

(Other Jurisdiction)

BETWEEN: Mohammed Rizwan

Claimant

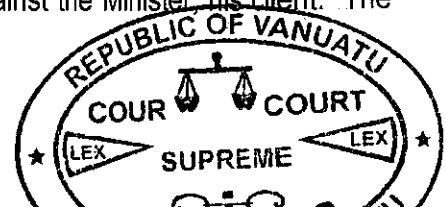
AND: Republic of Vanuatu

Defendant

Date: 30 August 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mr F. Loughman for the Claimant
Mr M. Hurley for the Defendant

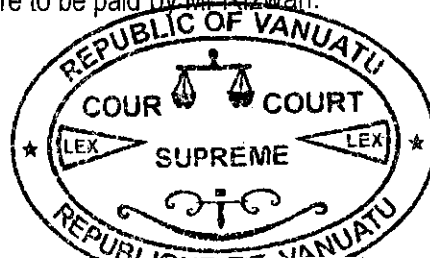
JUDGMENT

1. A conference was scheduled for this morning to deal with the outstanding issue of Mr Rizwan's allegation of contempt by the Minister of Internal Affairs ("the Minister"); and possibly also the issue of costs.
2. Following my decision of 20 August 2018 declining to judicially review the Minister's decision to order Mr Rizwan's removal from Vanuatu, there has been widespread media reporting suggesting that Mr Rizwan has left Vanuatu illegally. Nevertheless, Mr Loughman advises that he has filed an appeal against the decision this morning at 8am. His instructions are that his client wishes to return to Vanuatu.
3. As a result, he applied orally for the issues of contempt and costs to be deferred until after the Court of Appeal has made it's determination.
4. Mr Hurley opposed the application, the issue of contempt being in his submission quite unrelated to the appeal. He further submitted that the contempt application be dismissed as being misconceived and with no prospects of success as against the Minister, his client. The



basis for that latter submission is that the Minister's 5 April 2018 removal order was made pursuant to section 53A(1)(a) of the Immigration Act No. 17 of 2010 ("the Act"). Ultimately, that order was allowed to lapse without the Minister seeking to justify or enforce it.

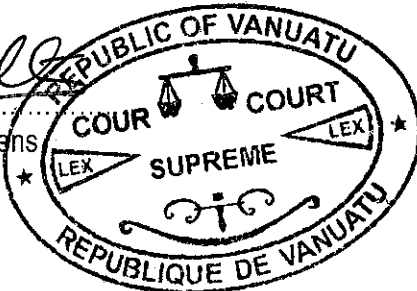
5. Subsequently, on 30 May 2018 the Minister made a further removal order, this time pursuant to section 53A(1)(b) of the Act. That subsequent removal order was the basis for the application for judicial review. That order requires quite different considerations to be taken into by the Minister. That being so, how is possible, Mr Hurley enquired, for the Minister to be in contempt of Court?
6. When that judicial review application was first made, it was accompanied by Mr Rizwan's allegation of contempt of court by the Minister, his First Political Advisor, and the Commissioner of Police. The application sought the incarceration of those named persons, or that they be fined or both.
7. I discussed with Mr Loughman the improbability of success in relation to the First Political Advisor as I could not see what steps, if any, he had taken in this matter; the equal unlikelihood of success against the Commissioner of Police, who appeared to me to following what he could legitimately point to as a valid instruction from a superior. Mr Loughman accepted those points at the time, but took no steps to amend his application.
8. I directed that this aspect of contempt be heard subsequent to the Judicial Review aspect; and following the decision of 20 August 2018, I scheduled the conference to see whether it was intended to pursue this aspect.
9. Mr Loughman has today confirmed that he seeks to pursue this matter, but as earlier described, he wants to do so after the Court of Appeal decision is known.
10. I cannot see any reason to defer the contempt allegation. Whether the appeal against my decision is allowed, or declined, cannot in any way affect the contempt allegation. It is quite separate and distinct. It therefore ruled against Mr Loughman, and declined to defer the contempt allegation.
11. Mr Loughman submitted that the contempt application ought not to be dismissed. He argued that the Minister was bound by my first direction and had determined to make the second removal order despite that direction and without taking any further matters into account. I reminded Mr Loughman that my decision was to the contrary – that not was the order made on a different footing, but it came about after further material had been made available to the Minister, which he considered prior to making the order.
12. Mr Loughman was unable to satisfy me that the application had any proper legal basis or any prospect of success. I therefore dismissed it as against all three named persons.
13. Costs ought to follow the event. There have been 3 substantive matters involved. The first involved a challenge to the 5 April 2018 removal order – the costs of that matter are to be paid by the State. The second part of the case involved the judicial review application of the 30 May 2018 removal order decision – the costs in relation to that are to be paid by Mr Rizwan. Thirdly, there is the contempt issue – the costs in relation to that are to be paid by Mr Rizwan.



14. If there is no agreement between counsel as to the appropriate costs awarded, they are to be taxed.
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15. The final matter raised was an oral application by Mr Loughman for a stay of the 30 May 2018 removal order, on the basis that an appeal has now been filed. He did not advance the matter other than that. Mr Hurley opposed the application.
16. There is no proper basis established for a stay to be granted. What has been filed by Mr Loughman is a pro forma document. There is complaint about the findings relating to whether or not the Minister was obliged to give notice of his decision – which is quite immaterial to whether or not the removal order was valid. The grounds listed are general, unspecific and imprecise – there is nothing that shouts out “error”, or any obvious basis on which the appeal is likely to succeed.
17. Had Mr Rizwan remained in Vanuatu and sought a stay, he would have been on much stronger grounds. However, having voluntarily departed, most probably somehow contrary to a stop order at the airport, it ill behoves him to now say he wishes to be able to return. His flight has condemned his application for a stay to failure.
18. The application to stay the operation of the removal order is declined.

**Dated at Port Vila this 30th day of August 2018
BY THE COURT**

Gandri Ull
Justice G.A. Andrée Wiltens

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, and "SUPREME" is written below it. Two small triangles containing the word "LEX" are also present. The seal is stamped in black ink.