

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

Judicial Review
Case No. 19/532 SC/CVL JR

BETWEEN: Benjamin Malas
First Claimant

George Pakoa
Second Claimant

AND: Republic of Vanuatu
Defendant

Date: 7 February 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr E. Nalyal for the Claimants
Mr T. Loughman for the Defendant

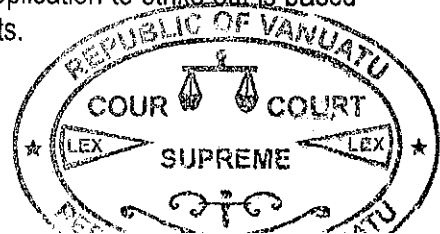
JUDGMENT

A. Introduction

1. This case involved a much delayed application for judicial review and an application to strike out the same.

B. Background

2. The application for Judicial Review was filed on 11 March 2019, challenging Public Services Commission determinations of 3 January 2019 to suspend both Claimants and seeking reinstatement to their positions respectively as Director of Customs and Inland Revenue and Acting Deputy Director of Customs and Inland Revenue.
3. Unfortunately the application was not accompanied by a sworn statement in support, as required by the Rules. That is one of the bases on which the application to strike out is based – the other is the lack of progress due to inaction by the Claimants.



4. This case was case-managed by 2 previous Judges, both of whom recused themselves.
5. The file was referred to me on 15 October 2019. I scheduled a First Conference for 4 November 2019.
6. Counsel previously acting for the Claimants did not appear at the First Conference. Despite that, I directed that all sworn statements to be relied on in support of the application were to be filed by 9 December 2019, with any response(s) to be filed by 17 January 2020. I also scheduled a further conference for 7 February 2020.
7. An application to strike out the application for judicial review was filed on 4 February 2020, with a supporting sworn statement.
8. Mr Nalyal filed a Notice of Beginning to act later the same day.
9. The next day, Mr Nalyal filed an application to enlarge time for the filing of evidence by the Claimants, with a sworn statement in support. The failure to properly file the application and the delays involved in this matter are laid at the feet of previous counsel, who it is also said insisted on an excessively large up-front payment toward his fees prior to doing any work on the case.

C. Discussion

10. Mr Nalyal conceded that the positions formerly held by his clients have now been filled by replacement personnel who are appointed to those roles on a permanent basis. He submitted there was nevertheless utility in the application for judicial review being allowed to carry on to determination, as, if successful, it would enable his clients to subsequently seek damages for their wrongful dismissal.
11. Mr Nalyal also conceded that the ideology behind applications for review is that there is a swift re-assessment by the Court of challenged administrative decisions. What has occurred in this instance, is that although the application was filed in time, it was subsequently left to languish in a sea of inactivity for over 11 months.
12. If the application for judicial review were to succeed at this point in time, it would be most unfair to those who have altered their legal positions on a permanent basis as a result of the challenged decisions.
13. In the circumstances, Mr Nalyal was not in a position to dispute the fact that the application for judicial review was now too late, and that without taking into account the further delay inherent is his having to still file sworn statements prior to the matter being set down for final determination.
14. The justice of the situation, no matter how badly the Claimants were dealt with at the time or subsequently by their chosen legal representative, had to be looked at from the point of view also of the present incumbents in the roles.
15. Further, there is no injustice to the Claimants as they have alternative remedies available to them if this current action is ended.



D. Result

16. Accordingly, the strike out application is granted, and the application for judicial review is dismissed.
17. Mr Nalyal's application to extend time is declined.
18. Costs are ordered, in the agreed sum of VT 10,000, to be paid by the Claimants within 21 days.

Dated at Port Vila this 7th day of February 2020
BY THE COURT

