

IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU

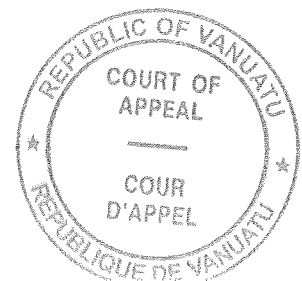
Civil Appeal
Case No. 19/1265 CoA/CVL

BETWEEN: **Republic of Vanuatu**
First Appellant
Andrew Napuat
Second Appellant
Albert Nalpini
Third Appellant

AND: **Evelyne Siltei**
First Respondent
Collette Fred
Second Respondent

Date: 12 July 2019
Before: Justice J. Mansfield
 Justice O. Saksak
 Justice D. Fatiaki
 Justice D. Aru
 Justice G.A. Andrée Wiltens
In Attendance: Mr S. Kalsakau for the Appellants
 Mr J. Temar for the Respondents
Date of Decision: 19 July 2019

JUDGMENT



A. Introduction

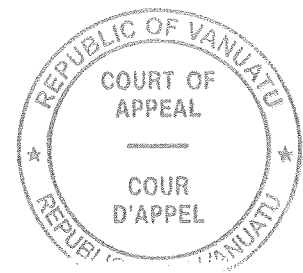
1. The appellants appeal an interlocutory Supreme Court decision declining an application to strike out a claim on the basis that the claim was said to be time-barred. The appeal centred on the interpretation of sections 3 and 9 of the Limitation Act [Cap 212] ("the Act").

B. The Claim

2. Harry Siltei had been a Police officer in the Vanuatu Police Force for over 31 years when he died on 6 September 2011. Dick Fred had been a Police Officer in the Vanuatu Police Force for over 26 years when he died on 6 August 2006. Both men died while in service.
3. The Respondents are their widows. The First Respondent obtained the consent of the family to represent them in making a claim for entitlements on behalf of Harry Siltei from the State; the Second Respondent had obtained a Court order to administer the estate of Dick Fred.
4. The State made some payments to each of them, and said that the full amount due had been paid. The Respondents claimed both deceased were entitled to further severance and other payments from the Government, and they accordingly filed a Claim on 28 August 2018.
5. The Appellants filed no defence, but on 27 February 2019 filed instead, an application to strike out the claim on the basis that it was time-barred and sought costs. A supporting sworn statement was filed and served. The Respondents replied on 3 April 2019.
6. The primary Judge then directed that written submissions be filed, and on 13 May 2019 the primary Judge provided a Ruling, to the effect that the strike out application was declined and costs followed the event.

C. The Ruling

7. At paragraph 8 of the ruling the primary Judge records the issue required to be answered as follows: "*What is the effect and application of section 9 of the Limitation Act to this proceeding?*"
8. The decision only refers to the Second Respondent's case, but we are assured by Mr Kalsakau that this was orally corrected so that both Respondents' positions were actually considered. We are content to proceed on the basis that the ruling had equal applicability to both Respondents.
9. The primary Judge was satisfied that the benefits claimed on behalf of the deceased were part of their personal estates, and that the Respondents were making their claims not solely as legal administrators but also as beneficiaries. On that basis the primary judge concluded that section 9 of the Act was the relevant section and that both the claims were within the 12 year time limit permitted by that section.



10. The application to strike out was accordingly declined, and additionally the appellants were ordered to pay VT 5,000 to each of the Respondents.

D. Leave

11. As this was an appeal of an interlocutory ruling, leave to appeal was required. No submissions were received objecting to leave being granted. The application was based on the need for the proper interpretation of section 9 of the Act, and the lack of any prejudice to the Respondents.

12. For the reasons which follow, we consider there is merit in the appeal, and we therefore grant leave accordingly.

E. Discussion

13. It seems to us that the primary Judge erred in posing the quoted question himself. The question requiring resolution could have been better put as: "Whether section 9 or section 3 of the Act had application to the facts of the case?" Thereafter a determination as to the validity of the Claim or otherwise could follow.

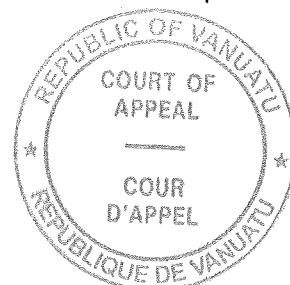
14. Section 9 of the Act reads as follows:

"9. Limitation of actions claiming personal estate of a deceased person

Subject to the provisions of subsection (1) of section 8, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due."

15. We see no need to determine, as the primary Judge held, whether or not the benefits claimed were part of the estates of the deceased. Nor was it necessary to determine whether the respondents were claiming as beneficiaries.

16. We consider, more pertinently, that neither Respondent was making a claim against their deceased husband's estates. Both were seeking to enforce alleged entitlements their deceased husbands had against the State. The claims do not fit within the phrase "...action in respect of any claim to the personal estate of a deceased...". That is also clear from the reference to "... the right to receive the share or interest...", which means the share or interest to the estate. It follows that the Respondents do not have a 12 year window to file the present claim.




17. Mr Temar's submissions to the contrary and in an attempt to uphold the primary Judge's ruling did not convince us otherwise.
18. As section 9 had no application to the facts at hand, we looked to section 3 as the relevant provision. That provides (without quoting the section *in extensio*) for the Respondents being able to file their actions to recover any sums recoverable by virtue of any Act (under subsection (c)) within six years of the cause of action accruing. Mr Temar accepted that a claim for unpaid benefits (whether by the officers if they were still alive, or by their estates) was a claim under an Act.
19. We agree with Mr Kalsakau's submission that the relevant date for each of the deceased or their legal representatives to file any claims for severance and/or other entitlements was the date of their deaths. Accordingly, the First Respondent was able to file her claim on or before 6 September 2017, and the Second Respondent was able to file her claim by 15 June 2013. Each claim was made after the relevant date.
20. The joint Claim filed on 28 August 2018 is therefore time-barred.

F. Decision

21. The appeal is allowed.
22. The Claim is struck out in its entirety.
23. The orders for VT 5,000 costs in favour of each Respondent are set aside.
24. The appellants are entitled to costs for the application in the Supreme Court and for the appeal. We set those costs at VT 25,000 as against each Respondent (a total of VT 50,000); and that is to be paid to the Appellant within 28 days.

**Dated at Port Vila this 19th day of July 2019
BY THE COURT**


Justice J. Mansfield

