

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

**Civil**  
**Case No. 21/3069 CVL/Civil**

**BETWEEN:** **Backpackers Port Vila**  
Claimant

**AND:** **Republic of Vanuatu**  
First Defendant  
**Customs Department**  
Second Defendant  
**Jay Ngwele**  
Third Defendant

*Date:* 25 January 2022  
*Before:* Justice G.A. Andrée Wiltens  
*In Attendance:* Mr J. Boe for the Claimant  
No appearance by or for the Defendants

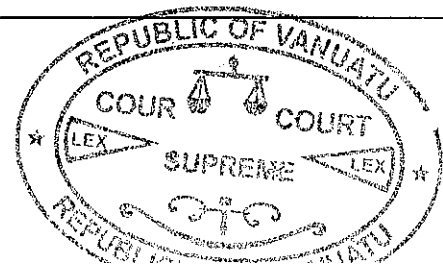
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**Judgment**

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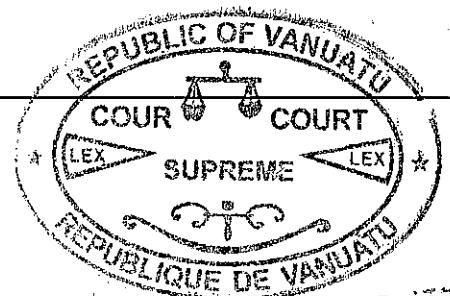
**A. Introduction**

1. This is, despite the descriptions of the parties, what is described as an Application to Appeal. It is not clear what such an application actually involves.
2. The application has not been served on any of the named Defendants.
3. However, despite that, Mr Boe has written to the Court seeking to expedite the matter.



## B. Background

4. On 18 September 2020, Mr Kernot, who is the proprietor of FR8 Logistics Limited, sought permission from the Minister of Public Utilities and Infrastructure ("MIPU"), Mr Jay Ngwele ("the Minister"), to import a right-hand drive vehicle from New Zealand. The vehicle was outfitted to be able to safely and comfortably transport individuals with disability, in particular those consigned to wheelchairs.
5. Mr Boe attended the Minister's office in relation to another matter on 21 September 2020. He has signed a statement recording what he alleges transpired on that occasion. He stated that he was advised the Minister would grant the application, and waive import duty as well, if a personal debt Mr Boe was pursuing against the Minister were reduced. Mr Boe did not accept the suggestion.
6. Mr Kernot deposed to many subsequent approaches to the Minister to get the Minister's approval, all of which failed.
7. Accordingly, from the papers filed with the Court, at no stage did Mr Kernot have the Minister's authority to import the vehicle earmarked to assist the handicapped in Vanuatu. Despite that, the vehicle was imported into Vanuatu, arriving here via Fiji on 17 February 2021; although Mr Kernot stated it landed on 25 February 2021. Nothing turns on the exact date.
8. By Notice of 22 July 2021, the Customs and Inland Revenue Department ("CIRD") advised FR8 Logistics Limited that the vehicle was seized pursuant to certain provisions of the Customs Act No. 7 of 2013, and within the contents of the Notice CIRD explained the reasons for such seizure. Mr Kernot accepted that CIRD was entitled to seize the vehicle, but he considered it unfair in the circumstances and wished to challenge the decision.
9. The Notice explained clearly that if the decision to seize the vehicle was to be challenged, such challenge was to be made to the Supreme Court within 20 days from the date of the Notice. That advice complies with the legislation, although I consider the 20-day period ought to commence from the time of service of the Notice.
10. Mr Kernot points to the humanitarian and benevolent reason for wanting to bring the vehicle to Vanuatu.
11. Mr Kernot further considers that, as the Minister has, to his knowledge, at least twice previously given consent to importing right-hand drive vehicles, he ought to have done so in this instance. This line of reasoning is of course fallacious, as the Minister has a discretion, which he can exercise for or against any applicant. At this time, the Minister's reasons for authorising this particular import is unknown.



C. Application to Appeal

12. Mr Boe sought an order that the Court compel the Minister to authorise the importation of the vehicle; that CIRDC release the vehicle or alternatively be restrained from selling the vehicle pending the outcome of the present Application to Appeal, and that the costs of storage of the vehicle be borne by MIPU.

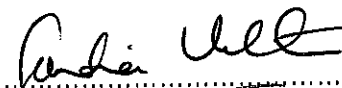
D. Discussion

13. Had Mr Boe wished to appeal, a Notice of Appeal, setting out the Grounds of Appeal ought to have been filed and served on the named Respondents. The procedure adopted is novel and inappropriate.
14. The Notice of Appeal needed to be filed with the Court within 20 days of service of the Seizure Notice dated 22 July 2021. It was served the same day, with an acknowledgment marked by someone from FR8 Logistics Limited. The Application to Appeal is clearly well outside the 20-day period, it having been filed with the Supreme Court only on 20 September 2021.
15. There is no application for Leave to File Appeal Out of Time. There is no information provided which might explain the delay.

E. Result

16. This matter cannot be further progressed. There is no prospect of any of the orders sought being granted.
17. The Application to Appeal is dismissed. There is no order for costs.
18. If not already attended to, Mr Boe should report his allegation to the Vanuatu Police Force.

Dated at Port Vila this 25th day of January 2022  
BY THE COURT

  
Justice G.A. Andrée Wiltens

