

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**

(Other Jurisdiction)

**Civil Appeal
Case No.17/2336 CoA/CIVA**

BETWEEN: PORT VILA MUNICIPALITY
Appellant

AND: SAM ELKEM LUKAI and OTHERS
Respondents

Coram: **Hon. Chief Justice Vincent Lunabek**
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice David Chetwynd

Counsel: **Mr. Less J. Napuati for the Appellant**
Mr. Leon Malantugun for the Respondents

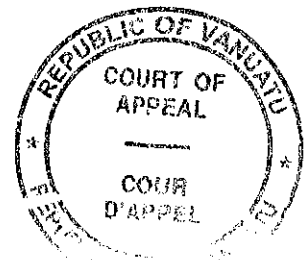
Date of Hearing: 6th Nov. 2017
Date of Judgment: 17th Nov. 2017

JUDGMENT

1. The subject matter of these proceedings is a claim by nineteen (19) former employees of the Port Vila Municipality (PVMC) who seek damages for wrongful dismissal.
2. PMVC seeks to appeal to this Court from a decision of the Supreme Court delivered on 18th August 2017 in which the trial judge concluded:

"I therefore enter judgment against PVMC as to liability in favour of all the 19 claimants. I adjourn the issue of assessing the amounts of damages to another date to be discussed with counsels"

3. The decision is an interlocutory one as it does not dispose finally the respondents' claims. As such an appeal does not lie as of right to this Court, and the appellant requires leave to bring an appeal. Upon this Court pointing out that leave was required counsel for PVMC, at the invitation of the Court,

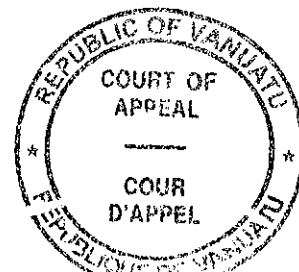


made an oral application for leave. For the reasons which follow leave to appeal was refused.

4. The proceedings were commenced in the Supreme Court on 27th September 2016. After several conference hearings PVMC applied to strike out the claim. The application was dismissed on 17th March 2017 and in the reasons for doing so the judge considered the evidence then before the Court, and made observations about the apparent strength of the respondents' claims.
5. After further conferences the matter was set down for trial on 29th May 2017. Unfortunately counsel for PVMC did not attend. The trial judge proceeded nonetheless. The judgment was entered in favour of the respondents as to liability with quantum to be assessed. The trial judge relied on the observations he earlier made about the apparent merits of the claims without giving further reasons. PMVC then sought leave to appeal against the judgment on liability.
6. The Court of Appeal granted leave and allowed the appeal: Port Vila Municipality v. Lukai [2017] VUCA 36. In doing so the Court of Appeal ordered:

"Matter referred back to the trial judge to give reasons for his determination of liability and to hear any further evidence and or submissions on the question of damages including an award under s. 56(4) of the Employment Act".

7. A further hearing took place in the Supreme Court resulting in the decision on 18th August 2017 which PVMC now seeks to appeal.
8. The clear intent of the order of the Court of Appeal was that the matter should proceed to final judgment in the Supreme Court because if any award were to be made under s.56(4) because the termination of employment was unjustified, reasons for that award would be interrelated with the reasons for finding that the respondents' terminations were unlawful.
9. The decision given on 18th August 2017 which PVMC now seeks to challenge concludes that the terminations of the respondents' employment were unlawful terminations, but the question whether the terminations were unjustified so as to attract an award under s.56(4) of the Employment Act has not yet been decided.
10. At the outset, the reasons given on 18th August 2017 record the order of the Court of Appeal and an agreement of counsel as to a process leading to a final judgment after assessment of damages. That process should continue, and

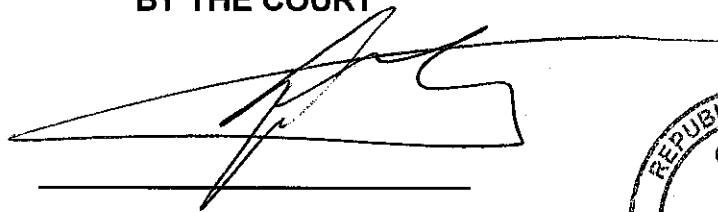


only then could it be appropriate for the Court of Appeal to review the matter should any party then wish to appeal.

11. Leave to appeal was therefore refused.
12. PVMC sought to introduce new evidence before this court that its principal witness in the Supreme Court had relied on a staff manual that had never been signed by the Minister of Internal Affairs. Whether this fact, if correct, could affect the reasoning of the trial judge was not explored in the application to adduce new evidence. This is a matter which should be taken up in the Supreme Court with the trial judge. As we understand the process which the parties agreed with the trial judge to advance this matter to final judgment, the "*judgment*" given on 18th August 2017 on liability is properly to be understood as an interim ruling along the way and is not the final word on liability. As the trial is ongoing the judge can revise his reasoning so far if that is necessary because of additional evidence adduced before him.
13. The Orders of the Court is that leave to appeal is refused. The PVMC must pay the respondents' costs of this application to the Court of Appeal on the standard basis.

DATED at Port Vila, this 17th day of November, 2017

BY THE COURT



Hon. Chief Justice Vincent Lunabek

