

BETWEEN: **Mr ROBERT M. BOHN**
Owner of Western Pacific Marine
P.O.Box 786, Port-Vila
Claimant

AND: **THE GOVERNMENT OF THE
REPUBLIC OF VANUATU**
SPR 9053, Port-Vila
Defendant

*Mr Robert Sugden for the Claimant
Mr Ari Jenschel for the Defendant*

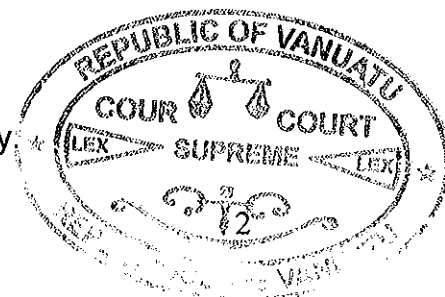
**RULING ON APPLICATION
FOR ADJOURNMENT**

This is an application for adjournment of the trial. The background is as follows:

- Claimant filed an Amended Claim on 12 June 2008.
- The Defendant filed an Amended Defence on 11 February 2009.
- The Claimant filed a reply to the Amended Defence on 23 February 2009.
- The Claimant was represented by Mr Nigel Morrison.
- Mr Nigel Morrison ceased to act for the Claimant on 25 February 2009 as the Defendant indicated to him he will be called as a witness by the Defendant.
- Mr Edward Nalyal begun to act for the Claimant on 26 February 2009.
- Various directions and orders were made since then in the case management of the proceedings.
- The claim is listed for 3 days trial hearing from 25, 26 and 29 June 2009.
- On 23 June 2009, objections to parts of statements were heard and respective ruling on those objections were made.
- On 22 June 2009, the Defendant filed a sworn statement of Sahe in support of the Defence referring to documents attached to Simon Athy statements.



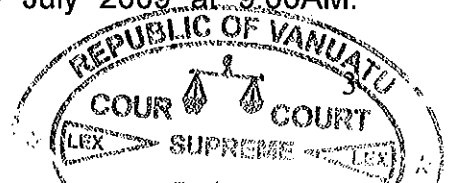
- Mr Nalyal, Counsel for the Claimant objected to the lateness of the statement. The Court allows the Claimant to file and serve sworn statements in response. The statements referred to other 58 Documents never disclosed.
- The trial begins on 25 June 2009. The Claimant's counsel, Mr Edward Nalyal opened the Claimant's case. The Claimant, Robert Bohn, gave his evidence in chief. He was then cross-examined by the Defendant. He was substantially cross-examined.
- On 26 June 2009, the Claimant sacked his lawyer. Mr Nalyal filed a Notice of Ceasing to Act.
- The Claimant was granted an adjournment of his trial to find himself lawyer by Monday 29 June 2009 or to progress with his trial in person.
- Mr Robert Sugden filed a Notice to begin to act for the Claimant on 29 June 2009.
- On 29 June 2009, Mr Sugden filed the application for adjournment seeking for:
 1. The trial of the proceedings to be adjourned.
 2. That the Defendant of the file or files in the Finance Department that were kept in relation to payment request out of the MPIF Fund.
 3. That the Claimant has fourteen (14) days to inspect the documents referred to in paragraph 2 of the List of Documents filed on 22 June 2009.
 4. That the costs of and incidental to this Application, and the adjournment be paid by the Defendant.
- The grounds of the Application are contained in the Application. The Claimant takes issue with the following:
 1. Mr Sahe's sworn statement dated 22 June 2009. It makes reference to Documents not disclosed to the Claimant and inspect by the Claimant.
 2. The sworn List of Documents of Simon Athy sworn 22 June 2009. It does not disclose the files referred to by Mr Sahe but it does give disclosure of a number of documents not previously disclosed. The Claimant wishes to inspect those documents.
 3. No sworn statement filed by Mr Nigel Morrison.
 4. Paragraph 4 of the sworn statement of Simeon Athy



5. Particulars required for Paragraph 3(d) and Paragraph 6(b) of the Amended Defence.

Upon hearing submissions and arguments from both counsel, the Court makes the following Ruling:

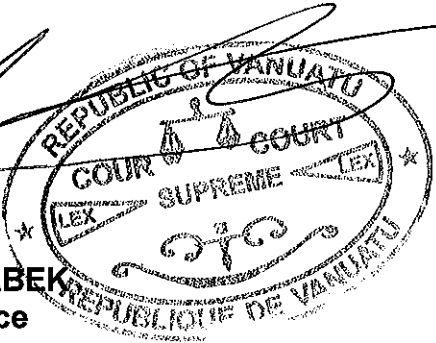
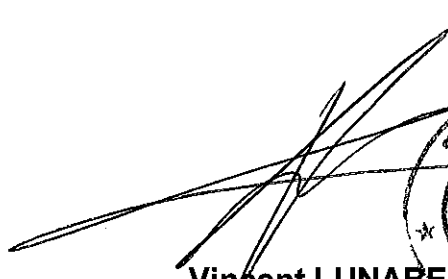
1. The trial of the proceedings is shortly adjourned.
2. Paragraph 4 of the sworn statement of Simeon Athy is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement is made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. It is an exception of the Hearsay Rule.
3. The Court is informed that Mr Nigel Morrison, as former counsel for the Claimant, is reluctant to depose evidence against that person. If the Defendant wishes to call Mr Morrison, the Defendant can do so by issuing a Summons to Give Evidence orally which had been already issued in this case. This is an exception to the Rule that evidence in chief be given by sworn statement. The exception is justified by the circumstance.
4. The Defendant to disclose to the Claimant, the sworn List of Documents of Simeon Athy sworn 22 June 2009 by 3 days and the Defendant to inspect within 7 days from today's date.
5. The Defendant to file and serve particulars of the Amended Defence as contained in the Minute of Proposed Amendments to Paragraphs 3 and 6 of the Amended Defence by 3 days from today's date.
6. The Claimant to file and serve Amended Claim by 7 days from today's date and must pay the wasted costs of the Defendant.
7. The trial is to resume on 23, 27, 28 and 29 July 2009 at 9.00AM.



8. The costs of this application are for the Defendant to be agreed or taxed.

DATED at Port-Vila this 30th day of June 2009

BY THE COURT



Vincent LUNABEK
Chief Justice

The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it reads "COUR SUPREME" and "COURT SUPREME" with a scale of justice. The word "LEX" is written on either side of the scale. There are two stars on the left and right sides of the seal.