

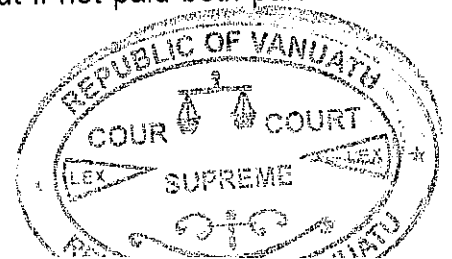
BETWEEN: Christiana Kaluscha
Applicant

AND: Linmark Developments
Ltd
Respondent

Date: 3rd November 2022
Before: Justice S M Harrop
Distribution to: The self-represented Applicant, Christiana Kaluscha

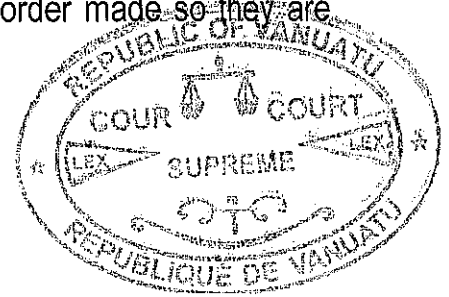
Judgment

1. On 3 November 2022 I considered the applicant's urgent application filed on 31 October 2022 for an ex parte freezing order under Rule 7.8 of the Civil Procedure Rules and the sworn statements of the applicant in support and as to its urgency, her undertaking as to damages and draft freezing order.
2. I promptly decided the urgent application was well-founded and I made a freezing order, although in somewhat different terms from that sought by the applicant.
3. The applicant was advised this was available for collection for service on the two restrained parties, the Respondent and the Registrar of the Supreme Court (though as a courtesy I have handed him a copy).
4. I now set out in brief my reasons for making the order I made.
5. The applicant obtained on 27 October 2022 a default judgment in the Magistrates Court, civil case 22/95, against the respondent for VT 1,023,071. The Magistrate allowed the respondent one month to make payment but if not paid both parties



were required to attend the Magistrates Court on 24 November 2022 at 9 am for an enforcement proceeding.

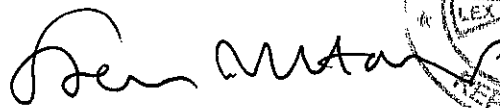
6. The applicant was aware that a mortgagee sale, by ANZ Bank (Vanuatu) Ltd, had recently occurred of 2 leasehold titles owned by the respondent. She was concerned that because (a) the first defendants in the Magistrate Court proceedings, Brad and Darlene McLean, the sole directors and shareholders of the respondent, do not reside in Vanuatu, (b) were not able to be served, and (c) it is believed these leasehold properties are their only assets in Vanuatu, there is a real risk that the net balance of the proceeds of sale would be removed from the country and the default judgment would be unable to be enforced.
7. The applicant was also aware from contact she made with staff at Hurley lawyers that all of the sale proceeds are currently held by the ANZ bank but, once a memorandum of costs from the bank had been supplied, the balance of the proceeds after deduction of those costs and those of Hurley lawyers would be paid into Court. She was aware there was to be some form of hearing at the Supreme Court on 1 November 2022 at which the memorandum of cost would be finalised and approval of it sought from the Supreme Court. She was concerned the Supreme Court may order the net proceeds be paid to the Respondent which would then put them beyond her reach overseas.
8. Accordingly the applicant sought a freezing order from the Magistrate's Court but was told (correctly) that only the Supreme Court can grant that kind of order; hence the application I considered.
9. I was satisfied that the criteria for making a freezing order under Rule 7.8 were established, at least in relation to the respondent and the Registrar of the Supreme Court. I saw no justification for making an order against the ANZ bank because (as I confirmed from checking the Supreme Court file for civil case number 321/2020, in particular the order made by a Master on 2 March 2020), there is already a Supreme Court order that the ANZ bank pay the net proceeds into Court. After that is done the ANZ bank will no longer have any power to deal with the funds, or at least not until there is a further order of the court.
10. In reality what the applicant is concerned about is to avoid a payment being made from funds held **by** the Supreme Court Registrar to the respondent or, if that has already occurred, that the respondent be prevented from dealing with the funds without satisfying the applicant's Magistrates Court judgment. That is why I made restraining orders against only the Respondent and the Registrar.
11. I did however direct that the ANZ bank and Hurley lawyers, who are interested and involved parties, be served with a copy of the freezing order made so they are aware of the situation.



12. Although I directed the applicant to serve the Registrar of the Supreme Court, I have as a matter of courtesy supplied him with a sealed copy of the order. He has since I made the order informed me that as far as he is aware no funds representing the mortgagee sale net proceeds have yet been paid by the ANZ bank to the Supreme Court.
13. To ensure that no unfair prejudice accrues to the parties involved I directed that the restrained parties could apply, on notice to the applicant, for variation or discharge of the order. Although I did not specify the extent of such notice, a minimum of 48 hours (during the working week) would be usual and appropriate.
14. The applicant is, as soon as practicable, to serve a copy of this judgment on the respondent, the ANZ bank and Hurley lawyers. There is no need to serve a copy on the Registrar as I have supplied him with a copy as a matter of courtesy.

Dated at Port Vila this 3rd day of November 2022

BY THE COURT



Justice S M Harrop

