

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

Civil Appeal
Case No. 19/1857 CoA/CIVA

BETWEEN: Teaching Service Commission
First Applicant

AND: Republic of Vanuatu
Second Applicant

AND: Alpet Christelle Saltukro and 36 Ors.
Respondents

Date of Hearing: 19 July 2019

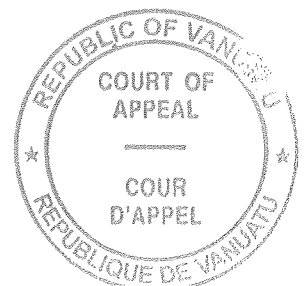
Before: Chief Justice V. Lunabek
Justice J. Mansfield
Justice O. Saksak
Justice D. Fatiaki
Justice D. Aru

In Attendance: Mr H. Tabi and Mr J. Toa for the Applicants
Mr E. Molbaleh for the Respondents

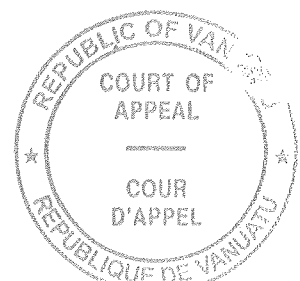
Date of Decision: 19 July 2019

JUDGMENT

1. This is an application for leave to appeal from the interlocutory judgment of the Court given on 24 June 2019, and if leave to appeal is given to appeal from that judgment.



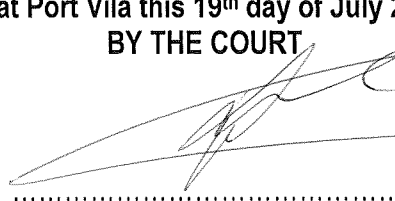
2. The respondents are teachers employed by the first applicant who say that they are entitled to be paid at a higher rate than they have been paid under the 2007 Government Remuneration Tribunal Determination (GRT). The applicants (we shall call them together the employer) dispute that, and say that they have paid the teachers at the rate appropriate to the classification which they previously occupied. Counsel for the employer agreed that the real dispute was the proper classification of the teachers from time to time to determine their entitlement to remuneration.
3. Of course, counsel for the employer also said that the employer would not deliberately underpay the teachers.
4. One of the supplementary defences of the employer was that, if the employer is found to have been paying the teachers at the incorrect rate of remuneration, the claim for the correct rate of remuneration would be statute-barred, save for the period from 25 February 2016, (a period of 3 years before the commencement of the current proceedings in the Supreme Court) by reason of section 20 of the Employment Act [CAP 160] Section 20 prevents a claim being made for an entitlement to remuneration more than three years after the period from which the entitlement to the remuneration arises.
5. On 24 June 2019, a Judge of the Supreme Court decided, on a preliminary question decided that section 20 of the Employment Act did not in any event operate as a bar to the teachers' claims for what they said to be their entitlement to a greater rate of pay under the GRT Determination, whether back to 2007 or in some other individual case from the time those particular teachers came to be employed.
6. In the course of argument, it became common ground that the determination of that issue was premature. It would not arise if the employer has correctly paid the teachers to the present time. That is the principal defence. If the determination of the Court is adverse to the employer on that issue, so they should have been entitled to remuneration based on a different classification, the entitlement to that remuneration will arise by virtue of the Court's decision and the consequential reclassification. As counsel for the employer acknowledged, there is no such entitlement at present, so it must arise by virtue of and from the determination of the Court, and consequently giving effect to that determination. In that event, section 20 of the Employment Act will not itself arise to bar the proceedings because the entitlement to the remuneration will have only arisen by virtue of the Court decision and the period to which the remuneration relates will therefore run from the Court decision of the entitlement to it.



7. The application for leave to appeal is therefore granted, and the appeal is allowed. The decision of the Court made on 24 June 2019 is set aside as having been made at a point in the proceedings when it was not necessary to be determined. The matter is remitted to the Supreme Court for further hearing and determination.

8. As the determination of the preliminary point was supported by both parties before the primary Judge, there should be no order of the costs of this application or this appeal.

**Dated at Port Vila this 19th day of July 2019
BY THE COURT**


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Chief Justice, V. Lunabek

