

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Civil**  
**Case No. 24/61 SC/CIVL**

**BETWEEN: Vanuatu National Provident Fund  
Board**  
Claimant

**AND: Vanuatu Maritime College Limited**  
Defendant

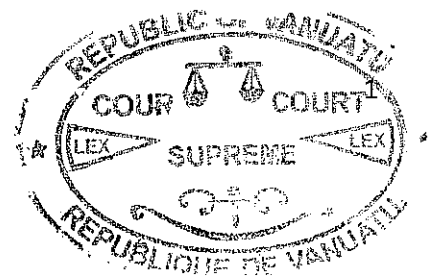
*Date:* 8 February 2024  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr K. Nathan

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**DECISION AS TO URGENT EX PARTE APPLICATION TO SEEK LEAVE  
TO FILE OUT OF TIME**

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1. On 12 January 2024, the Claimant the Vanuatu National Provident Fund Board (the 'Board') filed the Claim seeking the recovery of unpaid contributions in respect of Richard Coleman, a former employee of the Defendant Vanuatu Maritime College Limited ('VMCL').
2. On 16 January 2024, the Board filed Urgent *Ex Parte* Application to seek Leave to File out of Time an Amended Claim in relation to contributions for the period March 2011 to December 2017 which are out of time (the 'Application'). The Sworn statement of Richard Coleman was filed in support.
3. The Application is stated to be made pursuant to sections 3, 15 and 16 of the *Limitation Act* [CAP. 212], rules 7.7(1), 1.2(1) and (2) and 1.3(a) and (b) of the *Civil Procedure Rules* ('CPR') and subs. 28(1) of the *Judicial Services and Courts Act* [CAP. 270] (the '*JSC Act*').



4. The grounds of the Application include that the Defendant owes the Claimant outstanding contributions up to 10 January 2018, however cannot claim earlier contributions since 2 March 2011 as they are time-barred, that former Defendant employee Richard Coleman did not know of his rights under the *Vanuatu National Provident Fund Act* [CAP. 189] (the 'VNPF Act') until June 2023, if the Orders are not granted it will be prejudicial and unfair to the Claimant and the Court has the inherent jurisdiction to determine the merit of the Application.
5. By Orders dated 19 January 2024, I directed the Claimant to file submissions by 4pm yesterday to assist the Court as to the legislative provisions for the extension of limitation period sought. No submissions have been filed.

6. Section 56 of the VNPF Act provides as follows:

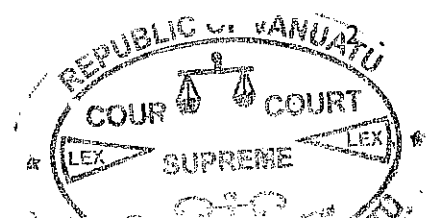
56. (1) *All contributions payable under the provisions of this Act may, without prejudice to any other remedy, be recoverable by the Board as a civil debt.*
- (2) *Proceedings for the recovery as a civil debt of any contribution may, notwithstanding anything in any other law to the contrary, be brought at any time within 6 years from the date when the contribution became due.*
- (3) *In this section the word "contribution" shall be deemed to include any surcharge under section 26(2).*

7. Paragraph 3(1)(d) of the *Limitation Act* provides as follows:

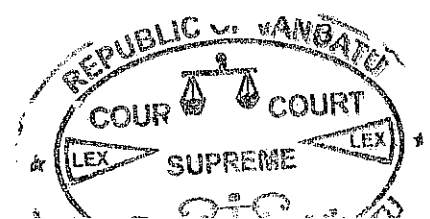
3. (1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –*  
  
...  
  
(d) *actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:*

8. Sections 15 and 16 of the *Limitation Act* provide as follows:

15. (1) *The provisions of subsection (1) of section 3 shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which –*
  - (a) *the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and*
  - (b) *the requirements of subsection (3) are fulfilled.*
- (2) *This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.*
- (3) *The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which –*



- (a) *either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period; and*
  - (b) *in either case was a date not earlier than twelve months before the date on which the action was brought.*
- (4) *For the purpose of subsection (3), reference to the three-year period relating to a cause of action means a reference to the period of three years from the date on which that cause of action accrued:*
- Provided that –*
- (a) *in relation to any cause of action in respect of which, by virtue of section 10, action could have been brought after the end of the period of three years from the date on which that cause of action accrued, any such reference to the three-year period relating to that cause of action shall be construed as a reference to the period up to the end of which an action could, by virtue of that section, have been brought in respect thereof;*
  - (b) *in relation to a cause of action in respect of which, by virtue of section 14, the period of limitation did not begin to run until a date after the cause of action accrued, any such reference to the three-year period relating to that cause of action shall be construed as a reference to the period of three years from the date on which, by virtue of that section, the period of limitation began to run.*
- (5) *Nothing in this section shall be construed as excluding or otherwise affecting –*
- (a) *any defence which, in any action to which this section applies, may be available by virtue of any provisions of any Act other than those contained in subsection (1) of section 3 (whether it is an Act imposing a period of limitation or not) or by virtue of any rule of law or equity; or*
  - (b) *the operation of any Act or of any rule of law or equity which, apart from this section would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.*
16. (1) *Any application for the leave of the court for the purposes of section 15 shall be made ex parte, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.*
- (2) *Where such an application is made before the commencement of any relevant action, the court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –*
- (a) *to establish that cause of action, apart from any defence under subsection (1) of section 3; and*
  - (b) *to fulfil the requirements of subsection (3) of section 15 in relation to that cause of action.*
- (3) *Where such an application is made after the commencement of a relevant action, the court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –*



(a) to establish that cause of action, apart from any defence under subsection (1) of section 3; and

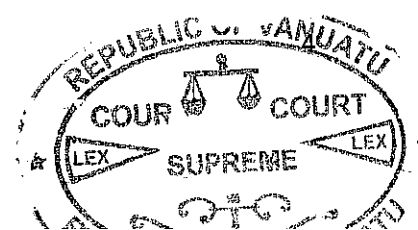
(b) to fulfil the requirements of subsection (3) of section 15 in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as, apart from the last preceding section, to afford a defence under subsection (1) of section 3.

(4) In this section, "relevant action", in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

9. Having considered the Application and supporting sworn statement, the Application is **declined and dismissed** for the following reasons:

- a) Subsection 56(2) of the *VNPF Act* and para. 3(1)(d) of the *Limitation Act* both prescribe a 6-year limitation period in relation to actions or proceedings for the recovery of a contribution;
- b) The Claim in the present matter was filed on 16 January 2024. Accordingly, the recovery of contributions may be sought from 17 January 2018 onwards which is within the 6-year limitation period. However, any claim for earlier contributions is time-barred pursuant to subs. 56(2) of the *VNPF Act* and para. 3(1)(d) of the *Limitation Act*;
- c) The Application is stated to be made pursuant to ss 15 and 16 of the *Limitation Act* however these provisions apply to personal injury actions and therefore do not apply in the present matter which is an action or proceedings for the recovery of a contribution;
- d) There is no provision that I can find in the *VNPF Act* or in the *Limitation Act* for extension of time in respect of an action to recover a contribution;
- e) Accordingly, any claim for the recovery of contributions prior to 17 January 2018 is time-barred;
- f) The references to rule 7.7(1) and rules 1.2 and 1.3 setting out the overriding objective of the CPR do not assist;
- g) The reference to subs. 28(1) of the *JSC Act* does not assist. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings in Vanuatu pursuant to subs. 28(1) of the *JSC Act*. The Court must apply the law to determine the proceedings before it and in this matter, that is a limitation period without any corresponding legislative provision for the extension of that limitation period;
- h) Whether or not Mr Coleman knew of his rights under the *VNPF Act* to have contributions paid in respect of his employment with the VMCL is



irrelevant as there is no legislative provision for the extension of the applicable limitation period;

- i) Whether or not the Board suffers prejudice if the orders sought are not granted is a relevant consideration on an interlocutory application seeking orders to maintain the *status quo* pending the determination of the Claim. This is not such an application. The Application sought extension of the applicable limitation period, and that cannot occur as there is no legislative provision for such extension; and
- j) Accordingly, the Application must be declined and dismissed.

10. The Claimant is to bear its own costs of the Application.

**DATED at Port Vila this 8<sup>th</sup> day of February 2024  
BY THE COURT**

*VM Trief*

Justice Viran Molisa Trief

