

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**

(Appellate Jurisdiction)

**CIVIL APPEAL CASE No.18 OF 2009**

and

**CIVIL APPEAL CASE No.19 OF 2009**

**BETWEEN:** VANUATU COMMODITIES MARKETING  
BOARD

Appellant

**AND:** CLAIRES DORNIC trading as C.L. Agencies  
Respondent

**Coram:** Chief Justice Vincent Lunabek  
Justice John Mansfield  
John Mark O'Regan  
Justice Nevin Dawson  
Justice Daniel Fatiaki

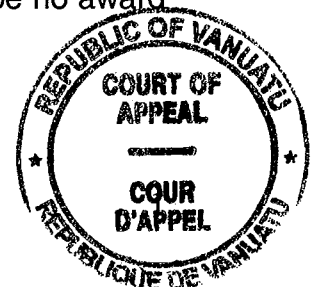
**Counsel:** Mr Jenshel and Ms Bulesa for the Appellant  
Mr Felix Laumae T. Kabini for the Respondent

**Date of hearing:** 26<sup>th</sup> October 2009

**Date of Judgment:** 30<sup>th</sup> October 2009

**COSTS JUDGMENT**

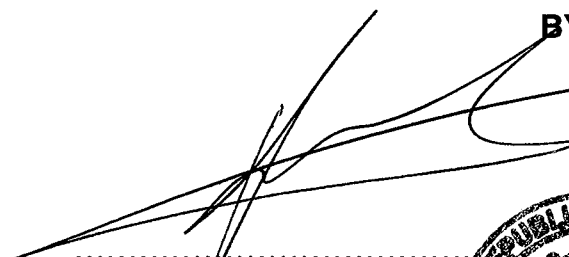
1. We delivered our judgment on these two appeals and the cross-appeal in CAC 18 earlier today. Although the Appellant was substantially successful, we expressed the preliminary view that it should pay costs, given its conduct of the Supreme Court proceedings.
2. We heard argument from counsel immediately after the delivery of our judgment. Both parties sought costs, though Mr Laumae accepted that any award in favour of the Respondent would need to be offset to some extent by an award to the Appellant in relation to the cross-appeal.
3. Having heard argument, we have concluded that there should be no award of costs to either party. Our reasons, in brief, are as follows:

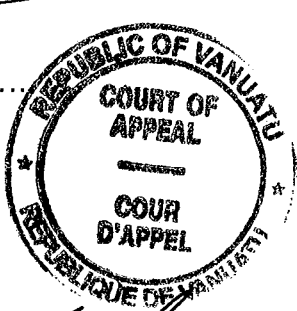



- (a) the Appellant will have to pay costs in the Supreme Court: we did not set aside the costs award against it in the default judgment of 9 June 2009 and costs have been reserved in the judgment of 30 September 2009. The costs awarded or to be awarded in the Supreme Court will reflect the Appellant's poor conduct in relation to the Supreme Court proceeding.
  - (b) the Appellant was largely successful in CAC 19 and the acceptance of its argument in that context substantially vindicated its position in CAC 18. It also succeeded on the cross-appeal.
  - (c) the Appellant made an offer which, if accepted, would have avoided the need for the appeal, but the terms of the offer represented almost no element of compromise and the outcome of the appeal was less favourable for it than the position reflected in the offer.
  - (d) the nature of the Respondent's claim was clarified only when counsel addressed this Court. If the claim had been clearly stated as a simple claim for payment of the subsidy, matters may have been able to be settled earlier.
4. We therefore order that costs should be where they fall in relation to the two appeals and the cross-appeal.


**DATED at Port-Vila this 30<sup>th</sup> day of October 2009**

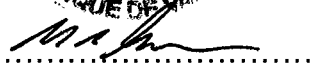
**BY THE COURT**


  
.....  
**Vincent LUNABEK CJ**

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

  
.....  
**John MANSFIELD J**

  
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**Mark O'REGAN J**

  
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**Nevin R. Dawson J**

  
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**Daniel FATIAKI J**