

IN THE COURT OF APPEAL
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Appeal Case No. 662 of 2015

BETWEEN: DANIEL RENE TARI
Appellant

AND: NOEL BEGLEY
Respondent

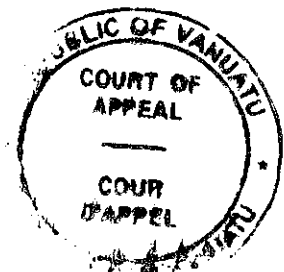
Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Paul Geoghegan

Counsel: *Mr Eric Molbaleh for the Appellant*
Mr Noel Begley in person

Date of Hearing: *Monday 11th April 2016 at 9:00 am*
Date of Judgment: *Friday 15th April 2016 at 4:00 pm*

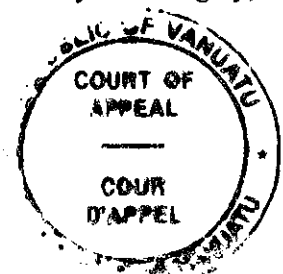
JUDGMENT

1. This is an appeal from a Supreme Court decision of October 28th 2015 pursuant to which the Court determined an employment dispute between the parties. Mr Tari also seeks the leave of the Court to file new evidence.
2. The notice of appeal filed on behalf of Mr Tari said that the Judge had erred both in fact and law by issuing a judgment in favour of Mr Tari by determining the claim on the basis of an



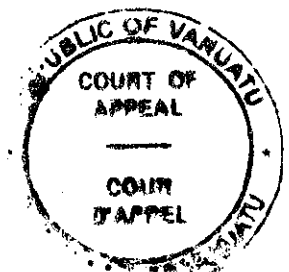
agreement reached between the parties pursuant to which Mr Begley agreed to pay Mr Tari the sum of Vt 384,000.

3. Before the Supreme Court, Mr Tari had claimed that he was employed by Mr Begley as a mechanic from January 2003 to December 2004 and then again from March 2008 to March 2014. He claimed that Mr Begley had not paid Mr Tari's VNPF contribution during his first period employment and also between March 2008 to December 2012. In addition, he claimed that Mr Begley had failed to pay any annual leave, public holiday entitlement or severance payment. The VNPF is the Vanuatu National Provident Fund and employers are required to make specified contributions to the fund on behalf of employees, for the benefit of those of employees.
4. Mr Tari's claims were denied by Mr Begley who said that Mr Tari had been employed by him between February 2009 and December 2013. He said that he had left Mr Begley's employment of his own will. He said the parties had reached an agreement in settlement of the dispute following a meeting at the Department of Labour, where Mr Begley had agreed to pay Mr Tari the sum of Vt 384,000. Mr Begley stood ready and willing to make such payment.
5. In addition, Mr Begley had counter-claimed against Mr Tari, claiming that Mr Tari owed to him the sum of Vt 120,000 being the balance of the purchase price of a motor vehicle sold by Mr Begley to Mr Tari.
6. Mr Molbaleh filed an application for leave to file new evidence. That evidence consisted of a letter from the VNPF regarding outstanding VNPF contributions owed by Mr Begley,



together with a sworn statement from a Mr Dimas Singo to support Mr Tari's claim that he was working for Mr Begley prior to 2009.

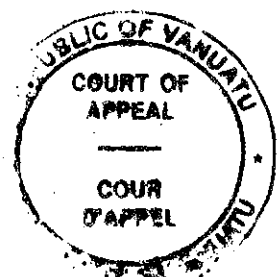
7. The application refers to the importance of the "*new evidence*" and that the application should be granted to "*clear up some of the issues if not all in the lower Court and to assist this Court making a fair judgment in this case*".
8. Regrettably, and as the Court has been at pains to point out in several cases during the course of this sitting of the Court of Appeal, that is not the test for the introduction of new evidence. The primary considerations for the admission of fresh evidence are whether or not that evidence was unavailable at the time of hearing or could not have been ascertained by reasonable enquiry, whether the evidence is relevant and whether the evidence, if given at trial, would have had a significant effect on the outcome of the trial.
9. The evidence sought to be tendered by Mr Tari was clearly available at the time of the hearing. Indeed it would appear that a letter from the VNPF was submitted by Mr Molbaleh at the time he filed submissions in the Supreme Court. Putting that to one side however, it is clear that that evidence and also the evidence of Mr Singo was available at the time of the hearing. They cannot be admitted in this appeal.
10. In his judgment the Judge had stated that it was his view, on the basis of the evidence presented by the parties, that the relationship between them was "*unsatisfactory and uncertain*". He commented that there appeared to be a subcontract arrangement of some kind but that it was uncertain in its terms and conditions. Timesheets produced were incomplete, documentation was unclear and the evidence was "*inconsistent and insufficient*".



The Judge observed that Mr Tari could have easily filed evidence from the VNPF to confirm whether or not VNPF contributions were paid by Mr Begley, however that had not been done.

11. The Judge determined that the evidence before the Court was of such an unsatisfactory nature that the only "*starting point*" could be the amount that the parties had agreed upon at a meeting at the Labour Department in 2013, being Vt 384,000. The Judge based his judgment on that agreement. He dismissed Mr Begley's counter claim and gave judgment in favour of Mr Tari in the sum of Vt 384,000, as per the agreed figure.
12. We agree that the quality of the evidence placed before the court was extremely poor. In the circumstances, the judge dealt with the evidence before him as best he could. Given the nature and quality of the evidence we cannot find any error in the way the judge dealt with the matter. If anything, the result could have been considered as being generous to Mr Tari given that it was for him to prove his case against the Respondent.
13. There is also a potential issue of limitation in this case. Section 20 of the Employment Act [Cap. 160] provides that:

"No proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates."
14. Given that the issue of limitation was not argued before the Supreme Court we do not consider it necessary to determine this matter taking that into account.

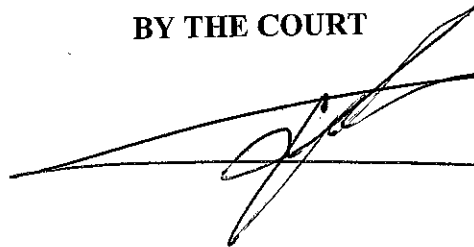


15. There is no proper basis for this appeal. Both parties failed to file the evidence which was needed to prove their claims. In all of the circumstances, the Judge was entitled to assess the matter in the light of the agreement reached between the parties earlier. For these reasons both the application for leave to file fresh evidence and the appeal itself, are dismissed.

16. As Mr Begley is self-represented there shall be no order as to costs however he shall be paid by Mr Tari any disbursements as fixed by the Registrar.

DATED at Port Vila this Friday 15th day of April, 2016

BY THE COURT



Vincent LUNABEK
Chief Justice

