

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 21/745 CoA/CIVA

BETWEEN: FR8 LOGISTICS LIMITED
Appellant

AND: HAROLD TAROSA
First Respondent

DEPARTMENT OF CUSTOMS
Second Respondent

Date of Hearing: 7th May 2021

Before: Hon. Chief Justice Vincent Lunabek
Hon. Justice Rayner Asher
Hon. Justice Richard White
Hon. Justice Oliver A Saksak
Hon. Justice Dudley Aru
Hon. Justice Viran M Trief

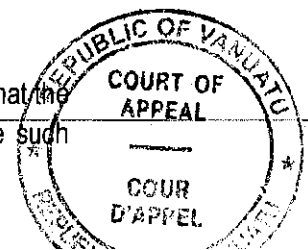
Counsel: Jerry Boe for the Appellant
Hardison Tabi for the Respondents

Date of Decision: 14 May 2021

JUDGMENT

Background

1. This is an appeal by FR8 Logistics Limited against a decision of the Court below dismissing their JR claim.
2. The proceedings were instituted by FR8 seeking mandatory orders against the Director of Customs to issue a notice to enable FR8 to pay the required licence fees to operate a Customs Control Area (CCA) and ultimately for the Director of Customs to issue FR8 with a CCA licence for its two premises, DHL Air Bond and Nambatu (ex-Laho) Sea and Airfreight Bond.
3. The second order sought was a prohibition order to restrain the Director of Customs from blocking or preventing FR8 usage of the CCA without reason.
4. When the matter was called by the primary Judge, he drew attention to the circumstance that the mandatory orders sought were not available because first the Director's power to issue such

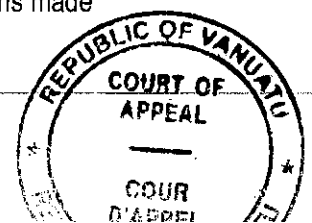


licences was discretionary, and secondly there was an appeal process pursuant to s195 of the Customs Act which applies to such applications.

5. At that stage the primary Judge was minded to strike out the proceedings on the basis the Claimant had no arguable case.
6. The primary Judge however adjourned the matter allowing the parties to re-consider their positions and to make additional enquiries to resolve the matter.
7. As a result of that adjournment, the Director issued the first licence. The second licence was not issued as the area in question did not meet the criteria for such a licence and FR8 was duly advised by letter dated 2 November 2020 which Mr. Kernot the principal of FR8 denied receiving that letter.
8. The primary Judge noted that as the Director had issued the first licence sought by FR8, the first order sought was no longer available. Mr. Boe for FR8 confirmed there was no longer any need for an order compelling the Director to issue an invoice for payment of licence fees.
9. Regarding the second order to prohibit the Director, the primary Judge noted that as the first licence had been issued for less than a week and it would be difficult for FR 8 to justify its claim for such an order.
10. Mr. Boe accepted that there was no need for the Court to consider the second order sought.
11. In the circumstances the claim was dismissed.

Appeal

12. The appeal raised two grounds. First that the matter was non-discretionary and was within the Court's jurisdiction to hear and deal with the matter. Second that the respondents have not complied with the legal requirements for issuing the second licence sought.
13. Mr. Boe's submissions in general were that the primary Judge had not enforced the Civil Procedure Rules and that this had resulted in the appellant being prejudiced at the hearing. He noted that a defence had not been filed within time and submitted that the respondents had breached their undertaking to issue a licence within a short period of time.
14. In his concluding remarks, Mr. Boe submitted that the appellant was not seeking a mandatory order to issue a licence but an order that an invoice be issued for the CCA licence.
15. Finally he submitted that the decision was misconceived as the respondents had not been truthful about the letter of 2 November 2020.
16. Mr. Tabi submitted that the orders made by the primary judge were based on concessions made by FR8 in Court. That was no error by the primary Judge in acting on those concessions.



Discussion

17. The licences being sought by the appellant are for FR8 to operate CCA's. These licences can only be issued pursuant to s 16 and s 17 of the Customs Act No 7 of 2013.

18. Section 16 provides for Applications for licences to operate a customs controlled area and states:

"16 Application for licence to operate customs controlled area

A person who wishes to operate a customs controlled area may apply to the Director in the approved form for a licence to declare an area as a customs controlled area if that person is:

- (a) the owner of the area; or*
- (b) the occupier of the area; or*
- (c) is operating in the area.*

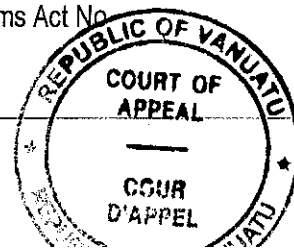
19. And Section 17 provides as follows :

"17 Issuance of licence to operate customs controlled area

- (1) On receipt of an application for a licence under section 16, the Director may issue a licence:
 - (a) if the application is made in the prescribed form and all the matters required to be filled out in the prescribed form are met; and*
 - (b) the prescribed licence fee is paid.**
- (2) The Director in considering an application, may request additional information from an applicant.*
- (3) A licence granted under this section must:
 - (a) specify the area in respect of which it is granted; and*
 - (b) specify the applicant as the licensee; and*
 - (c) specify the purpose or purposes described; and**
- (4) The Director is to specify the terms and conditions of the licence which the Director considers necessary."*

20. A discretion lies with the Director to ensure matters specified in the above provisions are complied with before any licence is issued. The second licence was not issued as some of the criteria were not met by FR8 as advised in the letter of 2 November 2020.

21. In exchanges with Mr Boe by the Bench, it was put to him that as a matter of discretion, the Court could not intervene. Secondly only a Customs Appeal Tribunal under s195 of the Customs Act No 7 of 2013 could deal with the matter.



22. Section 195 1) (c) provides:-

"195 Appeal against the decisions of the Director

(1) *A person not satisfied with a decision of the Director relating to:*

(c) the issue, suspension or revocation of any license issued under this Act; or

.....

may within 30 days of receiving the decision, appeal to Customs Appeal Tribunal."

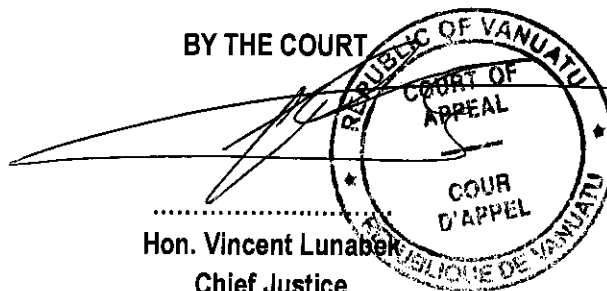
23. We are unable to discern in the submissions of the appellant any basis for the original Supreme Court claim. We find no error in the decision of the primary Judge, especially as the Judge had acted on the basis of the concessions made by Mr. Boe.
24. In the end Mr Boe for the appellant, after some matters were put to him by the Court did not press ahead with the appeal.

Result

25. The appeal is dismissed.
26. As for costs the respondents have not sought indemnity costs but standard costs in the sum of VT200, 000. Considering the nature of this appeal, we allow those costs in favor of the respondents.

DATED at Port Vila this 14 day of May, 2021

BY THE COURT



**Hon. Vincent Lunabek
Chief Justice**