

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil jurisdiction)

Civil
Case No. 18/1604 SC/CIVIL

BETWEEN: **Willie Siri**
Claimant

AND: **David Joseph t/a DJ Auto Repair
and Septic Tank Cleaning**
Defendant

Date of Hearing: 27 April 2020
Before: Justice G.A. Andrée Wiltens
Counsel: Mr L. Napuati for the Claimant
Mr J. Tari for the Defendant
Date of Decision: 7 May 2020

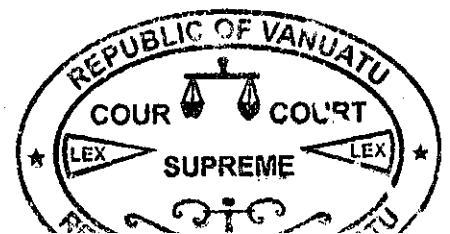
JUDGMENT

A. Introduction

1. This is a dispute regarding the alleged failure to repair a bus, and the financial implications that flowed from that. The Claim is entirely disputed.
2. Counsel did not wish to cross-examine any of the witnesses, and were content to rely on their written submissions already filed. Accordingly, this matter was dealt with "on the papers". This case demonstrates the dangers in adopting such an approach.

B. Evidence

3. In 2016, Mr Siri owned a Hyundai bus Registration No. B5808. Mr Siri wanted some repairs and painting done to the bodywork, and approached Mr Joseph who was in that line of work to get a quotation.



4. The quotation DJ-0259026 is on letterhead and dated 12 September 2016. It records a total cost of VT 270,000, being VT 110,000 for "panel and painting labor" and VT 160,000 for "material & paint, panel and painting labor".
5. Mr Siri maintains the agreement he came to with Mr Joseph was that he would pay half the quoted amount in advance, pay the balance on completion of the work, and that the work would be done within 3 months.
6. Despite that, Mr Siri stated that he paid VT 240,000 prior to commencement of the work, at some time in September 2016. The expectation was that the work would be completed before the end of December 2016.
7. At some time Mr Siri gave a second bus to Mr Joseph which he could plunder for parts to repair B5808.
8. When Mr Siri went to check on progress in December 2016, he discovered his bus no longer at Mr Joseph's place of work, but at Mr Joseph's home at Half Road Erakor. Mr Siri described the bus as being "fully wrecked", with the engine, wheels and seats removed. When asked about this, Mr Joseph is alleged to have explained that his men were working on the engine.
9. On 16 June 2017, Mr Siri sought a letter from Mr Joseph confirming the condition of his bus. Mr Joseph provided a letter addressed to whom it may concern in the following terms:

Re: HUYNDAI BUS REG #

This letter is to certify that Motor Vehicle mentioned above belonging to Mr Siri Willy was brought in to my workshop to be repaired and repainted.

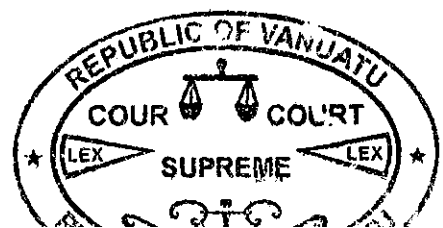
The owner sorted out the total cost of repairs which totalled up to VT 240,000. The vehicle is still under repair as there is still more mechanical work to be undertaken.

For more information, please contact me 7745086 or 25086.

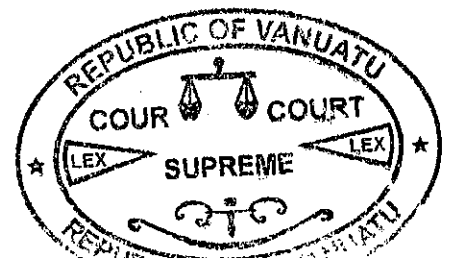
Yours faithfully,

David Joseph

10. A few days later Mr Siri went to inspect the vehicle but could not locate it at Mr Joseph's house or his garage. He considered the bus to be a complete loss to him.
11. Mr Siri stated he had recently purchased the bus from a person by the name of Edward for VT 800,000. It had been a fully functioning vehicle earning income prior to being given to Mr Joseph for the repairs to be undertaken.
12. Mr Siri accordingly sought recompense from Mr Joseph, but the letter of demand sent by his lawyers elicited no response. He therefore lodged the present Claim, seeking the value of the bus (VT 800,000), damages for loss of income between December 2016 to June 2018 at VT 10,000 per day (VT 5,700,000), exemplary damages and costs. I note that in his written submissions, Mr Napuati has relinquished the Claim for exemplary damages.



13. Mr Siri provided a second sworn statement in response to that of Mr Joseph in which he stressed that no wiring or mechanical work was required or agreed to be done to B5808. He also repeated that a second bus had been provided to Mr Joseph "to cut". He denied all knowledge of a quotation dated 14 July 2017 in the amount of VT 495,000.
14. The sworn statements of Toara Siri and Nick Siri, filed in support of the Claim, are of little value. Both claim to have driven B5808 to Mr Joseph's garage to commence the work, which is of course not possible. Further, their statements as to the next 6 paragraphs are identical. Each says, in summary, that
- the bus was left for panel and painting, not wiring and mechanical;
 - a second bus was provided to Mr Joseph "to cut";
 - there were numerous visits to Mr Joseph's garage, but Mr Joseph did not complete the work;
 - Mr Joseph has not demonstrated doing the panelling work, even after being paid and getting a second bus "to cut the parts" he needed;
 - He is sure Mr Joseph is misleading the Court; and
 - Mr Joseph needs to confirm to the Court how Mr Joseph spent the money and why the bus was not repaired.
15. Mr Joseph, in his sworn statement, accepts that he provided a quotation for panel beating in the amount of VT 270,000. He stated that other internal problems with the bus, such as the wiring, were later discovered. Mr Joseph stated that when Mr Siri came to the garage from time to time to check on progress, Mr Joseph advised Mt Siri of the wiring and other problems and that further payment would be required.
16. Mr Joseph stated that when the panel beating work had been completed, he advised Mr Siri that further payment was required in order for the bus to be able to operate. He stated that Mr Siri did not accept that and would not pay any more. Mr Joseph stated that he offered to give Mr Siri back his VT 270,000 and that Mr Siri could then take his bus and go elsewhere, but this only prompted Mr Siri to seek legal advice. That resulted in a letter of demand from Mr Siri's lawyers. Mr Joseph replied to that letter the next day as is recorded in paragraph 9.
17. On 22 June 2017, Mr Joseph again wrote to Mr Napuati, strongly refuting the allegations against him. He confirmed the initial inspection of the bus resulted in the quotation for VT 270,000 for the repairs. He confirmed that Mr Siri had paid VT 240,000 towards, and suggested that the balance remained owing. He confirmed the agreement was for full body repair, material, paint, panel and repainting labour.
18. Mr Joseph then recited that on closer inspection it became obvious the bus was beyond repair and unroadworthy – it required an "entire body repair, material, paint, panel, repainting labour, wiring materials, electrical labour and mechanical labour."



19. Mr Joseph enclosed a copy of a second quotation, which set out: VT 280,000 for material & paint, panel and painting labor, VT 60,000 for wiring/material, VT 35,000 for electrical labor, and VT 120,000 for mechanical labour. Towards the end of his letter, Mr Joseph sought to summarise the legal position as he understood it, and to find some common ground to resolve the dispute.

C. Submissions

20. Mr Napuati invited the Court to follow the authority of *Mala v Byugman Mun t/a G-Trading* [2019] VUSC 25. It is of no assistance to me, as the factual basis for the Chief Justice's decision is entirely different to what is claimed here; and there was evidence presented to the Chief Justice on which he was able to make the findings he did. Unfortunately, I am not in the same privileged position.

21. Mr Tari invited me to follow the decision in *Mael v Joseph t/a DJ Auto Repair & Septic Tank* Civil Case No 14/97. I assume Mr Tari wishes me to ignore the identity of the defendant in that case and also ignore the finding that his present client went against his instructions and removed an engine and did repairs not agreed to. I assume Mr Tari wishes me to focus on the weight to be placed on extremely unspecific evidence as to loss, as Justice Sey did in that case.

D. Findings

22. I accept that B5808 was given to Mr Joseph to repair. I accept further that it was an operating vehicle at the time it was given to Mr Joseph for repair, and that it therefore had value. A quotation for the requested repairs was given and accepted. VT 240,000 was paid towards the repairs, in advance.

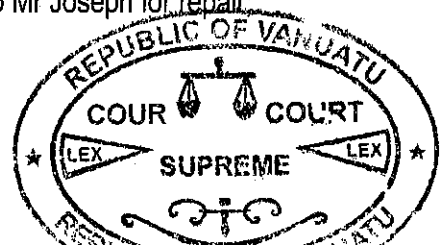
23. It is difficult to understand why the wheels of the bus were removed, which is another unchallenged statement. Even if there were wiring issues, they would be most unlikely to require removal of the wheels. The seats and engine might have to be removed if there were internal wiring issues – there appears to be agreement that the engine was removed.

24. The repairs referred to in first quotation make no reference to wiring. There is reference to that in the second quotation. I note that the second quotation is dated well after the agreed initial repair work was to be completed – that second quotation only came into being after Mr Siri resorted to legal action and when Mr Joseph wrote to Mr Siri's lawyers.

25. There is a further conflict in the evidence relating to the work required to be completed. On the one hand, the first quote excludes the further repairs Mr Joseph now seeks to support. On the other hand, the fact that Mr Siri gave Mr Joseph a second bus "to cut" does not sit well with mere panel work and painting having to be done.

26. There is no evidence as to:

- The cost of the bus when purchased by Mr Siri, other than his unchallenged but unsubstantiated statement that he paid a relatively modest sum of VT 800,000 for it. There is no evidence of the age of the vehicle, or the mileage. Mr Siri has also not told me when he purchased the bus – i.e. how long he owned it prior to giving it to Mr Joseph;
- The gross earnings of the bus prior to it being delivered to Mr Joseph for repair;



- The running expenses of the bus in terms of registration, diesel/oil usage, insurance, tyres and general depreciation; as well as salary for the drivers of the vehicle. It is impossible for the Court to assess the nett earnings; and
 - Where the bus is currently situated, and in what condition.
27. In the circumstances, I am left to do the best I can on the inadequate evidence presented by both sides of this case. The decisions required to resolve this conflict would have been made much easier if the witnesses had been called and subjected to cross-examination.
28. Mr Siri has effectively lost his bus. His claim for its value has been established as more likely than not. As his statement was to the purchase price was unchallenged, I award VT 750,000 for his loss. That reduced sum allows for some depreciation following the purchase, which was described as recent.
29. The other aspect of the Claim, the loss of earnings is not established with any certainty. Indeed, the only figures advanced in support of the Claim appear not in the sworn statements by the witnesses, but only in the Claim itself. That part of Mr Siri's claim is accordingly declined as unsupported by any evidence.
30. In respect of the VT 240,000 paid, there appears to be agreement that Mr Joseph did work on the bus. Not only would he therefore be able to rely on *quantum meruit*, but there is no claim for repayment of this sum. Accordingly, I make no order in relation to that aspect of the matter.

E. Result

31. Judgment is granted for Mr Siri in the amount of VT 750,000. He is further entitled to interest on that sum at the Supreme Court rate of 5% p.a. as from 1 January 2016 (by when the bus should have been repaired and returned to Mr Siri) until the judgment sum is paid in full.
32. Mr Siri is also entitled to his costs on the standard party/party basis to be agreed between counsel, or taxed by the Master. Once settled, the costs are to be paid within 21 days.
33. Pursuant to Rule 14.5(1), I now schedule a Conference at 8am on 3 June 2020, to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt. For that purpose, this judgment must be served on the Second Defendant.

**Dated at Port Vila this 7th day of May 2020
BY THE COURT**

Gudie Uell
Justice G.A. Andrée Wilfens

