

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

**Civil  
Case No. 23/3297 SC/CIVL**

**BETWEEN: VIRGINIA BAKEOLIU**  
Claimant/Respondent

**AND: LAURENCE SOLOMON & BROTHERS**  
Defendants/Applicants

**Before:** *Justice Oliver A. Saksak*

**Counsel:** *Kent T. Tari for the Claimant/Respondent*  
*James Tari for the Defendants/Applicants*

**Date of Hearing:** *16<sup>th</sup> October 2024*

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**JUDGMENT**

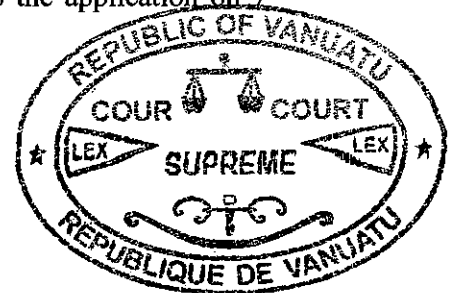
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Introduction and Background

1. This is a claim by the widow of late Mike Bakeoliu who passed away on 24 March 2022 for an unpaid invoice dated 20 June 2020 in the sum of VT26,616,000 with interest at 5% per annum, and general damages for breach of agreement of VT500,000 and costs in the sum of VT150,000.
2. The defendants filed a response indicating they disputed the whole claim. In their defence filed on 28 February 2024 by the defendants, all invoices received by them have been paid and alleged they have made some over payments. Further they say all 2017 invoices were paid and say that even if some remain unpaid, they are statute-barred pursuant to the provisions of the Limitation Act [Cap 212].
3. The defendants subsequently filed an application seeking orders to strike out the claim on 4 September 2024 and costs. The application is supported by the sworn statements of Lawrence Solomon and Jerome Natu filed in support of their defence dated 10 July 2024.

Submissions

4. Mr Kent Tari filed written submissions in response to the application on 7 October 2024.



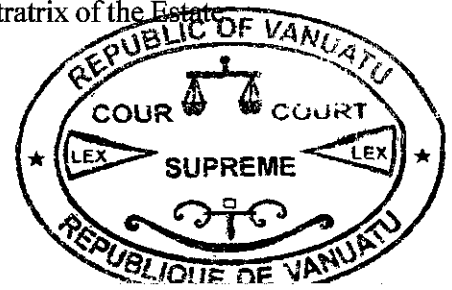
5. At the hearing of the application Mr James Tari orally submitted that based on the evidence of the defendants by their sworn statements, all invoices for survey work done and performed from 2012 to 2016 have been paid. Counsel further submitted that the June 2020 Invoice was unknown to them and argued that as they relate to survey works performed in 2017, they were time-barred by virtue of the Limitation Act.
6. Mr Kent Tari responded orally, relying entirely on his written submissions. He argued that the claims were not time-barred as the date of 20 June 2020 being the date the Invoice was issued was the date of the cause of action accrued, and therefore it is not yet time-barred.

### Discussion

7. I consider first the issue of time-bar. The claim pleads in paragraph 6 that the Estate of the deceased includes the outstanding payment of the Invoice dated 20 June 2020. This resulted from an agreement in 2017 entered into by the deceased with the defendant and that the Invoice issued on 20 June 2020 was based on that agreement (See para. 6(i) and (ii)).
8. The reliefs sought in paragraph 9 of the claim includes – general damages for breach of agreement (See 9 (c)).
9. In the claimant’s evidence by sworn statement dated 30 November 2023 she annexed photocopies of diary beginning Tuesday 23 March 2017 through to 18 May 2017.
10. From those documents it is evident that the Invoice dated 20 June 2020 related to works done by the deceased in March to May 2017.
11. Section 3 (1) (a) of the Limitation Act CAP 212 provides that the limitation for actions founded on simple torts and contract is 6 years.
12. Applying the law to the facts, it is clear to me that the claim by the claimant is time-barred. This should be enough to allow the application of the defendants.
13. However, I go further to identify some of the deficiencies of the claimant’s claim.

### Deficiencies

14. First the pleading in paragraph 6 of the claim as mentioned in paragraph 7 of the judgment. The claimant is claiming under the Letters of Administration she annexes as “VB1”, however the claim is instituted in her individual name as Virginia Bakeoliu instead of “As Representative or Administratrix of the Estate of Late Mike Bakeoliu.”



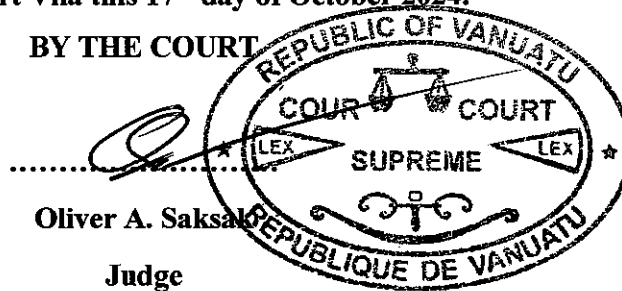
15. This deficiency renders the claim incompetent or invalide. See the case of Aaron Bongmial Hanghangkon v VNPF [2024] VUSC; CC 23/2975.
16. Further in the Letter of Administration (Annexure “VB1”) the value of the estate is under VT10,000,000. However, this claim is in excess of the value of the estate that exists. It is a misrepresentation made by the claimant.
17. Those deficiencies show a lack of standing of the claimant.
18. Finally, the claimant annexed copies of a diary from 23 March 2017 to 18 May 2017 and the Invoice dated 20 June 2020 (Annexure “VB3”) signed by Mike Bakeoliu. These documents contain figures which are unclear, and which cannot be easily identified or matched with the Invoice of 20 June 2020. If this case should proceed to trial, how would the claimant explain these figures when she was not the maker of them? That is the difficulty of the claimant. These documents would be inadmissible.

Conclusion/Result

19. For the foregoing reasons, I reject the submissions by Mr Kent Tari and accept the submissions by Mr James Tari.
20. I therefore allow the strike out application by the defendants and strike out the claimant’s claims in its entirety.
21. The claimant will pay the defendants’ costs of the proceedings as agreed or taxed.

**DATED at Port Vila this 17<sup>th</sup> day of October 2024.**

**BY THE COURT**



Oliver A. Saksak

Judge