

BETWEEN: ASSIAL ROLLAND & ORS.
First Appellants

AND: PIO LETINE & ORS.
Second Appellants

AND: TEACHING SERVICE COMMISSION
First Respondent

AND: GOVERNMENT OF THE REPUBLIC OF VANUATU
Second Respondent

Coram: Hon. Justice Bruce Robertson
Hon. Justice Oliver Saksak
Hon. Justice John Mansfield
Hon. Justice Daniel Fatiaki
Hon. Justice Stephen Harrop

Counsel: Mr. E. Molbaleh for the Appellants
Mr. F. Gilu for the Respondents

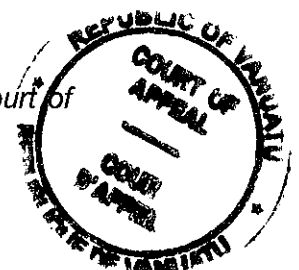
Date of Hearing: 7 and 12 November 2014

Date of Judgment: 14 November 2014

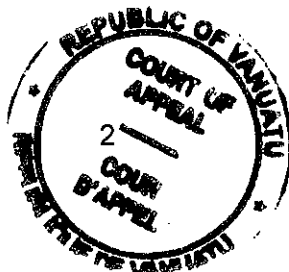
JUDGMENT ON ADJOURNMENT

1. This matter was in the call-over for this Court of Appeal session but no real progress was apparent at that time with regard to preparing the case for hearing.
2. There was serious lack of substantial information when the matter was at call-over on the 3rd of November. It was when the matter was listed for hearing on the 7th November that we found by then that a volume of new evidence had been lodged. It became clear how totally inappropriate it was for this matter to proceed in its current form. The file as it presently stands is simply not justiciable with or without the new material included.
3. It was listed again on 12th November but there had been no significant progress towards resolution although there was the promise that by the end of the day on 13th November a report would be made. Late morning on the 14th November we received a first optimistic joint memorandum. At 3.00 p.m. we received an amended version in these terms:

"1. That Civil Appeal Case No. 34 of 2014 be adjourned to the next Court of Appeal session in 2015;



2. *There are two issues relating to this matter. Issue 1 relates to allegation of the non-payment of the First Appellants' salary claimed to be due and payable according to the senior salary scaled as pleaded in paragraphs 4, 5, 6, 7 and 8 of the claim. Issue 2 is in relation to non-payment of Second Appellants' salary for 2011 who have been engaged by the school with the approval of the Ministry of Education to undertake teaching duties to the senior classes;*
3. *In respect of the first issue, the respondents shall have a look at the timetables filed in the Court of Appeal on the 11th of November 2014 for its consideration and verification and inform the appellants' counsel by the 30th of November 2014 whether or not they dispute those timetables;*
4. *The Respondents will have until 30th of November 2014 to consider whether or not they pay the salary for the second appellants teaching senior classes for the year 2011;*
5. *The parties have liberty to file new evidence before the Court of Appeal in respect to the disputed issues and facts regarding the first and second appellants and the first and second appellants will have until the 15th of December 2014 to file new evidence and the respondents will have until 15 January 2015 to file new evidence;*
6. *The parties have liberty to resolve the matters as pleaded in the claim through mutual dialogue;*
7. *The parties acknowledge that it remains an option for the parties to have the matter mediated before a mediator and that such option must be made known to the Court Registry anytime between now and February 2015."*
8. We are persuaded however that a more detailed framework is required.
9. Although much could be made of the case in terms of legal theory and the breaching of rules (which seem to have been common place), the matter deserves to be treated with reality and the issues put to an end.
10. At the moment it is still impossible for any court to determine whether the individual teachers have justifiable claims which have not been met. Secondly the issue of who should be responsible to pay teachers is a dispute not between the teachers and the ministry but between the ministry and the school authorities.
11. On 12 November the fundamentally essential information from the appellant was provided. It now needs to be responded to by the respondents so as to indicate what matters are accepted and what issues are still in contention.



12. As requested the appeal is adjourned and orders are made in terms of memorandum filed apart from order 8. However we order additional matters to facilitate the further progress towards resolution.

1. If the parties have not resolved the matters in dispute by mutual dialogue by 31 December 2014, each party must file in the Court by 17 January 2015 a document which:

(a) Lists each of the first applicants, and against each name the claim, the response, and the nature and extent of the dispute;

(b) Lists the name and address of the School Board of Lycée LAB if it is a corporate body or the names and addresses of the members of the School Board if it is not a corporate body, so that the relevant persons who the Commission says should pay the claims of the second appellants are clearly identified;

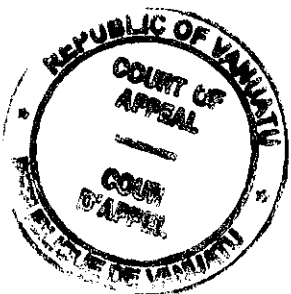
(c) Requests the Supreme Court to appoint an independent person (who may be a Supreme Court judge or a master) at the expense of the parties to act as an arbitrator, conciliator or mediator as that person considers appropriate to further address with the parties and the Lycée LAB School Board the possible resolution of the remaining disputes;

2. Upon the appointment of the independent person, that person use best endeavours to secure agreement on the disputed matters by 28 February 2015, and to give directions to the parties and the School Board to take procedural steps to reach that agreement;

3. To the extent that agreement is not reached, each party shall file and serve on this appeal by 9 March 2015 a document which sets out in a schedule:

(i) In the case of the first appellant, the name of each of the first appellants whose claim remains in dispute and the extent of the dispute, the reasons for it, and the suggestion of that party about how the dispute should be resolved, and the schedule shall have attached to it each document which is directly relevant to the dispute and no other documents;

(ii) In the case of the second appellants, the name of each of the second appellants who has not been paid because there is still a dispute about whether it is the Commission or the School board, and reasons for it and the suggestion of that party about how the dispute should be resolved, and the schedule shall have attached



to it each document which is directly relevant to the dispute and no other documents;

4. In relation to the documents filed in accordance with (3), the independent person may provide to the Court of Appeal a document with recommendation about how the outstanding disputes should be resolved and about how the appeal should be addressed.
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13. The matter is accordingly adjourned to the Court of Appeal session commencing on 16th March 2015. Costs are reserved pending final determination.

DATED at Port Vila, this 14th day of November, 2014.

BY THE COURT

Justice Bruce Roberts

