Case No. 2473

Judgment No. (B) 12/76
of the 29th October, 1976

JOINT COURT OF THE NEW HEBRIDES

KALORIS ZEBEDE -v- ALICK LOUIS PAKOA

JUDGMENT ON APPEAL
from Civil Judgment No. 9/76 of 26th May 1976 given by the Native Court C.D.I.

This is an appeal heard by the Joint Court on 12th October 1976, brought by KALORIS ZEBEDE, a New Hebridean aged about 44 years, against a civil judgment of the Native Court for Central District No.I dated 26th May 1976 under which judgment for $197.40 was given for the appellant against ALEC LOUIS PAKOA, a New Hebridean of Tongoa aged about 28 years. After hearing the parties the Joint Court reserved judgment.

The Court has perused the record and judgment of the Native Court and has considered the submissions of Counsel for both parties.

1. Paragraphs 1, 2, 3 and 4 of the Native Court judgment are reasonable findings on the evidence. The submissions of Counsel do not persuade this Court that such findings should be upset.

2. The judgment does not specify whether the appellant began work in anticipation of an $8000 contract or after he became aware that the respondent's Bank Loan had been reduced. On the evidence as a whole and particularly the plaintiff's testimony "I began to work on conditions we agreed to before, that is progress payments in three stages up to $A8,000" which the respondent did not thereupon contradict, this Court considers that on the balance of probabilities the Native Court could and should have found that the appellant began working on the job on the basis of the original contract.

3. There is direct conflict between the parties as to what transpired after the Bank reduced the respondent's loan; the appellant says that he stopped work because the respondent did not pay him or provide any more cement whereupon he left to find work elsewhere and accordingly he now claims $A2,000 for what he calls "my stage of the work". Against this the respondent says there was an agreement for payment by him to the appellant on a daily rate.

4. While a French or British tribunal in a European context would be unlikely to make a finding similar to paragraph 5 of the Native Court judgment, nevertheless this Court accepts the Native Court's decision in this regard; that Court as constituted being well able to decide what was reasonable as between the New Hebridean parties.

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5. The Court notes that when the appellant first gave evidence about the stages of the building and the progress payments which he expected he said "I considered that for the floor and plumbing it would cost $2000". His evidence of the work he actually did may be summarised as follows:-

(i) removed and repositioned pegs
(ii) supervised cutting and tying of wires for foundations
(iii) pouring cement
(iv) completing the walls of the foundation

The work actually done by the appellant is therefore not necessarily the same as the original stage I for which he would have expected $2000. This Court concludes that the reference by the Native Court in paragraph 3 of its judgment to "the first construction stage for which the claim of $2000 was made" and in paragraph 6 to "the 1st stage of his work" refer to the work actually done by the appellant.

6. In regard to housebuilding disputes between New Hebrideans no code of native civil law has yet been introduced under article 8.4 of the Protocol. Under article 21(A)3 of the Protocol the Joint Court, where there is no code applicable, is charged with reaching decisions according to substantial justice, respecting as far as possible, the native customs and general principles of law. Accordingly it is considered that the Native Court was acting properly and within its powers, after hearing evidence, consulting the Assessors and inspecting the building to come to a decision to "calculate the plaintiff's financial benefit" as stated in paragraph 6 of the judgment. However in some regards the calculation was made on wrong principles and requires adjustment.

7. (i) The figure of $168 for the appellant's own labour is acceptable.

(ii) The figure of $150 for wages is miscalculated. The appellant in his evidence testified to an amount of $226. He then listed five employees with wages totalling $150.40. It is noted that James' wages of 80cents per hour for 2 days should add up to $12.80, not $6.40. The total for wages should therefore have been $156.80. The disbursements of $30 lawn mower (damage) and $40 food for boys appear to be reasonable items, the respondent did not challenge them and they should therefore have been allowed also.

(iii) The deduction of $15 was in accordance with the Native Court's finding.

(iv) The deduction of $106 (cost of filling foundation) might have been a proper deduction had the decision been on the basis of awarding a progress payment or contract price, but this item has no place in a calculation of the appellant's financial benefit and should not have been deducted.

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(v) Finally, to have made the calculation without any allowance to the appellant for normal profit margin or compensation, depending on the point of view, was not a proper calculation of the appellant's financial benefit. Such a calculation gives him no financial benefit. Rather than refer this matter back to the Native Court, a calculation is now made bearing in mind

(i) Although not necessarily the same, the first stage of the work on the original contract and the work done by the plaintiff are related in some measure, and

(ii) Although there is no standard practice, the profit margin in a building contract under which the builder is not supplying materials may well be calculated at 10%

(iii) Accordingly $200, being 10% of the originally estimated first stage price of $2000, is within the range which the Native Court might have allowed in making a proper calculation of the appellant's financial benefit.

The appeal is accordingly allowed to the following extent:-

(a) The calculation in paragraph 6 of the Native Court judgment is deleted and replaced by the following:-

	$168.00	(personal remuneration of appellant)
+	$226.80	(wages and disbursements paid)
	$394.80	
-	15.00	(payment by respondent to appellant)
	$379.80	
+	$200.00	(estimate of appellant's profit)
	$579.80	and

(b) The amount of $A197.40 in paragraph 7 of the Native Court judgment is deleted and replaced by the amount of $579.80.

(c) The judgment of the Native Court shall take effect but with the above alterations.

GIVEN at Vila the 29th day of October, one thousand nine hundred and seventy-six.

L. CAZENDRES
French Judge

R. M. HAMPSON
Acting British Judge

P. de GAILLANDE
Acting Registrar