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

Civil Appeal
Case No. 17/776 CoA/CRMA

BETWEEN: PETER SIMON RANBEL and RACHEL RANBEL

Appellants

AND: REPUBLIC OF VANUATU

Respondent

Coram: ***Hon. Chief Justice Vincent Lunabek***
Hon. Justice John von Doussa
Hon. Justice Ronald Young

Counsel: *Mr. S. Stephens for the Appellants*
Mr. S. Kalsakau for the Respondent

Date of Hearing: *19th and 22nd February 2018*

JUDGMENT BY CONSENT

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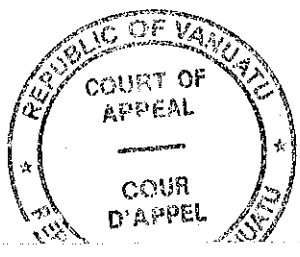
1. This matter concerned an appeal against the dismissal of the appellants' claim in negligence against the Vila Central Hospital for damages suffered as a result of the death of their infant son during his birth and for the rupture of the second appellant's uterus whilst she was in labour. The parties have now resolved their claim and at their request the Consent Judgment set out below is entered.

2. The way in which the trial of this matter was conducted in the Supreme Court has highlighted a recurring situation which has troubled the Court of Appeal in a number of past cases. At trial, the court proceeded to determine "*the question of liability*" as a separate issue.

3. We are concerned about the frequency with which the Supreme Court is asked by counsel, and the court agrees, to split the trial of a claim so as to try the "*question of liability*" as a separate issue, deferring the assessment of damages for later consideration if the court find in the claimants' favour. We therefore take this opportunity to express our concern, and offer guidance for the conduct of future cases.



4. We have put "*the question of liability*" in parentheses as this is an expression that has often been used to describe the decision to split the trial. In reality the so-called question of liability is often not a single and easily identifiable question. We return to that problem below.

5. It is often asserted by counsel that to split the trial and decide liability first will save time and expense. But experience demonstrates that frequently savings do not occur. Splitting a trial often means two trials and sometimes two appeals when only one would occur if all issues were tried at the one time. This case could have been one such instance had the parties not been able to reach settlement.

6. Often the assessment of damages will require little additional evidence beyond the evidence called to establish the wrongdoing alleged against the respondent. Again, taking the present case as an example, the appellants gave evidence about the events which took place at the hospital. Little additional evidence from them would have been required to describe their grief and future suffering from the medical condition suffered by the second appellant. To extend that evidence to cover these matters would have added virtually no extra time or expense to the proceedings. The evidence of the respondent's witnesses would also have been relevant to the damages assessment and could have been covered at very little or no extra expense at the one trial. Ideally the damages aspect of the claimants' case may have required a medical expert, but such an expert should have been called anyway to better establish whether the treatment received by the second appellant at the hospital caused or contributed to the injuries she suffered. In short, this case was a typical one where a suggested saving in time and costs by adopting the split trial approach was illusory.

7. Of more importance, once the evidence in a split trial gets underway it often turns out that the nature, causation, and extent of the alleged damage is inextricably bound up with issues going to liability. For example, in a negligence claim, and also often in a contract claim, to establish a breach of the relevant legal obligation by the respondent it will be necessary for the claimant to prove that the respondent's conduct caused the damage claimed. In an action in negligence a tortfeaser is liable for a breach of duty of care only if the breach causes damage. Until the court has evidence about the nature and extent of the damage there is

a real likelihood that the causation question will not be capable of proper and reliable determination.

8. We earlier foreshadowed the problem with an order that directs a separate trial on "*the question of liability*". A proper understanding of the nature of the claim is likely in many cases to indicate that the "*question of liability*" cannot be simply isolated from the loss and damage claimed. As we have noted, proof of the respondent's breach of a legal obligation is likely to require consideration of the loss and damage. The nature and extent of the damage will be indicative of the risk inherent in the task at hand and the scope of the respondent's duty of care or other legal obligation as well as its importance on the question of causation.

9. Furthermore, it is often the case that on analysis of the pleadings, a claim does not allege a single wrongdoing, but several, in which case the trial on the "*question of liability*" is rendered meaningless. The question remains: a trial on which liability? The present is a straight forward example of this problem. Here factors relevant to the claim for the death of their baby were quite different from those relevant to the claim for the second appellant's injury, and the respondent might have been legally liable for one but not the other claim.

10. Another more complex example is provided by another recent appeal to this court where the claim alleged against the respondent was unauthorized use of money in a business setting. In that case the parties directed their attention to obtaining a summary judgment for damages to be assessed. The concerns we have already expressed apply equally to such a case. In this example, and others where the claim involves numerous transactions, it is likely to be difficult if not impossible to separate a single issue for trial ahead of the assessment of damages. There are likely to be different explanations and contributing reasons for each transactions, or perhaps groups of transactions.

11. The above observations are not intended to deny that there may be exceptional cases where a particular issue can be identified for a separate trial and where there can be savings in costs and time. Claims that turn on the construction of a building, insurance or shipping contract provide an example. But the point which the Court of Appeal wishes to emphasis is that cases where it is appropriate to

have a separate trial on the so-called "*question of liability*" are few and exceptional.

12. We add a practical consideration. If a party persuades the court to have a separate trial on the question of liability and it ultimately turns out that all issues in the trial should have been heard at the one time, that party may not recover those costs of a second trial that could have been avoided by having one trial, and that party may also be ordered to pay additional costs incurred by the other side.

13. The parties have requested the court to record the following judgment to give effect to the settlement reached by them:

By Consent

1. Appeal allowed;
2. Judgment is entered in favour of the appellants for VT5 million (VT5,000,000) inclusive of all costs both at trial and in this court;
3. Payment of the judgment sum shall be made by the following instalments:
   (a) By 31 March 2018 – VT2,500,000;
   (b) By 20 April 2018 – VT1,250,000;
   (c) By 31 May 2018 – the balance of VT1,250,000;

4. In default of payment of any instalment interest shall run at 5% on any overdue amount.

DATED at Port Vila, this 23rd day of February, 2018.

BY THE COURT

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

Vincent LUNABEK
Chief Justice