

BETWEEN: REPUBLIC OF VANUATU
Appellant

**AND: FELIX LAUMAE T KABINI AND BEN
MAHANA representing the shareholders
and Directors of Qanaku Development
Company Limited (QDC)**
Respondents

Coram: *G.A. Andrée Wiltens*

Counsel: *Mr. S. Aron for the Appellant*
Mr. F. Laumae for the Respondents

Date of Hearing: *26 October 2018*

Date of Judgment: *12th November 2018*

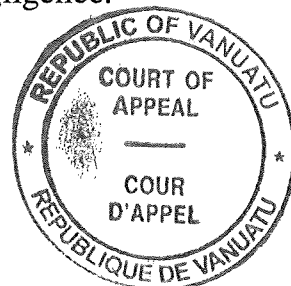
JUDGMENT

A. Introduction

1. This case concerns a belated application to be able to re-litigate something that had been agreed between the parties.

B. Background

2. Marine vessel, the Kaona, came to Vanuatu in early 2011 without proper authority. It was arrested and detained in the custody/care of the Ministry of Infrastructure and Public Utilities, but sank in 2013. The owners sought damages by way of negligence.



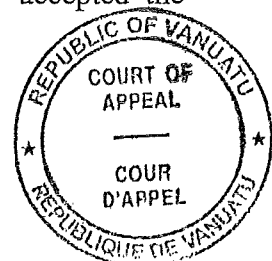
3. The Supreme Court issued a judgment in favour of the owners on 27 April 2018. That decision was confirmed to be accepted by counsel for the Ministry on 12 June 2018. As a result an enforcement consent judgment was signed on 28 June 2018 agreeing quantum and setting out a payment schedule. The first payment of VT2,500,000 was duly paid to the owners as per that agreement.
4. On 27 July 2018 the Ministry reconsidered.

C. The issues

5. In order to be able to appeal, an enlargement of time is required, pursuant to Rule 9 of the Court of Appeal Rules. That application was filed on 10 August 2018.
6. The application is silent as to reasons for delay. Further, it is boldly stated that there are “substantial grounds” to appeal and that it is not envisaged any prejudice will accrue to the owners. It concludes by “seeking an indulgence”.
7. A notice and ground of the proposed appeal accompanied the application, together with sworn statement by H. Worek.
8. Mr. Laumae opposed the application, pointing to actual prejudice, a lack of explanation as to delay; and the fact that consent orders were filed and payments of the judgment debt commenced.

D. Decision

9. The factors to consider in determining whether to grant the application for the enlargement of time include the length of delay, the reasons for delay, the prospect of success, the degree of prejudice that might arise, and the overall intents of justice.
10. The delay in appealing is from 25 May 2018 to 10 August 2018 a matter of 77 days. Given that no reason for the delay has been proffered, it is fair to conclude that having initially accepted the



decision, later, the proposed appellant simply changed his mind. That militates against granting the application.


11. Given that the ship had been arrested and was being detained by the authorities, it seems a difficult proposition to rebut that the authorities had no obligation to maintain the vessel or prevent it sinking without some catastrophic intervention. Accordingly I consider the prospects of success to be poor.
12. I accept that consent orders may be the subject of re-visiting or correcting. This however is not such a case. What is being attempted is a complete about-face. From having accepted liability, negotiated a payment schedule, agreed costs and made the first payment, the proposed appellant now seeks to re-litigate liability and quantum afresh.
13. To grant the enlargement sought is entirely discretionary. I exercise my direction to decline the application. There needs to be certainty and finality of disputes - that is the public interest in this matter. That had been achieved here, by means of consent enforcement orders. It would be wrong to go back to the beginning.

E. Orders

14. The application to enlarge time to appeal out of time is declined.
15. Costs ought to follow the event. Mr Laumae is entitled to his costs. If they cannot be agreed between counsel, they will need to be taxed.

DATED at Port Vila this 12th day of November, 2018

BY THE COURT


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Justice G. A. Andrée Wiltens

