

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

Civil Appeal
Case No. 16/2289CoA/CIVA

BETWEEN: REPUBLIC OF VANUATU
Appellant

AND: AUGUST LETLET
Respondent

Coram: *Hon. Justice Bruce Robertson*
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice John Mansfield
Hon. Justice Dudley Aru
Hon. Justice David Chetwynd

Counsel: *Mr. Sakiusa Kalsakau for the Appellant*
Ms. Stephanie Mahuk for the Respondent

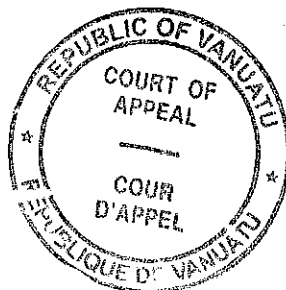
Date of Hearing: 20 July 2016

Date of Judgment: 22 July 2016

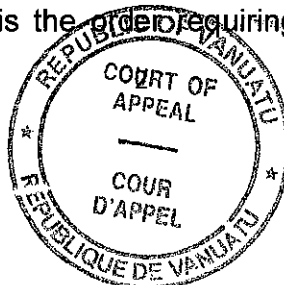
JUDGMENT

1. An urgent appeal against an interlocutory judgment delivered on 17th June 2016 following a hearing on the 13th June 2016 was added to the Court of Appeal list for the current session. Leave was granted by Geoghegan J. on 14 July, 2016 immediately after the judge had refused to stay the operation of the interlocutory judgment. We have had the benefit of very helpful submissions filed in this matter.
2. The short point in this interlocutory appeal is the relief which was granted by the Supreme Court judge pending the hearing of the substantive application for judicial review. He said:

"For these reasons I am satisfied that the applicant should be granted interim relief and I make the following orders:-

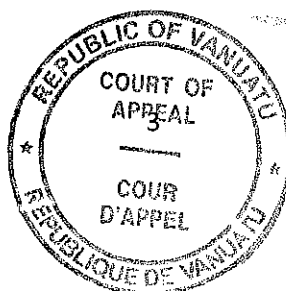


- 1) *An order directing the respondent to revoke the appointment of the current Acting Director General of the Ministry of Finance and Economic Management.*
 - 2) *An order reinstating the applicant to his position as Director General of the Ministry of Finance and Economic Management pending determination of the validity of his revocation of appointment.*
 - 3) *An order directing the respondent to pay the applicant's salary and benefits pursuant to his employment contract dated 10 February 2016 until further order of the court.*
 - 4) *An order directing the respondent to reimburse the applicant forthwith the salary and benefits of the applicant unpaid to the respondent since April 12th 2016 pursuant to his employment contract.*
 - 5) *Costs are granted in respect of this application in favour of the applicant. If costs are not agreed between the parties within 14 days, they are to be taxed.*
 - 6) *Given that this matter should proceed to a substantive hearing as soon as possible I direct a pre-trial conference to be held on Friday, August 5th at 9 am. I would urge the parties to endeavor to resolve the matter themselves in the interim".*
3. The respondent Mr. Letlet was the Director General of the Ministry of Finance and Economic Management. His appointment as such was "revoked" in a letter of April 12th 2016. The Court will refer to that office as DG-MFEM.
 4. In the substantive proceeding Mr. Letlet alleges that the decision to revoke was wrong in law and that he should be reinstated or alternatively he should be paid the salary and benefits. Pending the final determination of matters by the Court, in the application for interim relief Mr. Letlet sought reinstatement in the meantime and past and present salary and other entitlements.
 5. The background is carefully and succinctly set out by the trial judge in his reserved decision in paragraphs 2 to 12 and need not be repeated here.
 6. The trial judge correctly noted that as an application brought pursuant to Rule 7.5, 7.7(a)(i) of the Civil Procedure Rules 2002, Mr. Letlet had to satisfy the Court there was a serious question to be tried and that he would be seriously disadvantaged if the orders which he was seeking were not granted. He also correctly noted that the exercise involved a consideration of the balance of convenience.
 7. The Court is of the view that the appeal from the judgment should be dismissed, save in one respect. That is the order requiring the reinstatement of Mr. Letlet

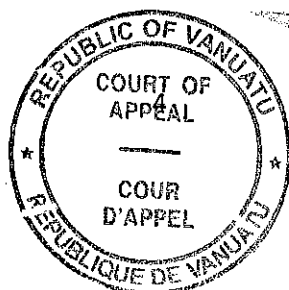


pending determination of the validity of the revocation of his appointment should be discharged.

8. As the appeal is from an interlocutory order, the reasons for varying the orders made by Georghagan J. should only be briefly stated.
9. As we have noted, on the background material which was uncontentious, and the evidentiary material referred to in particular at paras. 16 to 18, there was clearly a serious question to be tried as to whether the "*revocation*" of the employment was valid and effective. The evidence referred to in the judgment supported the proposition that Mr. Letlet was selected by the Prime Minister on 10th February 2016 to be appointed as DG-MFEM from a short-list of candidates for that position recommended by the Public Service Commission (the Commission) under Section 17A and 17B of the Public Service Act [CAP.246] as introduced by the Public Service (Amendment) Act No. 1 of 2011. It should be noted that there was evidence which points to the alternative position. In any event there was a serious question to be tried as to whether Mr. Letlet was properly appointed. If that was so, the grounds relied upon to revoke his appointment (as purportedly done by the letter of 12th April 2016 from the Prime Minister) might not exist.
10. The material before Georghagan J. on where the balance of convenience lay then, about whether to grant interim relief to Mr. Letlet was clearly adequate to support the grant of some interim relief.
11. We can see no error in the exercise of this discretion directing the Republic to revoke the appointment of the current acting DG-MFEM (at least to the extent of ensuring the office of DG-MFEM was not filled so as to preclude Mr. Letlet from being restored to that office if he ultimately succeeded in his claim).
12. Nor can we see any error in the exercise of the discretion by the order directing the Republic to pay to Mr. Letlet the salary and benefits applicable to the position of DG-MFEM from 10th February 2016 until the Court otherwise orders, particularly having regard to the facts that he resigned from his then existing position in the Public Service from that date.
13. However, we are of the view that it was not an available exercise of the discretion to direct the reinstatement of Mr. Letlet as DG-MFEM pending the hearing and determination of his claim.



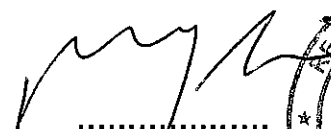
14. It is an appropriate starting point in the case of a dispute such as the present to recognise that the relationship between the employer and employee at such a high level should not be imposed on an interim basis where necessarily it is a close one, involving mutual trust and confidence (as is arguably the case between the Prime Minister and the DG-MFEM): see Iauko v. Vanuaroroa [2007] VUSC 6 at [23] – [24]; at a more general level see Air Vanuatu Ltd. v. Bong [2015] VUCA 17 at [11] – [12]; and Lupari v. Omare [2010] PGSC 21 at [10] – [14].
15. The judge at first instance does not refer to those sorts of considerations. There was no evidence positively to show that, on an interim basis, Mr. Letlet could be restored to that office without any significant discomfort on the part of the Prime Minister in particular, especially as it was the Prime Minister who signed the letter of revocation of 12th April 2016. The evidence of Mr. Letlet did not address that particular question.
16. Further we cannot ignore the continuing realities of the relationship and the events in the past month underline the problems which can exist.
17. The Judge at first instance directed an early pre-trial conference, so we anticipate that the substantive case may be quickly determined. We do not consider that the balance of convenience required Mr. Letlet's immediate restoration to the office itself.
18. For those reasons we would discharge order (2) referred to above. That does not relieve the Republic from having to comply with the other orders including order (3), which requires continuing to pay him the salary and entitlements to which he would be entitled as if he remained in the office of DG-MFEM, pending the hearing and determination of his claim, unless some other order is made by the Supreme Court.
19. We should also mention an apparent misconception in the first ground of appeal. It is asserted that the interim orders made on 17th June 2016 wrongly and finally determined the rights and obligations of the parties. That is not correct. Those rights and obligations will be finally resolved when the substantive claim is finally heard and determined (unless it is resolved by agreement in the meantime). It is not a case where the interim orders had the effect of finally disposing the action, unlike (for example) where a claim is summarily dismissed: see Duduni v. Vatu [2003] VUCA 15.



20. Finally, it may be helpful to identify certain issues which became a little more clearly defined in the course of the helpful submissions of counsel before us.
21. First, the Republic's position may be that there was no valid appointment at all, if in fact Mr. Letlet was not included in the recommendation of the Commission. If that is the case, then the letter of revocation may more correctly be a letter indicating that the Republic says there was never any appointment made, so there was nothing to revoke.
22. Secondly, the status of the proceeding as a judicial review application was debated. Both counsel accepted that there will be significant factual issues to be addressed if the matter proceeds to trial. They also, sensibly, agreed that they wish to avoid any procedural wrangling. To that end, if amendment or addition to the existing claim or defence is necessary to address the real issues, those amendments or additions should be prepared as soon as possible so that they can be addressed at the pre-trial conference on 5 August 2016.
23. Thirdly, certain submissions addressed the fact that, based on the letter from the Commission on 10th February 2016 (signed by the secretary) and the signing of the contract on that date, Mr. Letlet apparently had no reason to believe that his appointment was not from a short list of candidates recommended by the Commission. Mr. Letlet appears to have resigned from his existing Public Service position on that date, based on that information. The consequences of that, if it be the case, were not addressed in the course of submissions, but may be of substantial significance.
24. The appeal is allowed for the limited purpose of discharging order (2) made on 17th June 2016. The other orders made at that time stand.
25. In view of the confined success of the Republic on this appeal, it is appropriate that there should be no order as to the costs of the appeal.

DATED at Port Vila this 22 day of July, 2016

BY THE COURT


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Hon. Bruce Robertson
Justice.

