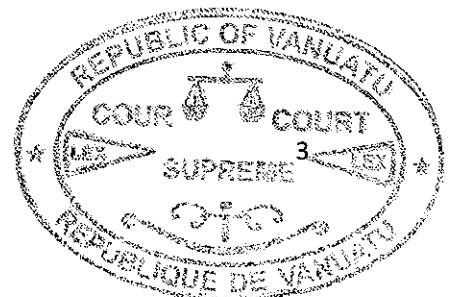
*15.16. The costs of determining costs of a proceeding form part of the costs of the proceeding.*

8. The costs of determining the costs of a proceeding (including by taxation or assessment of costs) form part of the costs of the proceeding pursuant to rule 15.16 of the CPR.
9. Accordingly, the costs of the proceedings on an indemnity basis from 23 February 2022 must include all costs from that date onwards, including all attendances involving the costs assessment/taxation before the Deputy Master. In other words, the indemnity costs order made at [26](b) of the costs decision continues to apply up to and including



the costs of determining that indemnity costs order, before the Deputy Master. I agree with Mr Hurley's submissions in this regard.

10. I have no regard to the disclosure of settlement offer communications referred to at paras 4, 5 and 12(c) of the Defendants' submissions. Mr Hurley objected to their disclosure, presumably as they were made without prejudice. In any event, those submissions are irrelevant for the purpose of the question referred to this Court by the Deputy Master. Mr Hurley submitted that any reliance on such correspondence should await the final determination of the costs assessment/taxation hearing and the Deputy Master could then be invited to determine the issue of the costs of the assessment determination process. I agree.
11. Contrary to the Defendants' submissions, the taxation proceeding is not an entirely separate proceeding. As rule 15.16 of the CPR makes clear, "*The costs of determining costs of a proceeding form part of the costs of the proceedings.*"
12. Mr Hurley is correct in his submissions that historically, before the appointment of a Master and Deputy Master, costs were assessed/taxed by the presiding judge. The fact that for current administrative purposes the application for determination of costs is allocated an enforcement case number does not mean it is a separate proceeding. It is the costs assessment of the same proceeding. Ms Raikatalau's submissions that an enforcement case constitutes an entirely separate proceeding are devoid of merit.
13. The majority of grounds for the Defendants' submissions that the indemnity period be limited to the period between 23 February 2022 and the date of judgment on 1 December 2022 were set out in para. 12 of the submissions filed on 28 January 2025. However, I agree with Mr Hurley's submission that those submissions fail to recognise the rationale for the making of the indemnity for costs order (as set out in the costs decision at [19] and [23]). Simply put, if Nikon's VT800,000 offer with each party bearing their own costs was accepted in February 2022, the proceeding would have come to an end. Instead, Nikon is still being put to costs, including by the assessment/taxation of costs hearing have not been finalised and the parties having to make the submissions resulting in today's decision.
14. The only rule from the CPR or case authority that the Defendants have cited related to the making of indemnity costs orders. However, this Court is not determining an appeal against the indemnity costs order in the [26](b) of the costs decision; it has been requested to clarify the period that the order in [26](b) of the costs decision is to apply. Accordingly, those submissions did not assist me.
15. The Defendants have not otherwise cited any rule from the CPR or case authority from this or any other jurisdiction to support their submissions. I reject their submissions because they defy the rationale for the indemnity costs order having been made.




16. The Deputy Master has made an order dated 13 June 2024 as to the rate at which standard costs will be taxed hence I make no comment as to the rate of standard costs. Any grievance with that order is a matter for appeal.

C. Result and Decision

17. For the reasons given, the indemnity costs order made at [26](b) of the costs decision includes all costs from that date onwards, including the costs of obtaining the clarification set out in today's decision and the costs of all attendances involving the costs assessment/taxation before the Deputy Master and the costs of determining that indemnity costs order, before the Deputy Master.

**DATED at Port Vila this 31<sup>st</sup> day of March 2025  
BY THE COURT**

  
Justice Viran Molisa Trief

