

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

(Civil Jurisdiction)

Civil Case No. 85 of 1999

BETWEEN: ROBB EVANS
Claimant

AND: EUROPEAN BANK LIMITED
First Defendant

AND: BENFORD LIMITED
Second Defendant

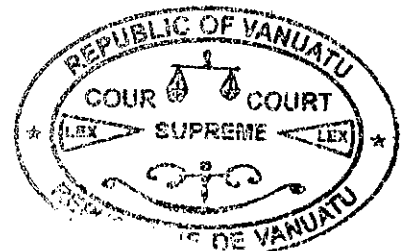
Date of Judgment: 15 February 2016

By: Justice Stephen Harrop

*Distribution: Mark Hurley for the Claimant
Garry Blake for the First Defendant*

RESERVED JUDGMENT AS TO COSTS

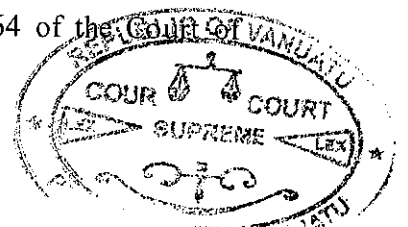
1. At the conclusion of my reserved judgment of 9 February 2015, I noted at paragraph 56 that the first defendant was entitled to costs on the applications which led to that judgment but I reserved those costs pending further submissions of counsel on the way matters would then proceed.
2. Subsequently as confirmed in my Minute of 27 February 2015 I recalled that aspect of my judgment and reserved the question of costs on the applications.
3. Eventually, after failing to reach agreement, on 27 November 2015 and 1 February 2016 respectively, Mr Hurley and Mr Blake filed memoranda regarding the costs issue.



4. Mr Hurley submits that although his client was unsuccessful in relation to the arguments which led to the judgment, the Court has a wide discretion in deciding whether and how to award costs and that in all the circumstances there should either by no order for costs or a direction that each party bear its own costs. The reason for Mr Hurley's primary submission is that the need for the judgment arose from ambiguity in relation to the meaning of the terms of paragraph 64 of the Court of Appeal's judgment of 14 November 2014 in *PP v. Evans* [2014] VUCA 38. He submits the claimant should not be penalised by an order for costs relating to the ambiguity which required detailed judicial intervention to be determined.
5. In the alternative Mr Hurley submits that any costs should be awarded on the usual standard basis there being no justification for costs to be awarded at any higher level and certainly not on an indemnity basis.
6. Mr Blake in response notes that the claimant was entirely unsuccessful in its application and submits that the Court should apply the general rule stated in rule 15.1 (2) that costs should be awarded against it as the unsuccessful party. He submits there is no reason why the general rule of costs following the event should not apply.
7. Mr Blake also submits that costs should be awarded at the rate of Vt 25,000 per hour. However, he notes that the first defendant maintains its claim that costs in the substantive proceedings should be awarded on an indemnity basis in relation to the proceedings as a whole.
8. As a result Mr Blake submits that the appropriate course is to order costs against the claimant on its application on the same basis as the costs ordered in the substantive proceedings, namely at Vt 25,000 per hour but subject to any subsequent determination that costs should be on a full indemnity basis, if and when that application is argued.

Discussion and Decision

9. While I accept Mr Hurley's point that the reason why the reserved judgment of 9 February 2015 was necessary was the ambiguity in paragraph 64 of the

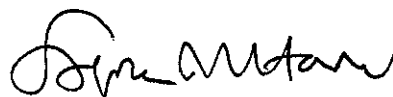


Appeal's judgment, I do not accept that means that costs should not follow the event. The subject matter of the argument in this case just happened to be the meaning of paragraph 64. The argument however could have been about anything. Strong positions were taken and detailed submissions were made. Mr Hurley could have conceded Mr Blake was correct but, as was his client's right, he argued otherwise and sought a ruling. Ultimately, the submissions of Mr Blake were upheld and those of Mr Hurley were rejected. Costs must be awarded in favour of the first defendant and against the claimant in these circumstances, in accordance with the general rule as set out in rule 15.1 (2). The Court certainly has the discretion to take a different approach but in my view there is no reason to do so here.

10. As to quantum, I accept Mr Blake's submission as to the appropriate order. The claimant's unsuccessful application of 26 November 2014 which the reserved judgment determined was one of many contested arguments in the course of this lengthy proceeding. I see no reason why the costs relating to it should be treated any differently than costs awarded in connection with other parts of the case.
11. For these reasons I award costs in favour of the first defendant and against the claimant in connection with the reserved judgment of 9 February 2015 on the same basis as the costs ordered in the substantive proceedings namely at the rate of Vt 25,000 per hour. However, in the event there is a subsequent determination that costs should be on a full indemnity basis, the award of costs in connection with this judgment will need to be revised accordingly.
12. If the parties cannot agree on the appropriate award of costs at the Vt 25,000 per hour rate then the first defendant may apply to the Master for taxation.

Dated at Port Vila this 15th day of February 2016

BY THE COURT



SM HARROP
Judge

