

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Appeal
Case No. 17/1464 SC/CIVA

BETWEEN: ZETHRY SEPA
Claimant

AND: GOVERNMENT OF THE REPUBLIC OF VANUATU
First Defendant

AND: COMMISSIONER OF POLICE
Second Defendant

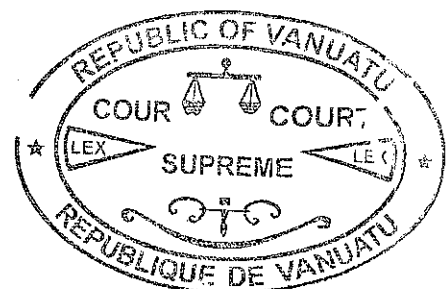
Date of CONFERENCE: 9th day of February, 2018 at 8:30 AM

Before: David Chetwynd

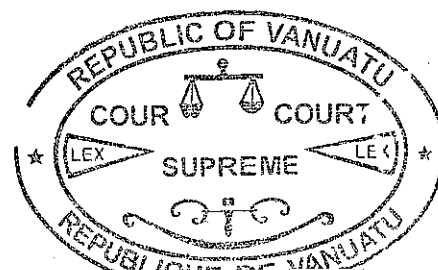
In Attendance: No appearance for the Claimant
Mr Sakiusa Kalsakau for the Defendants

JUDGMENT

1. This is an application for leave to appeal out of time. The decision that is intended to be challenged is that of the Supreme Court made on 30th November 2016. That decision in turn followed on from an order made on 18th October 2016.
2. The matter began as a claim lodged sometime in 2015. The case was then allocated to the Master for Mediation. There were several appointments and at one time a judgment in default which was set aside.
3. On 18th October 2016 the Claimant from the Appellant was directed to file an amended claim. The date for doing so was set for 2nd November. A further case management conference was set for 30th November.



4. On 30th November the Master noted that the amended claim had not been filed. The Respondent in this appeal made an oral application for the claim to be struck out. This was in accordance with clause 4 of the order of 18th October.
5. The Master gave her written decision on 30th November striking out the claim. The appellant appealed to the Court of Appeal. That was in December 2016. In March 2017 at a review hearing it was pointed out the appeal should be to a Judge of the Supreme Court not the Appeal Court.
6. On 15th June 2017 this appeal was filed in the Supreme Court.
7. The grounds of appeal are that the order (of 18th October 2016) showed bias. This is because of an inference that the appellant had failed to comply previously. This ground is unsustainable. What the Master was concerned about in October was delay. At the hearing on 30th November it was clear she was right to have concerns because the appellant asked for more time "to complete" his research on the claim.
8. The appellant says the application to adjourn was the first one made by the appellant. It is not the number of the adjournments which concerned the Master but the delay any adjournment would have caused.
9. It is then said the Master should have taken into account the fact the appellant had language difficulties and needed assistance from a Chief. It is difficult to understand this ground because on 30th November the appellants' Counsel was saying he needed more time to complete his research. This was not a case, or it should not have been case, where extensive instructions were required in order to amend the claim.
10. The appellant then puts forward a ground which is difficult to understand. It is said the appellant had established liability so why was the amendment needed. It is probably right to say the default judgment did establish something but the judgment was set aside. The appellant had been directed to file amended pleadings but did not do so. The appellant was not in a position to do so even some 28 days after the deadline imposed.

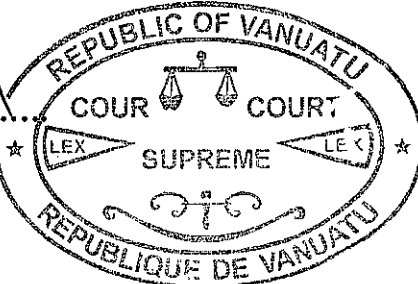


11. Finally it is said the Master addressed counsel in a loud voice. I would have thought that by now counsel would have learnt that if they do not comply with directions they are likely to be told of the consequences in no uncertain terms.
12. I have considered the grounds of appeal briefly because one of the factors to be taken into account is the strength of the appeal. It is clear this is a weak appeal. Counsel for the appellant was appealing law to the case. He then seeks to blame everyone else for his failure to comply with orders. The Master acknowledged in her decision that she found it distasteful to strike out matters, "as the ultimate victim is the client". However the interests of Justice affect all parties in a claim and if there has been delay and negligence in pursuing a claim by one party it is in the interests of justice that other parties in the case do not continue to suffer delays through procrastination.
13. Finally whilst the appellants impecuniosity is a ground to support a claim for leave extend time no effort was made by the appellant in this case to seek an extension until many months after the expiry of the time in which to lodge and appeal. The appellant could have raised this in the abortive appeal to the Court of Appeal. Instead the appellant did nothing.
14. In all the circumstances leave to appeal out of time is refused. That ends the matter. There is no appeal on foot. The Respondent is entitled to costs such costs to be taxed if not agreed, or a standard basis.

DATED at Port Vila this 9th day of February, 2018.

BY THE COURT

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David Chetwynd
Judge

The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom, separated by two small stars. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scale, the word "SUPREME" is written in a larger font. At the bottom of the inner circle, there is a decorative flourish.