



this position he held from time to time several Senior Acting positions with the Department namely as the acting Senior Financial Officer, acting internal Auditor and at one time the acting Principal Financial Officer. It was during his term of employment that he borrowed funds he has not entitled to and failed to fully refund the funds as promised.

The Applicant was provided an opportunity to respond to the allegations made against him. In his response, he admitted borrowing the funds for his personal use. Following his admission he was given time to repay the funds but he failed and or refused to fully repay the funds. The Defendants had reminded the claimant a couple of times to fully repay the money he borrowed but the claimant failed to do so. The reminders includes, verbal discussions between the Claimant and the then Acting Director of Internal Affairs, Mr Tete, letter to the Applicant informing him of the funds borrowed and for any attempts to repay the funds, joint written agreement and procedural arrangement to repay the funds, financial circular prohibiting councillors to advance funds from the provincial funds, and the Comprehensive monthly reports outlining those having unpaid advances. Despite all these attempts the applicant was finally forced by the Department's instruction to execute direct deductions from his monthly salaries. However, since he had ceased employment he still owes money that he borrowed from the Defendant. As all avenues have been explored to resolve this matter, the Public Service Commission therefore in its meeting of 11 April 2002 decided that the Claimant be dismissed from the service for serious misconduct for improper handling of the Government funds through the Shefa Provincial Council. On 11 April 2002, the Claimant was dismissed by the Public Service Commission under section 29 of the Public Service Act. In October 2002, the Claimant through his lawyer appealed the Commission's decision in Civil Case No.139 of 2002 pursuant to section 38 of the Act. This action named the Government of the Republic of Vanuatu as the 1<sup>st</sup> Respondent and the Director of Department of Internal Affairs as the 2<sup>nd</sup> Respondent. By notice of motion dated 20 November 2002 the Respondents sought to have the appeal struck out on the basis that the Appellant (now claimant) did not have a right of appeal. This was because in dismissing the Claimant, the Commission exercised its powers under section 29 of the Act. The Act only provides a right of appeal when a person is dismissed under section 37. The right of appeal in such cases is found in section 38 of the Act. Having heard both Counsel and considered their submissions, the Court struck out the appeal by order dated 10 December 2002.

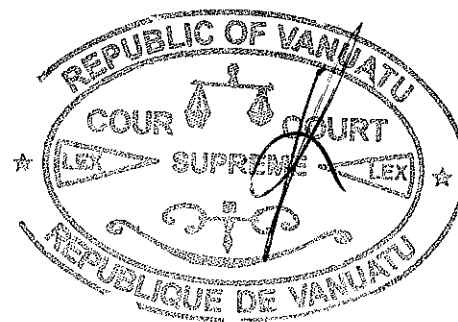
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On 23 December 2004, the Claimant served the Attorney-General with this Judicial Review Claim in the present proceeding.

It took almost 3 years (2 years and 8 months) to apply for leave to issue Judicial Review proceeding against the decision of the Commission dated 11 April 2002 to dismiss him from the Public Service.

The Claimant / Applicant advanced the Application for leave to file Judicial Review Claim out of time upon the following grounds:-

1. The Applicant was a Civil servant of the Government of the Republic of Vanuatu until the Public Service Commission sometime in April 2002 dismissed the Claimant for gross misconduct.
2. The Applicant claims the decision of the Public Service Commission is unfair, unlawful and retain the service of the Public Solicitor's office in the same month and the year to quash the decision of Public Service Commission and claim damages.
3. The Public Solicitor Office prepared and filed his claim in this Court by way of a notice of Appeal. A copy of a draft Notice of Appeal is annexed in the Appellants Further Sworn Statement.
4. The Applicants Notice of Appeal was struck out on the basis that the Applicant followed the wrong procedure in filing his claim.
5. Infact the Court correct procedure was through a Judicial Review Claim and not a Notice of Appeal.
6. Since then the Applicant made numerous appointments with the Public Solicitors office to re-file his claim. And having paid the office the prescribed fees the Applicant expected the Public Solicitors office to file his claim within time.
7. On numerous occasions the Public Solicitor's Office advised they will prepare his case but fail. On numerous occasions again the Applicant had to wait and reschedule his appointment with the Public Solicitor's Office.
8. The Applicant cannot afford another lawyer due to his unemployed status.
9. The Applicant kept pursuing the Public Solicitors office since his case was struck out until 2004 around the month of July when he finally decided to make personal sacrifice to find a private lawyer. That prompted the Applicant at present to file correct cause of action.



10. Had the Public Solicitors office acted within time, the Applicant would not have taken beyond 6 months to file this action.

11. This Court would only render Applicant justice if it extends time for the above reasons which are beyond the Applicant's control.

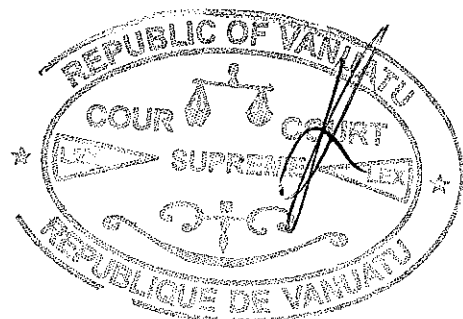
The Applicant filed three (3) sworn statements in support of his Application for leave to apply for Judicial Review respectively on 14 October 2002, (relied upon in the Appeal Proceeding) 14 December 2002 and 18 January 2005.

The Applicant submitted that he sought legal assistance to challenge the decision of the Public Service Commission. He filed a claim on 14 October 2002 (which is his notice of appeal). It was filed within 6 months but it was wrongly made. The Court informed the claimant to file a Judicial Review Claim not an Appeal.

It is submitted that the claimant has exercised his right to seek the professional assistance of the Public Solicitor's Office. The Public Solicitor's Office followed a wrong process. The Public Solicitor failed to pursue with the claim. The claimant then changed his lawyer. He now applied for leave to apply for Judicial Review out of time.

The Respondents objected to the application for leave to apply for Judicial Review. They rely on two (2) sworn statements of then Secretary of the Public Service Commission, George Pakoasongi filed 10 March 2005 and 29 April 2005.

The Respondents submitted that under Rule 17.5 (1), a claim to review a decision must be made within 6 months of that decision. Here the Claimant has not complied with Rule 17.5 (1). The Respondents submitted that there has been an inordinate (excessive or undue) delay in filing the judicial application for the Court to review the decision made in April 2002. The Respondent submitted that the claimant did not make any attempt to file any judicial review proceeding until 23 December 2004 when the Attorney General was served with the Judicial Review Claim. It took the Claimant for 2 years and 8 months. The claimant has had more than ample time to file any proceeding. It is submitted that waiting until after 2 years and 8 months to issue a claim for judicial review is unreasonable period to lodge a claim. There is excessive or undue delay in filing this claim. The Court agrees. The Claimant was legally represented by the Public Solicitor's Office through out the relevant period. This case is different from a claimant who does not know his right and does not know what to do and



lives in remote places where access to the courts and the lawyers is difficult.

The Claimant was legally represented throughout the period of 2 years and 8 months when he filed his claim on 14 October 2004 and served it on 23 December 2004.

The Claimant raised and relied on his financial situation as a reason to delay his claim. The Respondents submitted the Claimant cannot rely on his financial situation to justify the delay. The Court agrees. Further, the professional incompetence or negligence of Counsel does not justify the delay for the purpose of Rule 17.5 (2) of the Civil Procedure Rules.

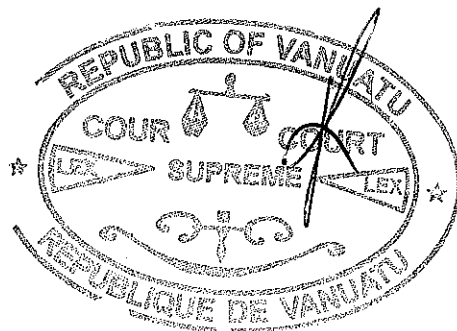
On perusing the sworn statements of the Claimants and the submissions of his Counsel, the Court accepts the Respondent's submissions that the Claimant has not provided reasons for the delay. In such a circumstance, substantial justice does not require the Court to extend the time for making a claim.

The court relies on the persuasive authority of the English Court of Appeal decision in *R –v- Institute of Chartered Accountant in England and Wales ex-parte Andreau (1996) 8 Adim L.R. 557* where the Court of Appeal [UK] in refusing leave to appeal against a refusal to extend time to begin judicial review proceedings held:

- (1)The purpose of the procedure governing applications for judicial review is to provide a simplified and expeditious means of resolving disputes in the field of public law.
- (2)This purpose would be frustrated if the relatively leisurely and casual approach to time – limits which characterised civil litigation in the field of private law were to be adopted in the field of public law.
- (3)Therefore, notwithstanding that the error had been entirely that of the Applicant's lawyers (the judge) had been right to dismiss the application.”

Rules 17.8 (3) (c) of the Civil Procedure Rules provides that the Judge will not hear the Claim unless he or she is satisfied that there has been no undue delay in making the claim.

In the present case, there was undue delay in filing this claim and the Claimant has not proved or shown the reasons for the delay in filing the claim. In such a circumstance, natural justice does not require the Court to extend time for this claim.



The application for Leave to file judicial review claim out of time is dismissed. The Defendants are entitled to costs against the Claimant on standard basis to be agreed or taxed.

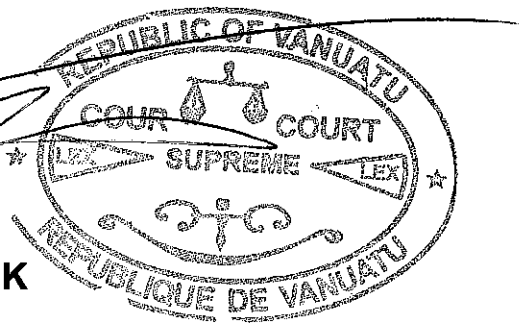

The Court makes the following orders:

### **ORDERS**

1. The Application for Leave to file Judicial Review out of time is dismissed.
2. The Defendants are entitled to costs against the Claimant on the standard basis. Such costs shall be taxed failing agreement.

**DATED at Port-Vila this 28<sup>th</sup> day of May 2014.**

**BY THE COURT**



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COUR' and 'COURT' are on either side of the scale, with 'SUPREME' below it. Two small triangles containing the word 'LEX' are positioned on either side of 'SUPREME'. The seal is partially overlaid by a signature.

**Vincent LUNABEK  
Chief Justice**