

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

Civil
Case No. 21/2178 CVL

BETWEEN: Tony Nicholls and Lily
Nicholls t/a Tahos Timber
Sales

Claimant

AND: Willy Hokten, David Nilanu,
Menek Tat, Reffin Octen,
Remi Wilson, Charley
Iapud, Christ Elaktali,
Eggar Elaktali, Tom James
and Others

Defendants

Date: 21 April 2022
Before: Justice G.A. Andrée Wiltens
Counsel: Mr J. Rongo for the Claimant
Mr Malantugun for the Defendants

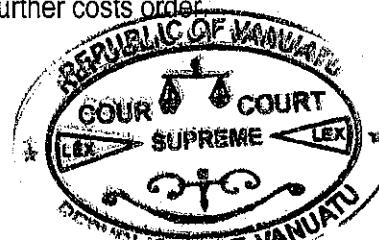
Judgment

A. Introduction

1. There is an application to stay the proceedings and suspend enforcement pending the outcome of an appeal.
2. The matter proceeded by way of telephone hearing, due to the alleged urgency, despite the unavailability of Mr Nalwang who had handled this matter for Mr Rongo to date.

B. Application

3. Mr Malantugun considered the Supreme Court judgment of 16 March 2022 to be based on a mere irregularity, which could and should have been addressed by way of a further costs order.



Accordingly, he considered the outcome of the litigation to date to be unfair and contrary to justice.

4. He expanded on his application orally, and also submitted that all matters to do with costs were for the Master to deal with.
5. He referred to the material that has been excluded as supporting his position.

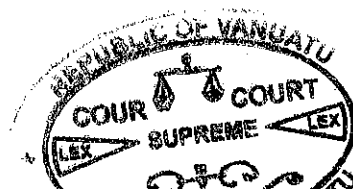
C. Discussion

6. The commentary in relation to Rule 13.4 of the Supreme Court Rules in A. A. Jenshel's "Civil Court Practice Vanuatu" which makes it plain that suspension is not automatic in the circumstance of an appeal having been filed. Something more needs to be established, such as:

- a demonstrable desire to not simply delay,
- where enforcement could ruin the enforcement debtor,
- the possibility that any funds paid over might be able to be recouped if the appeal is successful, or
- that the appeal would be rendered nugatory if suspension were not granted.

7. The history of this file demonstrates a desire on the part of the Defendants to delay.

- Although the Claim was filed on 5 July 2021, it was amended on 28 October 2021.
- By Minute of 28 October 2021, Mr Malantugun was directed to file and serve his Defence to the Amended Claim by 30 November 2021. He was to file and serve his evidence by 23 December 2021. Those directions were given ahead of a scheduled trial on 3 and 4 February 2022.
- By Minute of 3 February 2022, setting out what had occurred at the conference vacating the trial dates, it is recorded that (Having been prompted by the Court in the preceding week) on 2 February 2022 Mr Malantugun had presented a Defence, an application to add parties, sworn statements in support from Mr Kasso and Mr Hockten (his statement appended a proposed counter-claim), and a memorandum by Mr Malantugun. The explanation for the lateness of these filings varied – initially Mr Malantugun took the blame, but subsequently he ascribed the blame to difficulty in getting instructions.
- The same Minute further records that VT 50,000 wasted costs were imposed due to the trial dates having to be vacated. Those costs were ordered to be paid within 14 days, failing which the documents filed on 2 February 2022 would not be accepted into the Court's file.
- There was a further conference on 3 March 2022, at which Mr Nalwang reported the wasted costs had not been paid. Accordingly, the documents presented on 2



February 2022 were rejected. Mr Nalwang's application for summary judgment was deferred to prove service of the same and to allow Mr Malantugun to appear.

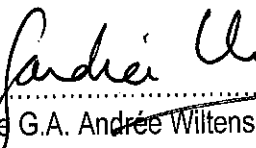
- The judgment of 16 March 2022 followed, in the absence of Mr Malantugun.

8. The appeal is likely to be heard in the Court of Appeal May session, running from 2 to 13 May 2022. Given the impact of Covid-19 on the Court system in Vanuatu presently, it is extremely unlikely that any enforcement steps or further litigation will occur prior to the Court of Appeal decision.
9. There remains an absence of any coherent explanation for the delays by the Defendants. In the circumstances, it is difficult to see this current application as anything but a further attempt to frustrate the Claimant's claims.

D. Result

10. The application for a stay of the proceedings and to suspend enforcement is dismissed.
11. There is no order as to costs, as Mr Nalwang has taken no steps in regard to the application.

Dated at Port Vila this 21st day of April 2022
BY THE COURT


Justice G.A. Andree Wiltens

