

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

Civil Appeal Case No. 46 of 2014

**BETWEEN:** AIRPORTS VANUATU LIMITED  
First Appellant

**AND:** ROWLAND KALSONG  
Second Appellant

**AND:** PETER BONG  
First Respondent

**AND:** ALAN CARLOT  
Second Respondent

**AND:** KEVIN ABEL  
Third Respondent

**AND:** ALAIN LEW  
Fourth Respondent

**Coram:** *Hon. Chief Justice Vincent Lunabek  
Hon. Justice John von Doussa  
Hon. Justice Ronald Young  
Hon. Justice Daniel Fatiaki  
Hon. Justice Dudley Aru  
Hon. Justice Stephen Harrop  
Hon. Justice Mary Sey*

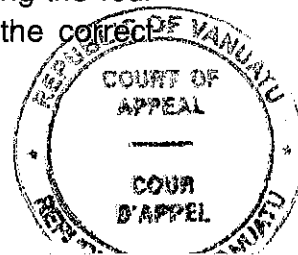
**Counsel:** *Mr Nigel Morrison for 1<sup>st</sup> and 2<sup>nd</sup> Appellants  
Mr Felix Laumae for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents  
Mr Robin Kapapa for 4<sup>th</sup> Respondent*

**Date of Hearing:** 5 May 2015

**Date of Judgment:** 8 May 2015

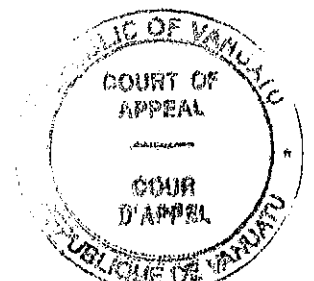
**JUDGMENT**

1. Mr. Lew as chairman of Directors of Airports Vanuatu Limited ("AVL") was, in 2014 removed from office. The first three respondents, as employees of AVL had their employment terminated in 2014. All the respondents challenged these decisions in the Supreme Court by judicial review. The judge in the Supreme Court found the removal/dismissal of all respondents was unlawful and quashed them. AVL was required to reinstate all respondents.
2. AVL appealed to this Court but the appeal was filed out of time by two days and leave to appeal was therefore required. The sole appeal point was whether the decision of AVL (as a private company limited by shares) in removing the four respondents was susceptible to judicial review. AVL argued that the correct



process for at least the first three respondents to challenge their terminations was by a simple Court claim under the Employment Act. After hearing AVL in support of the leave application we refused leave. We now give our reasons.

3. The first to third respondents were all employees of AVL in senior management positions at the relevant time; Mr. Bong the CEO, Mr. Abel the General Manager Operations and Mr. Carlot the General Manager Commercial. Mr. Lew was the chairman of the Board. The first three respondents had contracts of employment, Mr. Lew had been appointed to the board in 2014 for three years and as chairman for one year commencing 2014.
4. The appellant in its submissions accepted that some decisions of AVL as a public corporation could be susceptible to judicial review. The appellant accepted that Mr. Lew, as chairman of the board of directors (as a holder of a public office) could bring judicial review proceedings to challenge his removal as chairman. And so AVL abandoned their appeal regarding the judge's finding that Mr. Lew's removal was unlawful.
5. In support of its application for leave to appeal out of time AVL argued the delay in filing the appeal was modest (2 days). AVL accepted it had to convince us that the availability of review in such circumstances was a matter of public importance. Without challenge there would be a Supreme Court judgment which allowed judicial review in what AVL categorized as disputes about private contracts of employment. This decision could therefore open the floodgates to similar such claims for review of what were mere private employment disputes.
6. We accept the delay in this case was modest and by itself such delay would not be a ground for refusing leave. We now consider the public importance aspect.
7. Pursuant to Rule 17.8 (3) (d) (Civil Procedure Rules) before a Supreme Court judge can hear a judicial review he or she must be satisfied that there is no other remedy that "*resolves the matter fully and directly*".
8. AVL did not plead in its defence that judicial review was not available with respect to any of the respondents. At this appeal counsel for the appellant accepted that the appellant had not raised any objection to the case proceeding as a judicial review in the Supreme Court. We note at paragraph 7 of his decision the judge said the criteria in Rule 17.8(3) (a) – (d) had been met.
9. This illustrates the decision by the Supreme Court to hear this employment contract dispute as a judicial review has no precedent value for future cases. There were no submissions by counsel in the Supreme Court on the availability of judicial review and there is no reasoned decision by the judge. It cannot be said therefore that the Supreme Court decision stands for any principle as far as judicial review of employment contracts are concerned.



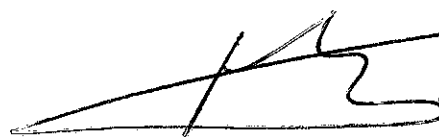
10. In those circumstances if we gave leave we would be doing so where this Court did not have the assistance of a reasoned decision from the Supreme Court.
11. While in some cases the law allows review of private employment contract disputes (for example it may do so where the contract of employment effectively involves the tenure of a public office) typically such disputes will best be resolved by litigation determined under the Employment Act. Judicial Review and proceedings under the Employment Act can provide for different remedies. Review does not typically involve damages claims and the remedy sought will generally be reinstatement. But in an employment context reinstatement may not be given even if there is a reviewable error where there has been significant delay and where the employment relationship has broken down.
12. Employment Act proceedings while providing for both reinstatement and damages in certain circumstances typically do not involve reinstatement. Most proceedings under the Employment Act will likely fully resolve all employment issues and judicial review will not therefore be appropriate under Rule 17.8 (3) (d).
13. We do not therefore consider that a matter of public importance arises in this case. In those circumstances we did not consider leave ought to be given to appeal and accordingly leave was refused.

**Costs**

14. The respondents should have one set of costs for an appeal given all parties had prepared for a full appeal hearing.

**DATED at Port Vila this 8<sup>th</sup> day of May 2015.**

**FOR THE COURT**



**HON. Vincent LUNABEK  
Chief Justice.**

