

19/06/00
**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**

Civil Case No. 33 of 2000

(Civil Jurisdiction)

BETWEEN: PUBLIC SERVICE COMMISSION

Appellant

AND: ANNIES STEPHEN

Respondent

Mr. Tom on behalf of the Appellant

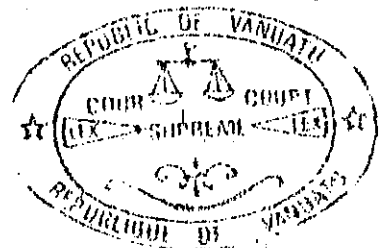
Mr. Saling Stephen on behalf of the Respondent

DECISION

This was an appeal by the Appellant on cost only as awarded by the Magistrate court at 100,000vt against the Appellant/Defendant. The grounds of appeal as stated out in the Notice of Appeal. However, ground (2) was no longer a matter for deliberation as the judgment was satisfied and the said vehicle was released already. And therefore stood alone is whether the magistrate was wrong in ordering cost.

Law.

The magistrate has jurisdiction under order 32 to entertain any matter for cost summarily or referred cost for taxation. In this case it appear to be that the Magistrate proceed in dealing with the matter summarily rather than referring it for taxation as appear in the judgment of the court of the 23rd March 2000. And that is an exercise of discretion. And a party dissatisfied with such exercise of discretion can appeal to the Supreme Court. So in such case the Magistrate had that power to hear summarily any matter on cost. And this court can only interfere with such discretion of the Magistrate if he has wrongly exercise his discretion or better put in the case, Alltrans Express Limited -v- C.V. A Holdings Ltd (1984) 1 WLR 394 as applied in the Mark James Hurley -v- The law council of the Republic of Vanuatu and I quote:



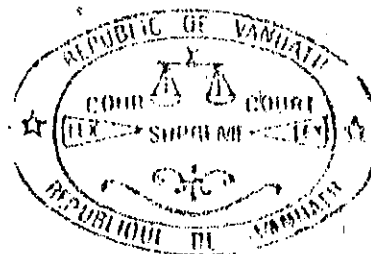
"Before court can interfere it must be shown that the judge has either erred in the principle in his approach or has left out of account, or taken into account, some feature that he should or should not, have considered or that his decision is wholly wrong"

The respondent advances that he started his private practice as from 3rd March 2000 and only claimed on cost incurred over the case as of 3rd March 2000 and not before that as he was still employed by the Government of the Republic of Vanuatu. And therefore this court will accept that he was not entitle for cost before the 3rd of March 2000. But after the 3rd March 2000 he will be entitle to claim cost just like any other practicing lawyers. He advances further by tendering his memorandum of cots totaling VT172,000 that the amount he applied for on the 27th March 2000 before the Magistrate's court and was reduced by the Magistrate to VT100,000. And advance too that the Appellant counsel had no objection to such cost to be awarded at that time.

Counsel for the Appellant in response that he was not the Appellant counsels in the case at that time. And further advance that the Respondent's counsel was informed that the matter was settled already which, the Respondent's counsel denied that he was informed, and if he was informed he would not attend.

The appellant relied on the submission in support of this appeal. In the alternative the respondent's counsel produced his memorandum of cost and disbursement, not only that, but referred to judgment of the Magistrate by judgment dated 23rd March 2000 in awarding cost to the Respondent. And in doing so I am satisfied that the magistrate has exercise his discretion in accordance with order 32 of the Magistrate's Court Civil Rule of 1976 in disposing of costs summarily at that time and proper in accordance with his jurisdiction.

In the Mark James Hurley V the Law Council of the Republic of Vanuatu case only decided on the 17th of July 2000 and cost in this case was decided on the 23rd of March 2000. And only cost matters decided after the 17th of July will be subject to that decision otherwise the court if rule to apply that decision than it will open up all other cost cases decided before the 17th of July.



The Appellant counsel advances further on order 77 r.15 of the white book . I have stated earlier as the amount has been settled and there is no longer any matter on execution of the property. However, in my view order 77 r.15 is not a immunity rule. To start order 45 of the Blue Book plainly stated that the Appellant/Defendant just like any other defendant have to comply with final orders of the court whether they like it or not. Order 77 r.15 of the white book should read to mean that the Appellant/Defendant in this case is always capable to pay its debt in accordance with court orders when ordered by the court. And it is not necessary at all for the court to issue execution orders against the state to recoup her properties. However, if not paid, then the Appellant/Defendant, in this case, be treated just like any other ordinary defendant with orders unsatisfied against them for the due process of the law to be applicable to them. And for all these reasons I therefore now dismissed this Appeal with cost to the Respondent to be taxed if not agreed.

Dated at Port Vila this, 7th day of August 2000.


R. MARUM MBE
JUDGE

