

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

**Civil Appeal  
Case No. 17/2195 CoA/CIVA**

**BETWEEN: WALTERSAI HAPSAI HAPHAPAT II  
AHELMHALAHLAH**

**Appellant**

**AND: REPUBLIC OF VANUATU**

**First Respondent**

**AND: CHIEF MAGISTRATE OF THE  
MAGISTRATES COURT**

**Second Respondent**

**AND: CHIEF REGISTRAR OF THE SUPREME  
COURT**

**Third Respondent**

**AND: CHIEF JUSTICE OF THE REPUBLIC OF  
VANUATU**

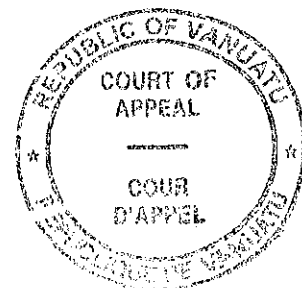
**Fourth Respondent**

**Coram:** *Hon. Justice John von Doussa  
Hon. Justice Ronald Young  
Hon. Justice Oliver A. Saksak  
Hon. Justice Daniel Fatiaki  
Hon. Justice Dudley Aru  
Hon. Justice Paul Geoghegan*

**Counsel:** *George Boar for Appellant  
Jelinda Toa for Respondents*

**Date of Hearing:** *10<sup>th</sup> November 2017*

**Date of Judgment:** *17<sup>th</sup> November 2017*



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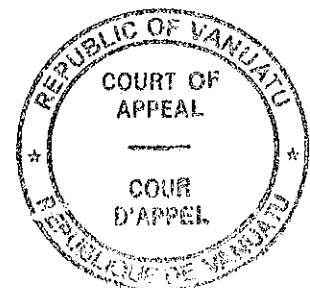
# JUDGMENT

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## Introduction

1. The appellant issued proceedings against the respondents alleging defamation (against the 2<sup>nd</sup> respondent) constructive dismissal (against the 4<sup>th</sup> respondent), illegal decision making (against the third defendant) and negligence (against the second, third and fourth respondents).
2. On 15 June 2017 the Supreme Court struck out all of the appellant's causes of action on the basis that no amount of amendment would make the claim "*any more acceptable or tenable.*" Reason for this decision were published on 29 June 2017.
3. The Judge said the case was so fundamentally flawed it could not succeed. He said the claim disclosed no reasonable causes of action.
4. The appellant's case is that he has a tenable, sustainable claim and that he should be allowed to bring it to trial.
5. Although this appeal was filed out of time (about 1 month late) we granted leave to extend time at the appeal hearing which was not opposed.

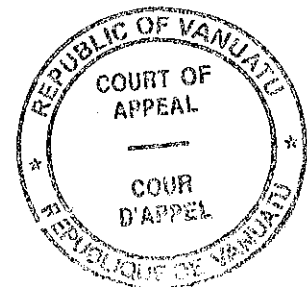
## Background



6. These proceedings arose from the circumstances which led to the appellant's suspension from office and then resignation as a Magistrate.
7. The appellant's amended claim alleged firstly that Mr Stephen D. Felix , the Chief Magistrate of the Magistrates Court in Vanuatu, said "Magistrate Waltersai has been seen harassing some of the college d'Isangel female students" in a letter of complaint about the appellant's conduct. The amended claim alleged this was defamatory.
8. The second cause of action, against the Chief Justice alleges the Chief Justice intentionally coerced the appellant into resigning. He was therefore constructively dismissed.
9. The third cause of action alleged that the Registrar of the Supreme Court acted outside his statutory jurisdiction by himself suspending the appellant. This it is alleged was an illegal act.
10. The fourth cause of action alleged that the Chief Magistrate, the Chief Justice and the Registrar owed a duty of care to the appellant which they breached during their actions surrounding the appellant's suspension and resignation.

### **The Decision to Strike Out**

11. There is some background to the Supreme Court's decision of 29 June 2017 to strike out the appellant's claim. A history is necessary to give context to the June decision.



12. The appellant's original Supreme Court claim was filed on 17 June 2016. On 25 August 2016 the respondent applied to strike out the appellant's claim. The application alleged the claim was:  
*"not brief or concise as possible and it is not clear and definite nor does it set out the fact (sic) to disclose a cause of action."*
13. The respondents said they had written to the appellant requesting he comply with R4.2 (1) but this was met with a refusal. The respondents complained that the appellant's claim was confusing, unclear and not brief contrary to R4.2 (1).
14. The respondents did not specify in either the application or letter why the claim was inadequate by particular reference to the pleadings.
15. In a minute of 29 August 2016 the Supreme Court Judge said the claim did not comply with R4.2. He suggested the appellant obtain legal advice and amend the claim. The Judge did not particularise the inadequacy in the pleadings. The application to strike out was adjourned.
16. On 14 September 2016 the appellant filed an amended claim. On 4 January 2017 the respondent filed a defence to the amended claim and on 20 February 2017 the appellant filed his response to the defence.
17. On 10 February 2017 the Judge adjourned the application to strike out but said the pleadings were defective and told the appellant again to obtain legal advice.
18. The matter came back before the Judge on 21 March 2017. The Judge granted the appellant further leave to file an amended claim. He



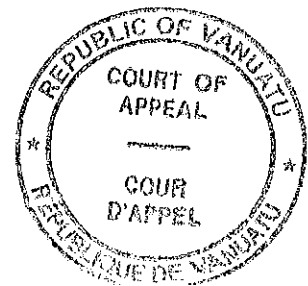
timetabled further pleadings and told the appellant that if a further amended claim has not filed he would be required to show cause why the proceeding should not be struck out.

19. A further amended claim was filed on 1 June 2017. On 13 June a further application to strike out the claim was filed. The grounds of the application were that the pleadings were in breach of R4.2 (1) in that they were not brief or concise as possible or clear and definite, nor did they disclose a cause of action. On 15 June the Judge struck out all causes of action based on this further application.

#### **The Decision Appealed From**

20. In his decision the Judge considered the evidence filed by the parties in the various interlocutory applications. He identified what he said was the weakness of the appellant's causes of action and how in his view the claims could not or were unlikely to succeed, at any trial.
21. The Judge then said:
- “I am satisfied that no amount of amendment would make this claim any more acceptable or tenable. The Claimant's case is so fundamentally flawed, as has been set out in my decision of 6<sup>th</sup> April and in this decision; that simply it cannot succeed. The Claim discloses no reasonable cause of action and to allow the Claimant to pursue it would be to allow an abuse of the process. Accordingly I confirm what I told the Claimant on 15<sup>th</sup> June 2017 the Claimant is struck out. The Claimant has the right of appeal against this decision and time will start to run from the date he receives a copy of it.”

**This Appeal**



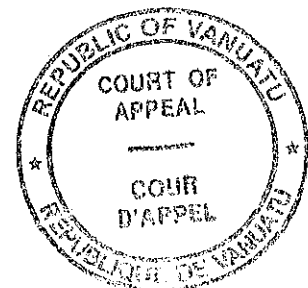
22. The appellant's case on appeal is that each of the causes of action are properly pleaded and can be understood and do not, (save with some exceptions we will consider later in this judgment) require amendment.

23. The respondents essentially repeated their claim that R 4.2 (1) has not been complied with and therefore the Judge's decision was correct.

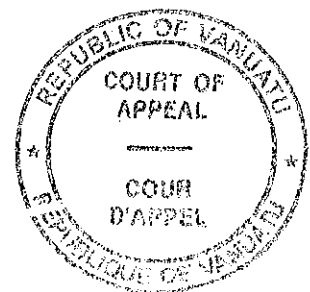
### **Discussion**

24. We are satisfied that the Judge took the wrong approach to the application to strike out. The application to strike out alleged inadequacy of pleading. The Judge's decision was primarily based on his assessment of the merits of the appellant's case. He did not deal with any particular inadequacy in any particular cause of action as the respondent's application required of him. The merits of the appellant's case was irrelevant to the application to strike out for inadequate pleadings.

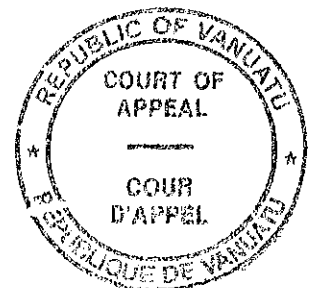
25. We are satisfied that with amendments to causes of action C and D (as marked in the amended claim) the pleadings are adequate and comply with the civil procedure rules. We note that in the respondents' various applications, and sworn statements criticising the appellant's pleadings they did not specify with any particularity any defect. We asked counsel at the hearing of this appeal to detail the criticisms of the pleadings. None were given beyond the generalisations used in R 4.2(1).



26. First the defamation cause of action (claim A). We are satisfied the pleadings fairly and fully inform the respondents (here the 2<sup>nd</sup> defendant) of the appellant's cause of action. There are said to be two defamatory statements. Both are particularly identified. The context and date on which they were published and to whom is identified. The natural and ordinary meaning of the words are also identified. Finally the appellant identifies the consequences of the alleged defamatory statements and the damages sought. This cause of action is therefore adequately pleaded.
27. The second cause of action is constructive dismissal (claim B). The concept of constructive dismissal is based on the proposition that an employee's resignation is in effect a dismissal because the conduct of the employer has in some way forced the resignation.
28. In this case the appellant alleges that although he formally resigned as a Magistrate the actions of the fourth defendant effectively coerced him into resigning. The cause of action identifies the alleged specific actions by the 4th defendant said to give rise to the constructive dismissal. It identifies the loss suffered as a result. This pleading adequately informs the respondents of the details of the appellant's claim.
29. The third cause of action is described as "Illegal Decision Making" (claim C). We advised counsel for the appellant that this cause of action was not clear. After discussions with counsel this claim was reformulated in this way as stated in paragraph 30.

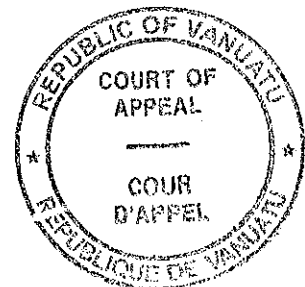


30. This claim is an alternative claim to the Constructive Dismissal Claim. The appellant advised this Court that claim C alleged that the Chief Magistrate and the Chief Registrar had together unlawfully agreed to dismiss the appellant as a Magistrate. The agreement to dismiss was said to arise in October 2013 and the effective dismissal occurred when the appellant's salary was stopped was on 25 October 2013. The dismissal was said to be unlawful because the Chief Magistrate and Chief Registrar did not, in law, have the power to dismiss the appellant.
31. We are satisfied that if cause of action C is amended to reflect these propositions then the pleadings will be adequate.
32. The fourth cause of action alleges negligence (claim D). The cause of action identifies that a duty of care arose in particular circumstances and it alleges there was a breach of that duty. It does not however identify the particular breach of the duty alleged that is the negligent act. After discussion counsel for the appellant advised us that the negligent act by the Chief Magistrate was, when sending his letter of complaint about the appellant's conduct to the Chief Justice, (justified) he copied that letter to the Chief Registrar of the Supreme Court, the Human Resource Officer of the Supreme Court and to all Senior Magistrates and Magistrates (not justified and negligent).





33. Further the appellant says that the Chief Registrar breached his duty of care and was negligent when he sent a letter of 11 November to the appellant (justified) and copied that letter to the Minister of Justice, the Chief Justice, and to two members of the Judicial Services Committee (not justified).
34. The appellant will therefore need to amend this cause of action accordingly and he will need to delete the 4<sup>th</sup> defendant from those respondents whom he is claiming against in claim D.
35. The appellant has included significant further detail in his various sworn statements which can supplement the information in the appellant's pleadings and therefore further inform the respondents of the appellant's causes of action. It will be open for the respondents to seek further particular details of the claim if they think it necessary to do so.
36. If these amendments are undertaken then the pleadings will be adequate.
37. For the reasons given the appeal is allowed, and the claim reinstated. The claim should be re-pleaded as we have indicated within 28 days of this judgment. Once re-pleaded the respondents will need to respond, both by amending their pleadings if necessary and by filing sworn statements. Lists of documents must be exchanged. A trial will then be arranged.




38. We consider that the judge who struck out the claim should not continue as the conference judge as definite views were expressed by him on the factual merits of the claim. This Court has arranged for the matter to be return to Geoghegan J in the Supreme Court to complete the management of the case until ready for trial. At that point arrangements will be made for a judge from outside the jurisdiction who is not known to the parties to hear the trial.

39. The appellant seeks costs. He has partly succeeded although claim C and claim D were not adequately pleaded. In those circumstances the appellant should have standard costs reduced by 25% to reflect the pleading inadequacy.

**DATED at Port Vila this 17<sup>th</sup> day of November, 2017.**

**BY THE COURT**



**John von DOUSSA**

**Judge**

