

**IN THE SUPREME COURT**  
**OF THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case No.177 of 2003

**BETWEEN:** CHRISTOPHE TARI, EDWARD  
TAMBISARI, G. TILDENA MALAPA,  
GRIFFITH HARRISON, RICHARD  
W. LEONA, SANTUS WARI. T.  
SALA VUROBARAVU

Claimants

**AND:** THE GOVERNMENT OF THE  
REPUBLIC OF VANUATU

Defendant



Coram: Justice P. I. Treston

Mr. Tari or Mr. Bani for Claimants

Ms. Molisa for Defendant

Date of Hearing: 17 May 2005

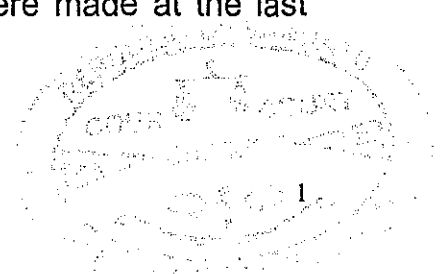
Date of Reasons: 17 May 2005

**REASONS FOR JUDGMENT**

This was a claim by various medical doctors for damages for unpaid on-call allowances, interests and costs.

After many conferences and orders the matter was eventually allocated a hearing for 17 May 2005. The orders setting the hearing and time-tabling for filing of documents and submissions were made at the last conference on 30 March 2005 as follows: -

A handwritten signature in dark ink, appearing to be a stylized name.



~~Mr. Bani for Claimants~~

~~Ms. Melisa for Defendant~~

**ORDERS**

- (1) *The Defendant must file and serve sworn statements by 3pm on 6 April 2005.*
- (2) *The Claimants must file and serve sworn statements in reply by 3pm on 13 April 2005.*
- (3) *The Claimants must file and serve written submissions with copy authorities by 3pm on 20 April 2005.*
- (4) *The Defendant must file and serve written submissions with copy authorities by 3pm on 27 April 2005.*
- (5) *A hearing is set for 9am on 17 May 2005.*

**Dated at Port Vila, this 30<sup>th</sup> day of March 2005**

**BY THE COURT**

**P. I. TRESTON**

**Judge**

**NOTE:** *The parties are reminded to pay the trial fees within 7 days of the date of this Order or be subject to a 50% increase."*

In accordance with the Orders, the Defendants filed and served a sworn statement at 4pm on 8 April 2005. Although that was two days late, the Claimants failed to file and serve sworn statements in reply as

required by 3pm on 13 April 2005 and in fact did not file any such statements in reply by the date of the hearing.

In addition, the Claimants failed to file and serve written submissions with copy authorities by 3pm on 20 April 2005. Certainly the Defendant likewise did not file and serve written submissions because it was awaiting the submissions to be filed by the Claimants.

As can be seen above, a hearing was set for 9am on 17 May 2005.

The Defendant paid its trial fee, the Claimants failed not only to pay the trial fee by 14 days before the trial as required by the Rules but did not pay the trial fee at all.

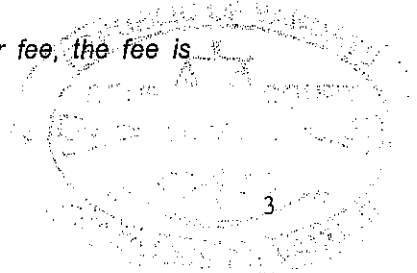
Mr. Bani did not appear in person at the hearing on 17 May 2005 but sent an unrobed Mr. Tari to appear on his behalf to apply for an adjournment. The reason given for the application was that Mr. Bani had another commitment.

It was clear that the Claimants totally failed to comply with the Orders of 30 March 2005 and they did not pay the trial fees.

Rule 4.12 (3) of the Civil Procedure Rules No. 49 of 2002 covers the question of fees as follows: -

*"The following provisions apply to the payment of fees:*

- (a) *the fees are payable to an officer of the court; and*
- (b) *a filing fee is payable at the time of filing; and*
- (c) *if Schedule 1 fixes another time for paying another fee, the fee is payable at that time; and*



- (d) *for a filing fee, the officer must write the amount of the fee, and the date and time it was paid, on the document; and*
- (e) *the fee for setting a proceeding down for trial ("trial fee") in the Supreme Court is payable by each party equally, unless the judge orders otherwise; and*
- (f) *if a party fails to pay his or her trial fee by 14 days before the trial date, the judge may;*
  - (i) *order that the party is not to participate in the trial; or*
  - (ii) *make any other appropriate order; and*
- (g) *of a trial is adjourned part heard, the judge may make an order about the proportion of any further trial fees to be paid by each party; and*
- (h) *no fee is refundable."*

In the context that I have described above, bearing in mind the recent statement by the Court of Appeal at the last Court of Appeal sessions that future breaches of court orders requiring filing of case books submissions and like would result in appeals being dismissed, I determined that the appropriate course in this case was to order that the Claimant not participate in the trial in accordance with Rule 4.12 (3) (f) (i) (above). That being the case the appropriate order to make was that judgment should be entered on behalf of the Defendant and that in accordance with the sworn statement of George Pakoasongi of 8 April 2005, judgment should be that "applicable overtime" rate referred to in the schedules for on call allowances in the Public Service Manual 2002 means 25% of the officer's base hourly rate. The Court understands from the sworn statements that that amount has already been paid to the Claimants.

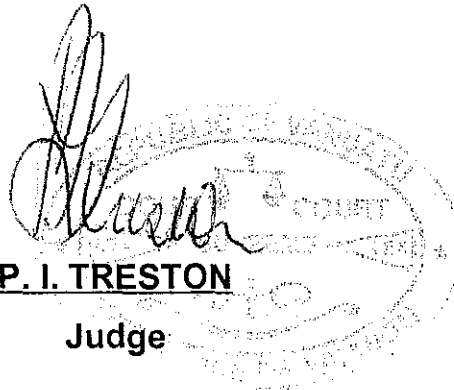


Accordingly, I enter judgment for the Defendant against the Claimants and make the following Orders: -

1. The Claimants having failed to pay their trial fee are ordered not to participate in the trial.
2. Judgment is entered for the Defendant against the Claimants.
3. The Claimant must pay costs to the Defendant on a standard basis as agreed or as determined by the Court.
4. In the absence of the agreement as to costs the Defendant may apply for a hearing to determine such costs.

**Dated AT PORT VILA, this 17<sup>th</sup> day of May 2005**

**BY THE COURT**



**P. I. TRESTON**  
Judge