

IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Civil  
Case No. 14/262 SC/CIVL

**BETWEEN:** Etienne Robert  
Claimant

**AND:** Dinh G. Shipping  
Defendant

*Date of Hearing:* 4<sup>th</sup> September 2020  
*Date of Decision:* 26<sup>th</sup> November 2020

*Before:* Justice Oliver A. Saksak

*In Attendance:* Steven Garae Junior for Claimant  
Robin Tom Kapapa for Defendant

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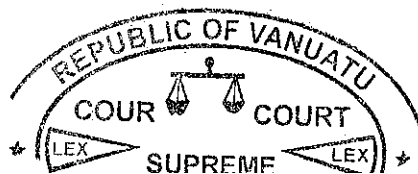
## DECISION

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1. The strike out application filed by the defendant on 14<sup>th</sup> August 2020 is hereby dismissed with costs.

### Reasons

2. The applicant alleged the claimant was paid his entitlements, and that Dinh G. Shipping Ltd is no longer an existing business in Vanuatu.
3. The claimant's claim is not statute-barred. He filed his claim within the time allowed by law. The defendant's defence and grounds on this issue cannot stand.
4. As for his entitlement to overtime, the defendant's defence is that this has been paid. That is not correct. Gilbert Dinh's sworn statement filed on 14 August 2020 is clear evidence that overtime at VT213 per hour has nil payment. This defence is therefore not sustainable.
5. As for the claim the company no longer operates, there is no evidence in support of it. There is no document from the Vanuatu Financial Services Commission in evidence to support this allegation. The defendant alleged it, he has the onus to prove it.



6. It is a fact that Dinh G. Shipping existed in 2006. In 22 April 2014 the Department of Labour wrote to Serges Laloyer as Manager of Dinh Shipping about the claimants' entitlement to overtime payments and seeking payment of VT1,028,160. This amount was calculated at 170VT x 4 hours x 1.75 x 24 days x 12 months x 3 years. That letter fell on deaf ears. The company or the business was in existence then when the letter was written. It cannot now be a defence that the company or business does not operate or exist. That is immaterial. Gilbert Dinh as user of the Business Name must now be personally liable to make good this judgment.
7. The claimant has by his sworn statement dated 21 September 2017 proven his claims for overtime entitlements. He is entitled to judgment.
8. The defendant's defence and application are therefore dismissed with costs to the claimant. Costs shall be paid on the standard basis as agreed or taxed.
9. The claimant was granted judgment in his favour on 26<sup>th</sup> July 2019 for the total amount of VT1,130,848. That judgment is affirmed.
10. As the matter has long been outstanding and the delay is attributed to the defendant, I now order that there be interest on the principal debt of VT1,072,848 at 5% per annum from 21 September 2017 being the filing date of the amended claim, until payment is made.
11. I further order that this judgment be served on Mr Dinh to pay the judgment sum and interest within 28 days from the date of this judgment.

**DATED at Luganville, Santo this 26<sup>th</sup> day of November, 2020.**

**BY THE COURT**

