IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU

Civil Appeal Case No.11 of 1999

(Civil Jurisdiction)

BETWEEN: GUILLAUME LEINGKONE
Appellant

AND: TONY DEAMER
Respondent

Coram: Acting Chief Justice Vincent Lunabek
Mr. Justice J. Bruce Robertson
Mr. Justice John W. von Doussa
Mr. Justice Daniel Fatiaki
Mr. Justice Roger J. Coventry

Counsel: Mr. Sugden for the Appellant
Mr. Ozols for the Respondent

Hearing Date: 8th May 2000.

JUDGMENT

In September 1995 there was a disposal by tender of a number of vehicles at Public Works by the Board of Survey on behalf of the Government of the Republic of Vanuatu. One of the vehicles (Lot 21) was a Hyundai Sonata which previously had the registration No. G53. The highest bid came from Willie Kakae for VT165.000.

The auction was on an "*as is where is basis*" and it was a condition that the board would not accept any refund of monies paid or the return of the vehicles purchased. If a successful bidder failed to pay in full within 14

There was a hearing before the Senior Magistrate Jerry Boe in July 1996. In a reserved decision delivered on 20 August 1996 the Magistrate found:

1. That the appellant was the legal owner of the vehicle known as G53.
2. The respondent was within 1 day to grant the appellant access to the vehicle to assess damages.
3. The respondent was to return the said vehicle to the appellant immediately after damages had been assessed.

The question of the assessment of damages first came before the Magistrate's Court on the 8th of October 1996. It was adjourned and there was a further hearing on the 11th of October when some evidence was called.

By way of a schedule dated 22nd October 1996 the appellant contended that his loss was in excess of VT1.4 Million. There was a further hearing on 25th October.

The matter was then adjourned to various days until July 1997 by which stage the appellant was asserting that its losses were approximately VT2.8 Million according to a second schedule which had been prepared.

It appears that about this time Mr. Ozols became directly involved. Eventually the Magistrate was persuaded by consent to make an order that the question of damages be transferred for hearing in the Supreme Court on the basis that the amount of the claim was in excess of the Magistrate's Court jurisdictional limit of VT1 Million.

How that came about is a matter of serious argument as between counsel.

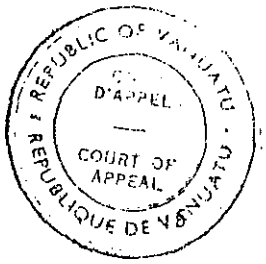
have the matter listed in Magistrate's Court for the assessment to take place the appellant requested a further adjournment pending the hearing of this appeal.

We have had the benefit (albeit late) of written submissions on both sides. We are of the view that the primary question which requires attention is whether the Magistrate having determined liability could transfer for hearing in the Supreme Court the issue of the assessment of damages.

Magistrate's Court (Civil Jurisdiction) Act CAP 130 deals with the jurisdiction of the Magistrate's Court. Under Section 1 (a) the Court has jurisdiction in respect of an amount claimed or where the value of the subject matter is not exceeding VT1 Million with an exception which is not relevant to this proceeding.

Section 3(2) provides that a person may relinquish part of the claim in order to bring a suit in the Magistrate's Court but shall not have a right to sue after in respect of the relinquished amount. We stress the word 'relinquish' which suggests some positive act or declaration on the part of the person relinquishing.

There is a power to hear a counter claim in the Magistrate's Court if the original claim was within the jurisdiction although the counter claim exceeds the jurisdictional limit. There is a discretion for the Magistrate to refer the counter claim to the Supreme Court for hearing and the Supreme Court may direct whether it hears the case or refers it back for hearing in the Magistrate's Court.



Both counsel agree that of particular importance in the present case is subsection 4 which provides:

> *"(1) Where the value of property or a claim cannot be precisely given a plaintiff may give an estimated value in his plaint.*
> *(2) When an estimated value is given in accordance with subsection (1) the court shall try the question of value as a preliminary issue.*
> *(3) When the court has heard the evidence and representations on value under subsection (2) it shall determine whether or not the claim comes within its jurisdiction and if it decides that it does not shall, subject to section 3 (2), refer the claim to the Supreme Court."*

Both Counsel before us argued that provision was sufficient to enable the Senior Magistrate to make the order which he did at their request to transfer the matter to the Supreme Court.

We do not agree. The Magistrate in this case was never asked to make a preliminary assessment of the value of the amount of the claim. A proceeding was commenced which concerned the ownership of a vehicle which had sold for VT165.000. There was an indication that there were additional claims in respect of trespass, conversion, and wrongful detention. But the matter proceeded to be heard and determined on the question of liability by the Magistrate acting within the jurisdiction of his Act.

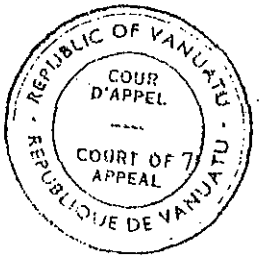
We agree that section 4 of CAP. 130 should be read liberally and to enable substantial justice to be done. But the clear words of the legislation cannot be ignored.

What the Magistrate has the power to do is determine whether or not "the claim" is within his jurisdiction. Subject to the ability of a plaintiff to relinquish part of its claim if the matter involve a greater sum than VT1 Million, he must refer it to the Supreme Court if it exceeds that sum. We do not accept that there is any power for a magistrate to determine liability then to refer the question of assessment of damage to the Supreme Court for determination.

The words are clear and unambiguous. There is no reason to go beyond them and no justification for ignoring them. We reject the submission that there could be a preliminary determination on this jurisdictional point after the question of liability had been determined. It is simply flying in the face of the plain words of the Act to advance such an argument.

Mr. Sugden sought assistance from Article 47(1) of the Constitution submitting that there was be no statutory provision relating to the situation which had emerged, and therefore the Court was able to determine that matter according to substantial justice. We reject that argument. In our assessment CAP 130 is plain and unequivocal on jurisdiction. The section creates no vacuum and there is no ambiguity. The jurisdiction of the Magistrate's Court is clear. A mechanism exists for a preliminary issue to deal with any uncertainty which might arise. There is no room for adopting this approach.

For the avoidance of doubt we should note in any event that bearing in mind the way these proceedings were commenced and run we are not satisfied that the substantial justice of the matter would in any event favour the position advanced by Mr. Sugden.



A further argument was advanced on the basis that it could be said that CAP. 130 and the Courts Act CAP. 122 did not expressly revoke CAP. 2 of Volume 1 of the Queen's Regulations and the Magistrate's Court Rules which had application between 30 July 1980 and the 30th April 1981.

An ingenious argument was advanced by Mr. Sugden as to the meaning of Section 35 and 36 of those regulations. First we should note that we are of the view that the Queen's Regulations have no application. The provision of CAP. 130 and CAP. 122 cover the area entirely.

Even if we had been persuaded that they had any application we are not satisfied that sections 35 and 36 of those Regulation are in fact capable of the interpretation which was advanced. We reject the proposition that there was ever a time when a Magistrate having determined liability could transfer to the superior court the duty and obligation to assess the damages. There may well have been a power in the superior court in respect of a proceeding in a lower court, but it was certainly not the other way around.

Notwithstanding the fact that the order was made by the Senior Magistrate by consent we are of the view that it was a nullity because there was no jurisdiction to make the order which the court was invited by both counsel to make.

Accordingly although for different reasons than those expressed by the learned Supreme Court Judge, we are of the view that the issue of the assessment of damages remains in the Magistrate's Court, and has never properly left that court. The conclusion we reach has the same practical effect and outcome as does the decision of the Supreme Court Judge.

It accordingly follows that the appeal must be dismissed and the order directing that the hearing be completed in the Magistrate's Court is confirmed with the consequence that the maximum sum which can be awarded is VT1 Million.

We are conscious that the Magistrate who commenced hearing this matter may not be immediately available. We understand that last year although he was on leave an opportunity existed for him to complete the hearing. We have no reason to believe that the same cannot be arranged again within the relatively near future. If not then another Magistrate will have to hear the question of the assessment of damage.

The most difficult aspect of this case is the issue of costs in respect of these proceedings. Both counsel before us argued that there should in any event be a cost order in their client's favour on the basis that what has occurred was entirely the responsibility of the other.

This is the sort of case which tends to bring the administration of justice into serious disrepute. Two men began arguing about who was entitled to the ownership of a vehicle for which each was prepared to pay in the vicinity of VT160.000.

On the face of the current schedule and the claims which are made for legal costs there is now a dispute between them about a sum of about VT5 Million. It is a disgrace that matters have escalated to this point because of course the matter is still not resolved and that there are further proceedings which will have to be heard in the Magistrate's Court unless

these parties jointly face the reality of their present position and reach a sensible commercial accommodation between themselves.

Assuming that they are unable or unwilling to do so the issue is who should pay the cost in respect of this appeal plus the costs incurred in the Supreme Court and the costs in connection with the various proceedings in the Magistrate's Court after liability was determined but once the question of the quantum of damage was an issue.

Mr. Ozols submits that his client should receive solicitor and clients costs in respect of all proceedings since October 1996. Mr. Sugden submits that his client should receive costs (he didn't suggest solicitor and client costs) because he says the idea of transfer to the Supreme Court was initiated by Mr. Ozols and he merely went along with it.

It is clear that it was Mr. Ozols who raised the fact that the schedules of loss were seeking sums in excess of VT1 Million. That was undoubtedly the case from October 1996 when the VT1.4 Million schedule emerged and the amounts simply increased each time there was a new document prepared and distributed.

Mr. Sugden says that because the case was in the Magistrate's Court he knew that however much he proved by way of loss there was a ceiling of VT1 Million on what his client could receive.

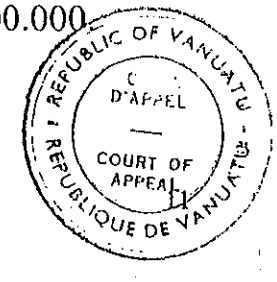
There is no doubt that in terms of Section 3(2) of CAP 130, the appellant had the ability to abandon anything over VT1 Million. The simple reality is that he did not do so. We can only presume that this matter having been raised by Mr. Ozols, the appellant was prepared to go along with the

transfer because it was seen as a mechanism whereby the appellant could gain a greater recovery then would otherwise have been the case in the Magistrate's Court. If that is what the appellant wanted he had to start entirely afresh in the Supreme Court subject to a liability for the costs incurred in the Magistrate's Court. The appellant could not take his liability finding with him to the Supreme Court for damages to be assessed. Whatever may have been in Mr. Sugden's mind and whatever conversations might have taken place between Mr. Sugden and Mr. Ozols there can be no doubt that the learned Magistrate was left with the clear impression on the basis of what counsels were (or were not) telling him that the appellant was seeking a sum by way of damages in excess of VT1 Million.

It therefore appears to us that inevitably Mr. Sugden and his client must bear responsibility for the costs which were incurred when counsel did not make it clear that the appellant could not have more than VT1 million. Mr. Sugden did not specifically abandon the claim above that amount, and he accordingly led the Magistrate to believe that he was seeking the greater sum.

Neither side is blameless in respect of this unhappy saga. The delay and frustration which have been occasioned by this can only be condemned in the strongest terms.

We are of the view that it is appropriate for the Court to make an assessment of reasonable contribution to be made by the appellant towards the respondent costs in respect of all aspects of matter since October 1996 and we determine that in a global sum of VT100.000.



The orders of the Court are accordingly:-

1. That the appeal be dismissed.
2. That the appellant pay an all-inclusive sum of costs of VT100.000 to the respondent.
3. The hearing of the substantive matter is to be concluded as a matter of urgency in the Magistrates Court.

DATED AT PORT-VILA, this ..12... DAY of MAY, 2000.

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V. LUNABEK , ACJ

.....
J. BRUCE ROBERTSON, J

.....
J. von DOUSSA, J

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D. FATIAKI, J

.....
R. COVENTRY, J

REPUBLIC OF VANUATU
COUR D'APPEL
COURT OF APPEAL
REPUBLIQUE DE VANUATU