

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

Civil
Case No. 23/3234 SC/CIVL

BETWEEN: AARON BONGMIAL HANGHANGKON
Claimant

AND: LANDS DEPARTMENT
Defendant

Date: 3 October 2024
Before: Hon. Justice M A MacKenzie
Counsel: Claimant – Self-represented
Defendant – Ms N Robert

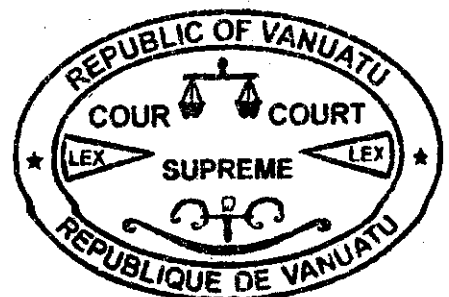
DECISION

The issue

1. On 18 March 2024, Hastings J struck out Mr Hanghangkon's claim against the Department of Lands. (*"the Department"*) He now seeks leave to appeal out of time, and to stay the decision striking out the claim. The application for leave to appeal out of time was filed on 19 August 2024, 5 months after the decision was delivered.
2. Leave to appeal out of time is required because Mr Hanghangkon did not file an appeal within the timeframe provided in the Court of Appeal Rules 1973.
3. The application as opposed by the respondent.

Result

4. After hearing argument, I declined both applications and said I would give written reasons. These are my reasons.



Background

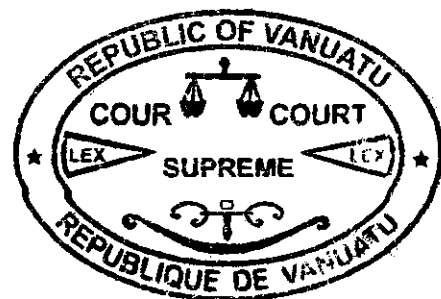
5. In the claim, Mr Hanghangkon alleged a failure by the Department in its duty of care towards him in relation to a caution he registered against lease title 11/OB22/067. (*the lease title*) He further alleged that the Department failed in its duty of care to serve the letter relating to withdrawal/substantiation of the claim within the timeframe prescribed. As a result, he sought damages. The circumstances are detailed more fully in the ruling striking out the claim.
6. The claim was struck out because it did not disclose a cause of action. Hastings J said that the claim disclosed no cause of action, and was poorly pleaded. His Lordship said that the Department did nothing wrong when it registered the transfer of the lease title from his father to his father and his brother. The Department's delay in removing the caution allowed Mr Hanghangkon time to contact the Department and substantiate the claim. He took no steps, however.

The Law

7. In accordance with rule 20 of the Court of Appeal Rules, an appeal against a decision must be filed within 30 days after the decision was delivered. There is a discretion to extend the time for filing an appeal, by virtue of rule 9.
8. Applicable principles include;
 - a. The rules and the time limit are not to be lightly overlooked; *Toara v Simbolo* [1999] VUCA 6.
 - b. Permission to appeal out of time is entirely discretionary.
 - c. The factors to be taken into account include length of delay, reasons for delay, prospects of success and the degree of prejudice to the potential respondent that might arise; *Laho Ltd v QBE Insurance (Vanuatu) Ltd* [2003] VUSC 26.
 - d. There may be reasons of public interest to extend time to appeal; *Neel v Blake* [2004] VUCA 6 and *Nalau v Mariango* [2007] VUSC 55.

Discussion

9. I will start by considering the factors discussed in *Laho v QBE Insurance*.

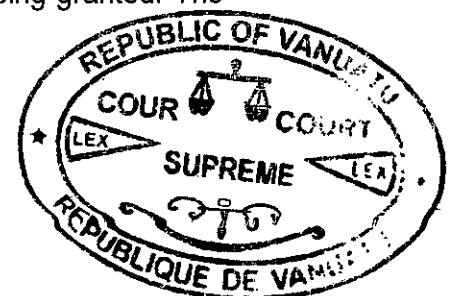


Length and reasons for delay

10. The decision was delivered on 18 March 2024. The application for leave to appeal out of time was filed approximately 4 months after the time to appeal expired. Mr Hanghangkon gives no reason at all for the delay.
11. At this juncture, it is not for me to decide the merits of the appeal. Mr Hanghangkon's application seems to focus on what he perceives to be the shortcomings of Hastings J's decision. His position is that His Lordship erred in law and fact by not considering the request for default judgment and not considering the share of his late father's legal interests in the estate regarding the transfer into the sole name of Hermon Hanghangkon as the surviving proprietor.
12. The evidence shows that Hermon Hanghangkon and the deceased were registered as joint proprietors of the lease title. Accordingly, by virtue of s 75(2)(b) of the Land Leases Act [CAP 163], the deceased's interest vested in the surviving proprietor by operation of law. I agree with His Lordship that the Department, in the circumstances, did nothing wrong. Further, the fact that the Department delayed in serving the letter regarding the caution worked in Mr Hanghangkon's favour. It gave him more time to address the caution, yet he chose not to take any steps.
13. Given the circumstances described above, in combination with the matters Hastings J took into account, it is unsurprising then that the claim was struck out because it disclosed no cause of action. The fact that a default judgment was not entered is a moot point because the claim was struck out due to a lack of a cause of action. In that situation, default judgment could never be entered.
14. As such, there is very little chance of an appeal succeeding.

The degree of prejudice to the potential respondent

15. If time to appeal out of time is granted, the prejudice to the Department arises from being put to further expense in taking part in an appeal when the Department did nothing wrong, either in relation to the transmission of the title or issuing the letter regarding the caution.
16. After considering these factors, I can see no reason to grant leave to appeal out of time. There have been no reasons given for the delay, an appeal has very little prospect of success, and there is likely prejudice to the Department. There are no public interest considerations either which point towards leave being granted. The public interest favours finality.



17. Accordingly, I decline the application for leave to appeal out of time.

Stay of decision

18. Pursuant to rule 26(1)(a) of the Court of Appeal Rules, an appeal shall not operate as a stay of a proceeding. With respect, there are no grounds to stay the decision of 18 March 2024 as the Court has declined to grant leave to appeal.

Result

19. The application to appeal out of time is declined and dismissed.

20. The application to stay the decision of 18 March 2024 is declined and dismissed.

21. Costs are reserved.

DATED at Port Vila this 7th day of October 2024
BY THE COURT

Mackenzie

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Hon. Justice M A MacKenzie

