

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

CIVIL APPEAL CASE No. 34 OF 2014

BETWEEN: **ASSIAL ROLLAND & ORS**
First Appellants

AND **PIO LETINE & ORS.**
Second Appellants

AND: **TEACHING SERVICE COMMISSION**
First Respondent

AND: **GOVERNMENT OF THE REPUBLIC OF
VANUATU**
Second Respondent

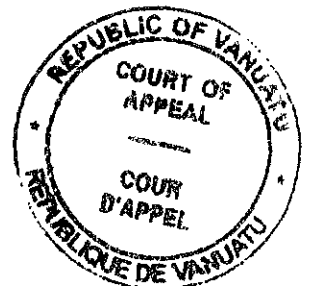
Coram: *Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Oliver Saksak
Hon. Justice Daniel Fatiaki
Hon. Justice Stephen Harrop
Hon. Justice Mary Sey*

Counsel: *Mr E Molbaleh for Appellants
Mr F Gilu (SLO) for Respondents*

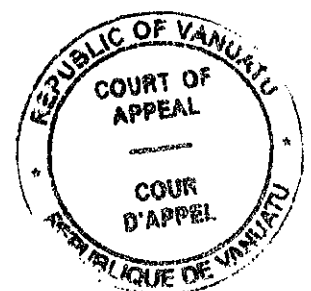
Date of Hearing: *Monday 28 April 2015*
Date of Judgment: *Friday 8 May 2015*

JUDGMENT

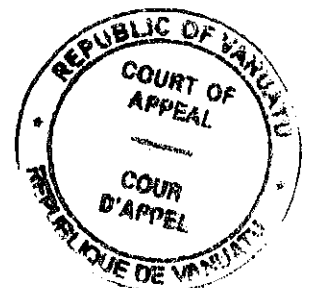
1. This is an appeal from a decision in the Supreme Court which dismissed the appellants' claims in their entirety as the evidence before the Court failed to establish any proper basis for the claims, or to elucidate the complaints which the appellants were making against the respondents.



2. The appeal first came before the Court of Appeal during the third session of the Court in 2014. It is a most complicated matter as the appellants represent some 45 members of the Teaching Service who each have separate claims for alleged unpaid salary. The matter was heard by the Court of Appeal on 7th and 12th November 2014, and ultimately adjourned to the present sittings of the Court of Appeal.
3. The published Judgment on Adjournment gave detailed directions to the parties as to additional preparation and information that was required to enable the substantive issues between the parties to be properly understood.
4. It was immediately apparent to the Court of Appeal that to understand the issues in the case, and to determine them according to law, much additional information was required. In so far as it would have been open to the respondents to argue that fresh evidence should not be admitted to overcome the evidentiary shortcomings in the Supreme Court, the Court of Appeal, by the directions that it gave, treated the case as an exceptional one where the interests of justice required that full information about the claims of each of the teachers should be produced and considered. The purpose of the extensive directions given by the Court of Appeal was to assist the parties in identifying issues that require determination, and then resolving those issues by agreement, or failing that with the assistance of an arbitrator, conciliator or mediator to be appointed by the parties. The directions envisaged that if matters could not be resolved in one of these ways, the independent person appointed by the parties could provide the Court of Appeal with a recommendation in writing about how the dispute should be resolved and about how the appeal should be addressed.
5. When the matter was recalled before the present session of the Court of Appeal, much additional information had been filed, although some of it during the week preceding the start of the sittings. Included in the most recently filed material were separate files relating to each of the teachers involved. Whilst there may be common interests between groups of teachers, in the end the position of each one will require separate assessment to determine whether there has been an under payment of salary.



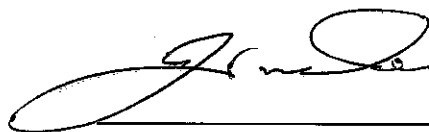
6. With the benefit of the additional information now before the Court, which is voluminous, we considered that the matter was not one which could ultimately be resolved at the Court of Appeal level as to do so the Court of Appeal would, in effect, be sitting as a first instance Court to consider all the new material. In our opinion the better course is to have the matter remitted to a single Judge of the Supreme Court who can manage the marshalling of the new information. If the parties cannot by discussion or otherwise resolve the matters between themselves, or at least narrow them substantially, the Supreme Court Judge will be in a position to decide the matter on adequate information. If the primary decision is made at the Supreme Court level, a right of appeal will be preserved to the parties in the event that any party is dissatisfied with the result.
7. Our views were discussed with counsel who were in agreement that the best course forward at this stage is for the judgment standing in the Court below to be set aside and the matter remitted to the Supreme Court for the Chief Justice to assign a Judge to undertake the future management of the litigation.
8. Now that information relating to each of the teachers has been filed, the Supreme Court will require the parties to identify which matters have common interests, and to group them so that the common issues can be decided in advance of consideration of individual claims. The Court will also require a spreadsheet or detailed schedule identifying the teachers who fall into each group with common interests, and which identifies the quantum of each teacher's alleged claim. Mr Gilu, counsel for the respondents, indicated to the Court that he has been giving consideration to how the new information should be processed. Whilst the obligation may rest primarily on the appellant's advisors to undertake this task, the Court urges Mr Gilu to work in conjunction with them to enable the exercise to be carried out in a way that has common agreement between counsel.
9. Accordingly, with the consent of the parties, the Court orders:
 - 1) Appeal allowed.
 - 2) Judgment in the Supreme Court set aside.
 - 3) The matter is remitted to the Supreme Court for the Chief Justice to assign a Judge to undertake the future management of the litigation.



- 4) Costs of the appeal to this Court will become costs in the cause, and will be determined in the Supreme Court in due course.

DATED at Port-Vila this 8th day of May, 2015

BY THE COURT



**John von Doussa
Justice of the Court of Appeal**

