

BETWEEN: Joshua Kalsakau
Appellant

AND: ANZ Bank (Vanuatu) Limited
Respondent

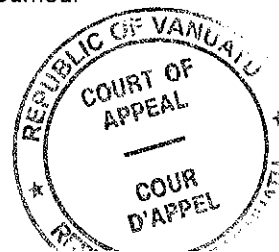
Date of Hearing: 11 May 2021

Coram: Hon. Chief Justice V. Lunabek
Hon. Justice R. Asher
Hon. Justice R. White
Hon. Justice O. Saksak
Hon. Justice D. Aru
Hon. Justice V.M. Trief

In Attendance: Mr M. Fleming for the Appellant
Mr M. Hurley and Mrs C. Hamer for the Respondent

MINUTE

- [1] The Appellant seeks to introduce new evidence in the form of Bank statements, which may have relevance to the appeal.
- [2] New evidence is only admitted on appeal in rare situations. There should be a written application and ideally a sworn statement in support explaining why the documents were not adduced at the trial and outlining their nature if not exhibiting them. This has not been done.
- [3] There are a number of things that can be said about admitting these bank statements. First, their admission appears to be intended to support an argument that the amount that the ANZ succeeded on in its counterclaim was excessive. However, at the trial the quantum of the counterclaim was not in any specific way contested by the appellant. Thus, there would be a change in the nature of the issues to be determined here on appeal if the quantum issues raised that the bank statements relate to were argued.
- [4] We can see why if there was detailed evidence given about errors in the quantum claimed on the counterclaim by the ANZ, the respondent would wish to have evidence adduced in reply.
- [5] The short point that arises is that to adduce this evidence could well derail the appeal entirely. It is likely to mean that the appeal at the very least had to be adjourned.



- [6] Matters of procedure are very important on appeals of this nature. It is important to protect the process. The failure to apply and provide a sworn statement in itself is a good reason to decline the application.
- [7] As a matter of substance we are concerned that the bank statements could have been produced at trial but they were not. No good reason has been provided for them not being produced at trial. We do appreciate Mr Fleming's position as newly appointed counsel, but this cannot assist the appellant's position.
- [8] We have decided for the reasons given that we will decline the application to adduce further evidence before this Court.

DATED at Port Vila this 11th day of May 2021

BY THE COURT

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**Hon. Chief Justice
Vincent Lunabek**

