

BETWEEN: VANUATU FERRY LIMITED
Claimant

AND: THE REPUBLIC OF VANUATU
Defendant

Date of Hearing: 4th September 2023

Date of Judgment: 16th February 2024

Before: Justice Oliver Saksak

Counsel: Mr Mark Hurley for the Claimant
Mr Lennon Huri for the Defendant

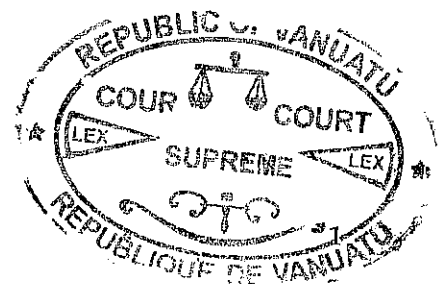
JUDGMENT

Introduction

1. This is a claim for damages in the total sum of VT 27,861,904.
2. The proceeding was filed following the decision of this Court in Judicial Review Case 20/1901. In that proceeding the claimant sought judicial review of the Directors of the National Disaster Management Office (NDMO) and Immigration who had refused entry into Vanuatu of the claimant's vessel and its crew in or about July 2020.

Declarations in JR 20/1901

3. In the judgment dated 10th December 2021 the Honorable VM Trief, J gave judgment in favour of the claimant by making three declarations:-
 - a) That the decision of the Defendant through its Director of NDMO of 2nd July 2020 by reliance on Orders No. 71 of 2020 or otherwise to refuse to allow the claimant's vessel registration No: RV- 6443 known as Vanuatu Cargo to enter the port of Port Vila, Efate Republic of Vanuatu, was unlawful.



- b) That the decision of the Defendant through its Director of Immigration and Passport Office, of July 2020 to refuse entry for all passengers on board the Vanuatu Cargo to enter the port of Port Vila, Efate, Republic of Vanuatu, was unlawful, and
- c) That Orders No. 71, 77 and 94 of 2020 with reference to locally registered ships were of such unreasonableness as to warrant the Court's intervention under the Wednesbury principles, and were unlawful."

The Claims

4. The claimant claims that they suffered damages in terms of costs and loss of earnings in the total sum of VT 25,861,904 and a further VT 2,000,000 being damages for reputational harm as a result of defamatory statements made on various social medial posts and outlets.

Evidence of Claimant

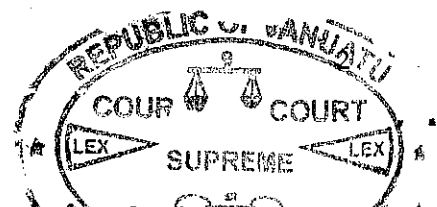
5. The claimant relied on the evidence of Marcel Galenon by sworn statement dated 4th August 2023 (Exhibit C1) in support of their claims. Both witnesses were called as witnesses and were cross-examined by Mr Huri.
6. The defendant filed a defence on 18th August 2023 denying liability. They filed an amended defence having sought leave to do so on 4th September 2023. They relied on the sworn statement of Abraham Nasak dated 30th August 2023. His evidence was admitted into evidence by consent as Exhibit D1 as Mr Hurley did not wish to cross-examine him.

The Issues

7. There are 2 issues in my view. The first is: whether or not the defendant is liable to pay damages to the claimant as claimed? And the second issue is if so, how much is the claimant entitled to be paid?

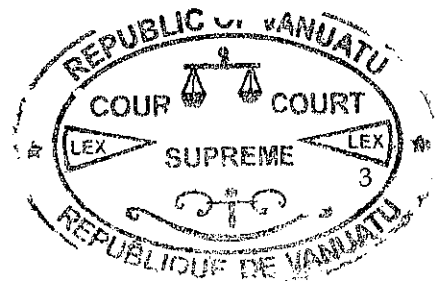
Discussion

8. Mr Hurley relied on the declarations made in the Ferry case in JR 20/1901 to argue and submit that the defendant should be found liable for the damages incurred by the claimant. Further, counsel placed reliance on what the Court of Appeal said in the case of Ombudsman v Letlet [2023] VUCA1 at paragraphs 37 and 38 of its judgment about the meaning of the term " Good



faith" used in section 41 of the Ombudsman Act. This section provides immunity to the Ombudsman, an officer or employee to liability for any act or omission done or made in good faith and without negligence.

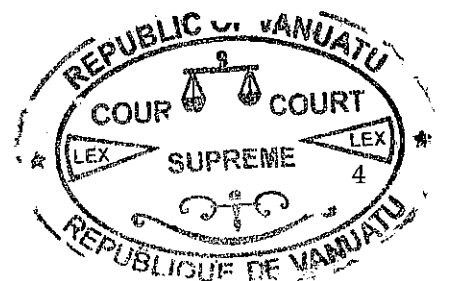
9. Mr Hurley argued in response to the defence of the defendant that section 44 of the Disaster Risk Management Act which provides immunity from legal actions or any damage, loss, death or injury sustained during a state of emergency or because of anything done or omitted to be done in good faith under the Act by the Minister, Director General, Director, an emergency services officer and any other person nominated by the Director to carry out his or her duties under the Act, did not afford any immunity to the Directors of the NDMO or Immigration Departments.
10. The Defendant relied on section 44 of the Disaster Risk Management Act (DRM Ac) to submit there was no liability against the Directors of NDMO and Immigration Departments as they had performed their duties in good faith.
11. By comparison, section 41 of the Ombudsman's Act is more extensive and clear as it has three subsections.
12. Section 44 of the DRM Act on the other hand does not have subsections.
13. Subsection (3) of section 41 of the Ombudsman's Act states however that subsection (2) does not apply if it is shown that the Ombudsman, or the officer or employee, acted in bad faith.
14. Subsection (2) states that neither criminal nor civil proceedings are to be issued against the Ombudsman, his officers or employees, for anything done, said or omitted by them under the Constitution or the Act.
15. From those provisions there is no absolute immunity under section 41 of the Ombudsman Act. But section 44 of the DRM Act lacks those subsections and clarity. Does that mean that section 44 of the DRM Act affords absolute immunity to the agents for the defendant in this case?
16. I am of the view that section 44 of the DRM Act does not provide absolute immunity to the defendant and its agents.



17. In JR 20/1901 Trief J declared the decisions of the Director of NDMO and of Immigration to be unlawful. Further that the orders No 71, 77 and 94 of 2020 were “unreasonable” in light of the Wednesbury principles. This is an expansion of section 44 of the DRM Act which requires the acts done or omitted to be done by any agents of the State must not only be done or omitted to be done in good faith, but it must be seen to be reasonable, or reasonably done or omitted to be done.
18. That decision was not appealed and remains so.
19. The facts from the evidence show that the claimant’s vessel departed from Yamba on 27th June 2020. She arrived in Port Vila Harbour on 3 July 2021. She was held in Port pursuant to the decisions of the Directors for 21 days until 21 days until 24th July 2020 when she was finally given permission to berth. Under normal circumstances the vessel should have been in “isolation” for only 14 days after arrival. She should have been released only on either 10 or 17 July 2020 but was detained for an additional 7 days. The decision by the Directors to keep the vessel detained for that period was not only done or omitted to be done in good faith, but as Trief J held, it was an unreasonable action, therefore unlawful.
20. In the circumstances I accept Mr Hurley’s submissions that section 44 of the DRM Act does not provide any immunity to the defendant and its agents. I therefore find the defendant and its agents liable for damages.

Quantum of damages

21. I now deal with the second issue of quantum of damages. I deal first with the claim for VT 2,000,000 for damage to reputation. This claim is declined and dismissed. I find no evidence by the claimant establishing this claim against the State and its agents.
22. I accept the defendants arguments and submissions that the claimant is not entitled to daily costs while the vessel was in Australia.
23. However I accept that the claimant is only entitled to costs incurred for 21 days whilst the vessel was anchored in Port Vila Harbour from 3rd July 2020 to 24th July 2020 in the following sums:-
- a) Daily Costs – VT 253,339 x 21 days = VT 5,320,120
 - b) Loss of earning- VT 227,762 x 21 days = VT 4,783,010



Total- VT 10,103,130

24. The claimant is entitled to damages in the reduced sum of VT 10,103,130 and judgment is entered in their favour accordingly with interest of 5% per annum from 22nd July 2020 to the date of judgment.

25. Finally the claimant is entitled to its costs of and incidental to this action on the standard basis as agreed or taxed.

**DATED at Port Vila this 16th day of February 2024
BY THE COURT**


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**Hon. Oliver Saksak
Judge**

