

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
ON APPEAL FROM THE SENIOR
MAGISTRATE'S COURT

Civil Case No. 110 of 1998

(Civil Jurisdiction)

BETWEEN: SHANTILAL BROTHERS (FIJI)
LIMITED

Plaintiff

AND: THE ATTORNEY GENERAL

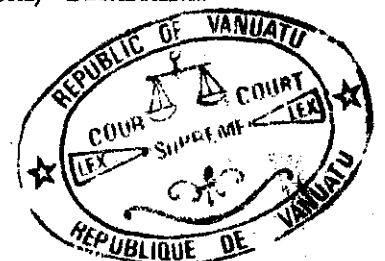
Defendant

Hudson & Co for the Plaintiff
The State Law Office for the Attorney General

JUDGEMENT

This was an appeal by the Appellant who was the Plaintiff in the original case No 123 of 1996. The appeal was over the decision of the magistrate of the 23rd of July 1998 in which the magistrate dismissed the appellant's case against the defendant, the Attorney General.

This matter it involves two separate proceedings. In the first proceeding was in the case, Shantilal Brothers (Fiji) Limited as plaintiff and Port Vila Fisheries Limited as defendant and in the second case, which is now the subject of this appeal, Shantilal

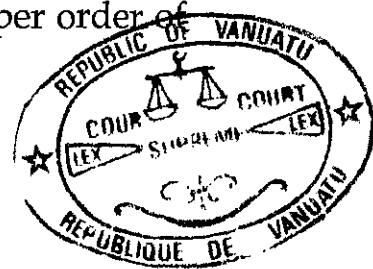


Brothers (Fiji) Limited as the plaintiff and the Attorney General as the defendant. In the case Shantilal Brothers (Fiji) Ltd. -v- Port Vila Fisheries, after a Writ of Summons was issued to the Defendant, the Court endorsed a consent order by the parties. No dates stated, but could be on the 14th February 1997. The Order of case No 123 of 1996 reads:

- 1- *That there be judgement for the Plaintiff in the sum of USD 2, 795.50*
- 2- *That the Defendant pay interest on the said sum of USD 2, 799.50 from the date of the Writ of Summons herein until judgement at the rate of 12% per annum.*
- 3- *That the Defendant pays the Plaintiff costs of the action to be taxed or agreed.*

There is no need for me to know the factual situation and the law on the case 123 of 1996 as the appeal was not on this order but on the said Consent Order of the 2nd of March 1998.

A warrant of execution was issued on the 25th July 1997 against Port Vila Fisheries for the amount of U.S.Dollars \$2795.50 as per order of the 14th February 1997.



When the Writ of Execution was to be executed on the property, the Defendant, the Attorney General (The Defendant in this appeal) entered into an agreement with the plaintiff, dated the 2nd March 1998 of which a consent agreement signed by both parties for settlement of the order of the 14th February 1997.

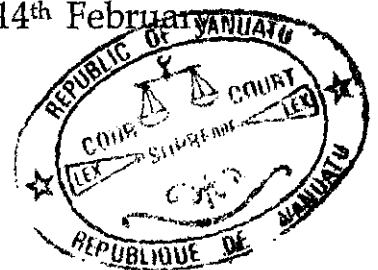
The consent order stipulate clearly in paragraph 1 of the agreement and state:

The Attorney General will pay, by monthly installment of 150 000 vt remitted to Shantilal Brothers' solicitor, Hudson & Co a total of VT 1.079.079 and interest at the rate of 12% per annum on the outstanding balance from time to time, interest accrue monthly on the last day of each month and to be added to the capital sum.

The purpose of such agreement was to facilitate paragraph (iii) of the consent agreement being that:

In consideration of (i) and (ii), above, Shantilal agrees to cease the execution procedure currently in place and consent to all hearings in respect of thereof being adjourned sine die for so long as the Attorney General comply with (i) and (ii).

The consent order as endorsed by the Court on the 14th February 1997 clearly states that:



Order:

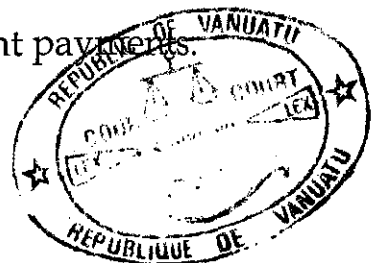
- i) *That there be judgement for the Plaintiff in the sum of USD 2 795.50*
- ii) *That the Defendant pay interest on the said sum of USD 2 795.50 from the date of the Writ of Summons herein until judgement at the rate of 12% per annum.*
- iii) *That the Defendant pays the Plaintiff cost of the action to be taxed or agreed.*

Upon the consent agreement of the 2nd of March 1998, both parties again further agreed that the matter for taxation will also be adjourned.

So in summary the situation of these cases are that:

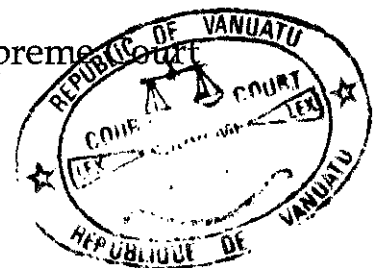
- 1- *The Magistrate Court made judgment order by consent on the 14th February 1997 against the Defendant.*
- 2- *That the Attorney General consented by consent agreement dated the 2nd March 1998 agrees to pay off the judgement sum plus costs.*
- 3- *Then the same day by consent by both the Attorney General and the Plaintiff consented that the enforcement plus taxation be adjourned sine die.*

There after the Attorney General made two - installment payments.



In the Appellant's counsel submission, which I accept, that installment payments were made. This is in my view was in settlement of the order of the 14th February 1997 in settlement of USD 2 795.50 and left was for the amount outstanding as for cost for taxation.

Before going to taxation I must bring into light that any claim that are to be brought in the Magistrate Court in Monetary term the amount therein must be converted into the local currency. This is quite very important as this be the basis for determining the jurisdiction of the Magistrate pursuant to section 1 of the Magistrate Court (Civil Jurisdiction) [CAP 130]. The use of USD as in this case or any other currencies then that foreign currency must be converted into vatu. The Magistrate's Court can only decide or make orders in the local currency and not others. It is important to note that as the value of different currencies around the world do not always have the same and equal corresponding values which will have effect on the jurisdiction of the court. Therefor, any claim in foreign currency not converted to the local currency or Vatu will be in breach of Section 1 of CAP 120 and should be struck out by the Magistrate for want of jurisdiction. In the Supreme Court this will not be the case due to the unlimited jurisdiction the Supreme Court has.



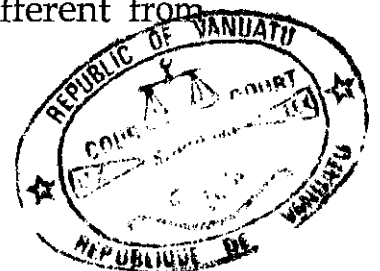
TAXATION

The consent order endorsed by the Court on the 14th February 1997 ordered cost of the action and to be taxed or agreed. Again this was not executed due to the consent agreement endorsed by the Appellant and the Respondent. No evidence to say that taxation actually took place in accordance with the order.

Paragraph 1 of the agreement of the 2nd Of March 1998 should separate the amount as ordered by the Magistrate Court on the 14th February 1997 as to legal cost in accordance with the terms of the court order by consent which expressly separates the three orders.

Procedure on hearing of civil case

In this matter a Writ of Summons was properly filed for hearing before the Magistrate's Court. If it is than the procedure provided for in Order 30 of the Civil Procedure Rules, which states clearly that after the Plaintiff has presented his/her case then the defendant shall present his/her case. Than the Defendant can either call evidence or not. Order 30 simply state that in civil proceeding both the Plaintiff and the Defendant have a right to be heard and only after hearing evidence from both the Plaintiff and the Defendant and their witnesses then the Court can make a decision. The appellant presses that this right was not afforded in presenting his case, as the plaintiff, before the court in the said matter reaches the decision. The procedure in civil cases is slightly different from

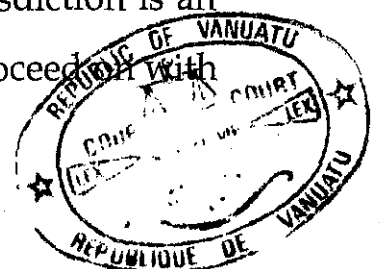


criminal proceeding where the Court in criminal matters is given the power to rule in law at the close of the Prosecution case whether the Defendant has a case to answer or not.

The Appellant in this matter was the Plaintiff in the Writ of Summons filed in the Magistrate's Court on the 4th June 1998 in case No. 72 of 1998 and by law he has right to put his case by evidence to prove the claim and be given the opportunity to make submissions. Not permitting the Plaintiff the right to present his case before a decision is made is a denial of a right to be heard and it is a good ground for an appeal to be successful. Further this will also amount to procedural unfairness and further defeats the purpose of Article 47 of the Constitution.


The Plaintiff has not been given the right to present his case before the Magistrate reached his decision and it is only proper that he be allowed to exercise that right to present his case before a decision is reached by the Court. In coming to what I have just stated the court is not prepared to accept the claims by the Respondent's counsel in dismissing the appeal for reasons as stated in his statement of response but for the matter to go back for re-hearing.

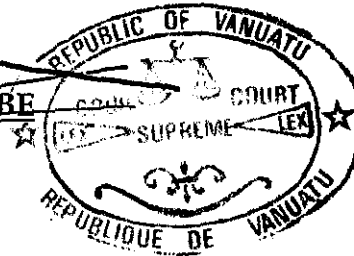
I, therefore, allow the appeal, quash the decision of the 23rd July 1998, and remit the matter back to the Senior Magistrate Court to properly hear the matter afresh. In the event that jurisdiction is an issue than the Magistrate must decide that before it proceed



the matter but not just dismissing the matter without giving the opportunity to the Plaintiff to further pursue his interest over the matter. I need not give any direction to the Magistrate as of what the court shall do, but to treat the matter as a matter for re-hearing before another magistrate in the Magistrate Court just like any other Magistrate Court's matter. Cost of this proceeding will be dealt with at a date to be fixed.

DATED AT PORT VILA this 30th day of April 1999.


R. MARUM MBE
Judge



Mr. Robert Sugden for Hudson & Co

Mr. George Boar for the State Law Office