

BETWEEN: PETER LUI
Appellant

AND: RAYMOND NASSE
Respondent

Coram: Hon. Justice O. Saksak
Hon. Justice J. Mansfield
Hon. Justice R. Young
Hon. Justice G. Andrée Wiltens
Hon. Justice D. Aru
Hon. Justice V.M. Trief

Counsel: Mr E. Molbaleh for the Appellant
No appearance for the Respondent

Date of Hearing: 7 July 2021

Date of Judgment: 16 July 2021

JUDGMENT OF THE COURT

A. Introduction

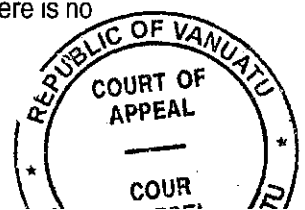
1. On 20 June 2008 the Respondent was badly injured in a road accident in Port Vila, when he was hit by a truck driven by the Appellant. He sued the Appellant for damages for personal injuries and losses as a result of the negligence of the Appellant.

B. The Decision

2. The claim had an unfortunate procedural history. Eventually it came on for hearing before the Chief Justice. On 18 January 2021, judgment was given in favour of the respondent against the Appellant for VT 6,088,800 plus interest at the rate of 5% from the date of judgment to the date of payment, plus costs fixed at VT 80,000. The Appellant's claims that he did not drive negligently, and that the Respondent was guilty of contributory negligence were rejected.

C. The Appeal

3. This is an appeal from that decision. It is confined to the question of liability. There is no separate complaint about the assessment of the damages.



4. The Appellant argued on the appeal that the trial judge erred because the Appellant was not negligent at all, and that the Respondent was the cause of the accident by walking in front of his truck when the Respondent was very drunk.

D. Discussion

5. The appeal must fail. It is a hopeless appeal.
6. The attack on the judgment was about the facts found by the trial judge. The judge properly understood the evidence, and the contested issues of fact. As the judgment recorded, the evidence of the Respondent and of his supporting witnesses was not challenged. The Appellant did not give evidence at all. The judge made findings on the basis of the unchallenged evidence. They included evidence that the Respondent was not drunk at the time; that the Appellant drove his truck at high speed straight at the Respondent. The two witnesses called on behalf of the Appellant did not directly contradict any of that evidence. The trial judge concluded that the Appellant's driving was *'a piece of gross and deliberate reckless driving...'*
7. It is hard to understand how counsel thought the appeal could have been even arguable.
8. Separately, there was an application by the Appellant to call fresh evidence on the appeal, at least for the purpose of having the judgment set aside and the matter being remitted for retrial.
9. There is no material to show the Appellant or his legal representatives did not know of the existence of the proposed witness at and prior to the time of the trial. Nor is there evidence that the Appellant or his legal representatives made any attempt to contact him and secure his attendance at the trial to give evidence. It is not shown that the proposed evidence was not available to be called by the Appellant at the trial. The proposed witness says that he was engaged in seasonal work and only returned to Vanuatu in December 2020, but the trial commenced in June 2018 and the Appellant's case started on 18 September 2018, so that is well before the seasonal work period during 2020. The lateness of the application (the day before the hearing of the appeal) would itself be a good reason to refuse it. We comment further on that below.
10. The criteria for permitting the Appellant to introduce that material on the appeal are clearly not made out.

E. Result


11. The appeal is therefore dismissed. The Respondent did not appear on the hearing of the appeal. He was given the opportunity to make written submissions, which we have considered. In the circumstances, there is no order for the costs of the appeal.



12. The Court needs to make one other observation about the conduct of the appeal. It was instituted on 18 February 2021. The Practice Direction for Appeal to the Court of Appeal dated 17 September 2020 required the Appellant to file and serve the Part A Appeal Book at least 4 days before the first Directions Conference. That was not complied with. At the Conference on 24 June 2021, the Court set a fresh timetable for the filing of the Appeal Books Part A and Part B and for the Appellant's submissions. None of those dates were complied with. No application was made to vary those dates, or until the hearing to explain why they were ignored. The Appeal Book (including the application for leave to call fresh evidence) and the submissions were filed only the day before the hearing, and in the case of the Appellant's submissions only late in that afternoon. The Appellant could not have expected the Respondent to have had a fair opportunity to consider that material before the hearing.
13. The purpose of the Practice Direction, and for Directions by the Court, is to ensure fair and efficient hearing of appeals. The failure to comply with them may, in certain circumstances lead to the appeal being dismissed if the other parties cannot get a fair hearing by reason of the lateness. The persistent failure of a particular legal practitioner to comply with such Directions may indicate that that practitioner has such disrespect for the Court as to raise issues about his or her fitness to be a legal practitioner, and so may lead to the conduct of that practitioner being referred to the Law Council Disciplinary Committee.

DATED at Port Vila, Vanuatu, this 16th day of July, 2021

BY THE COURT


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Justice Oliver Saksak

