

IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil. Case No. 98 of 2012

BETWEEN: WILLIE ALBERT

Applicant

Claimant's lawyer:
Henzler Vira of PSO LAWYERS
Port Vila, Efate, Republic of
Vanuatu

**AND: JB & INDIGENOUS
SECURITY SERVICES**

Defendant

Defendant's lawyer:
Saling Stephen of SALING
STEPHEN & ASSOCIATES
Port Vila, Efate, Republic of
Vanuatu

Coram: Moses Peter

*Appearances: Saling Stephen for Defendant
No appearance for Claimant*

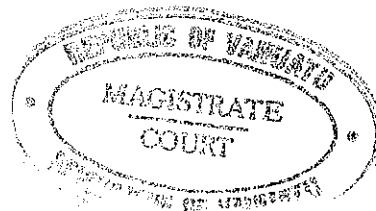
JUDGMENT

1. Claimant brought proceeding against defendant and sought damage for entitlements from his employment with defendant during and after his termination. Entitlements sought for were annual leave, outstanding salary, termination without notice and overtime worked.
2. Claim was supported by sworn statement of claimant who confirmed his employment with the claimant and alleged entitlements were not given in respect to his employment and termination.
3. Defendant filed response disputing the entire claim and asks the court to dismiss the claim in that the claimant is a casual worker and that his services were hired only on an hourly basis.
4. Pleading was completed and the matter is listed for trial hearing.
5. The trial hearing did not proceed because either one of the counsels did not appear on 16 March 2014 and 17th April 2014.



6. When the matter was again called for trial on 20 May 2014, claimant did not appear so counsel for claimant sought another adjournment on his behalf.
7. Court granted adjournment for trial having considered also claimant counsel's indication that the case file will be allocated to another counsel in his firm because of his personal connection with the defendant. A wasted cost of VT 5,000 was imposed on claimant to be paid by next trial date. Court informed parties that that was going to be the final adjournment for trial.
8. The matter was again called for trial on 13 June 2014, however, both counsels did not turn up. Court clerk send notices to both counsels for trial hearing on 17 July 2014.
9. Counsel for defendant appeared for trial with his client (defendant). Claimant and his counsel did not appear.
10. Counsel for defendant applied under rule 12.9 (2) (b) of CPR and sought for judgment in favour of his client. Reasons for the application are that:
 - He came prepared for trial with his client.
 - Claimant has not paid wasted cost ordered against him on 20 May 2014.
 - Court ruled that the adjournment of 20 June 2014 was final.
 - Claimant has failed to attend trial in many occasions.
11. According to rule 12.9 (2) (b) of CPR : *If a claimant does not attend when the trial starts:*
 - (a) *The court may adjourn the proceeding to a date it fixes; or*
 - (b) *The court may dismiss the claimant's claim and give judgment for the defendant; or*
 - (c) *The defendant, with permission of the court, may call evidence to establish that he or she is entitled to judgment under a counterclaim against the claimant.*

(3) *The court may give directions about further dealing with the proceeding and must consider the question of costs.*
12. The court is given a discretionary power under this Rule to either adjourn proceeding to another date it fixes or dismiss the claimant's claim and enter judgment for defendant. The court can also allow evidences to be called to establish that the party who is present for trial is entitled to judgment under a counter claim if any.
13. The court had been lenient on counsels and has adjourned trial hearing number of times. Claimant counsel sought adjournment for reallocation of case file to another lawyer in his firm, however, when the matter was listed for trial on 17 July 2014 a counsel from Public Solicitor did not turn up.
14. The overriding objective of the Rule as stipulated in Rule 1.2 (1) *The Overriding objective of these Rules is to enable the courts to deal with cases justly.*



(2) Dealing with cases justly includes, so far as practicable:

(a)..... (b)..... (c)..... (d) ensuring that the case is dealt with speedily and fairly. (e).....

15. This case is registered in the registry office of the Magistrates' Court on 20 July 2012. Pleading was completed around June 2013 and the matter was listed for trial just past mid 2013.
16. When lawyers file a case before the court they are required by the rules to ensure that the case is dealt with speedily and fairly. This case illuminates uncomplicated legal issues that can be ascertained in a short period of time.
17. It is almost two years and the case has not been disposed of because of the lawyers' failure to attend trial.
18. The court took into consideration the defence counsels application to dismiss the claim pursuant to Rule 12.9 (2) (b) and is satisfied thereof any hereby orders that:
 - Claimant's claim for annual leave, outstanding salary, termination without notice and overtime worked is dismissed in its entirety.
 - Cost for the defendant to be taxed failing agreement.

Dated at Port Vila this 17th day of July 2014

BY THE COURT



**MOSES PETER
Magistrate**

