

**BETWEEN: Gilbert Dinh**  
Appellant

**AND: Nelson Nanan and Others**  
Respondents

**Date of Hearing:** 13 November 2020

**Coram:** *Hon. Chief Justice V. Lunabek*  
*Hon. Justice J. Mansfield*  
*Hon. Justice R. Young*  
*Hon. Justice O. Saksak*  
*Hon. Justice D. Aru*  
*Hon. Justice V.M. Trief*

**Counsel:** *Mr R.T. Kapapa for the Appellants*  
*Mr S. Kalsakau for the Respondents*

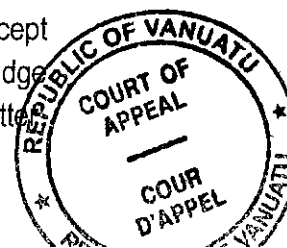
**Date of Decision:** 20 November 2020

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## **JUDGMENT**

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1. This appeal is from a decision of the Master given on 6 August 2020. The Master struck out the defence of the defendant (now appellant), apparently for failure to comply with directions given during case management of the matter. The Master then entered judgment against the appellant for the specified damages. The grounds of appeal were never specified, as the appellant did not comply with the directions of the Court about preparation of the appeal.
2. At the hearing, counsel for the appellant accepted that any appeal from the Master's order should have been to the Supreme Court: see subs. 42(4) of the *Judicial Services and Courts Act* [CAP. 270] including as amended by the *Judicial Services and Courts (Amendment) Act* 2008 (the Act). Consequently, he invited the Court to dismiss the appeal.
3. The appeal is therefore dismissed.
4. The Court notes that the matter was referred to the Master by a Judge of the Supreme Court on 6 November 2019 for mediation. The mediation is conducted under s. 42A of the Act. As a mediator is given access to information which should not be disclosed to the Court (except for the purposes of the mediation), it is obviously not appropriate for a mediator – if a Judge or the Master – to subsequently take any steps in the management or hearing of the matter.

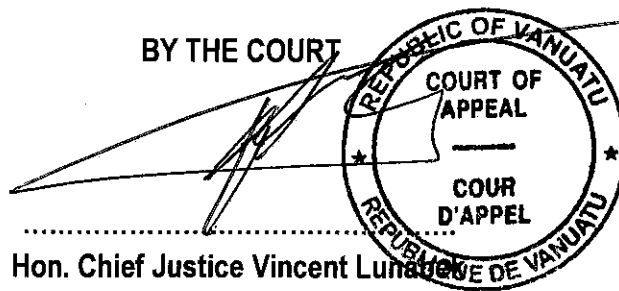


To do so might involve the reasonable apprehension of bias, because of what has been or may have been disclosed in the course of the mediation.

5. In such circumstances, any appeal to the Supreme Court from the Master's orders of 6 August 2020 would apparently be successful. In the events which have taken place, where the appeal was instituted in time, but to the incorrect Court, it is also likely that an extension of time to appeal to the Supreme Court from the Master's orders would be granted.

**DATED at Port Vila this 20<sup>th</sup> day of November 2020**

**BY THE COURT**



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Hon. Chief Justice Vincent Lunan