

**BETWEEN: FR8 Logistics Limited**  
Appellant

**AND: Port Vila Municipality**  
Respondent

**Date of Hearing:** 4 May 2022

**Before:** Chief Justice V. Lunabek  
Justice J. Mansfield  
Justice R. Asher  
Justice O. Saksak  
Justice D. Aru  
Justice G. Andree Wiltens  
Justice E. Goldsbrough

**Counsel:** Mr J. Boe for the Appellant  
Mr S. Kalsakau for the Respondent

**Date of Decision:** 13 May 2022

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## Judgment

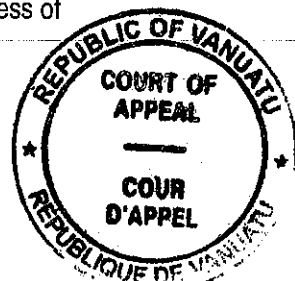
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### A. Introduction

1. This is an appeal against a decision in the Supreme Court disallowing a Claim by FR8 Logistics Limited ("*FR8 Ltd*"). FR8 Ltd claimed misfeasance in public office by members ("*wardens*") of the Port Vila Municipal Council ("*PVMC*") resulting from the allegedly illegal stop and seizure of FR8 Ltd's motor vehicle Registration No. 9060, and the consequent imposition of a VT 15,000 fine by way of penalty.

### B. Preliminary Issue

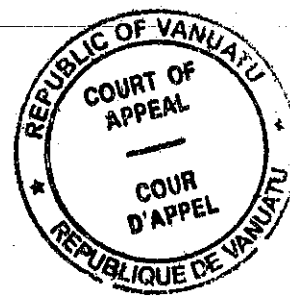
2. The appellant has filed an application for fresh evidence to be admitted, with two supporting sworn statements. The new evidence is submitted to relate to the Vanuatu Government's waiver of vehicular road tax for the 2020 year. It is submitted that the waiver set aside the need for a road tax sticker to be displayed, which is fundamental to FR8 Ltd's case.
3. The application indicates the failure to present the new evidence to the Court below was due to an oversight by counsel. The sworn statements do not indicate when awareness of the oversight dawned.



4. What is sought to now be adduced is in fact a copy of a Bill, which has no or little standing unless translated into subsequent legislation. The Court has had to locate the relevant legislation the application should have referred to.
5. What is sought to be additionally adduced is not "evidence" – it is legislation, that should have been referred to at trial if reliance on the provision was seen to be relevant. The legislation was passed into law in January 2021. The Statute Law (Miscellaneous Provisions) Act No 2 of 2021 amended, amongst others, the Road Traffic (Control Act) [Cap 29] and adds section 34 (2A) and (B) to this Act. By that amendment, it exempts owners of vehicles from paying road tax for the year ending 31 December 2020.
6. In any event, this Court does not see the legislation as having the effect counsel advanced. Accordingly, we do not see it as relevant. In our view the legislation does not obviate the need for a road tax sticker to be displayed on vehicles. It simply does not say that.
7. Hence, the application is declined.

### **C. Background**

8. In the morning of 20 August 2020, wardens assisted officers of the Vanuatu Police Force to set up a road block and carry out checks on motor vehicles. Such assistance is permitted by Section 54B of the Road Traffic (Control) Act ("the Act").
9. There is no dispute that the FR8 Ltd vehicle was stopped at a road block in Port Vila, during the road traffic check. It is not disputed that the vehicle was not then displaying a road tax sticker, as required by section 38 of the Act. It is also not in dispute that the vehicle was not carrying a road worthiness certificate; and that it did not have with it the required vehicle insurance cover, as required by section 41 of the Act. There is also no challenge to the fact that the vehicle was subsequently detained; and ultimately a fine of VT 15,000 imposed which was later paid by FR8 Ltd. The vehicle was released back to FR8 Ltd on 10 September 2020.
10. The Claim contended, that despite the above, the following aspects of what had occurred demonstrated misfeasance in public office:
  - The warden was not assisting a police officer, but a police officer, who had been seconded to assist PVMC, was assisting a warden;
  - The warden had no legal authority to stop FR8 Ltd's vehicle;
  - The warden had no legal authority to detain the vehicle;
  - The warden was aware he/she did not have the legal authority to stop/detain the vehicle but proceeded to do so regardless;
  - The warden was aware that detaining the vehicle would cause damage/loss to FR8 Ltd;
  - PVMC issued the ticket, and had no legal authority to do so; and
  - PVMC detained the vehicle for 21 days, without legal authority to do so.

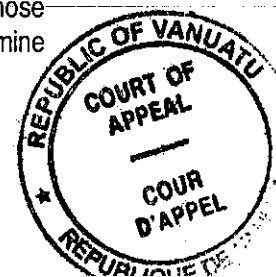


#### **D. Decision**

11. The primary judge's decision focussed on the crucial element required to prove a claim of misfeasance in public office, namely an intention to act for an improper motive. We note that it is extremely difficult to establish this element, and that very clear and specific evidence is required.
12. The primary judge found a lack of evidence of malice on the part of the warden, a lack of evidence that the warden knew he had no authority to stop or detain the vehicle or that to do so would do damage to FR8 Ltd, and a lack of evidence that the warden did not have an honest belief that he could stop and detain the vehicle. The onus of proof was on the Claimant, and the failure to establish these matters was determinative.
13. The primary judge did not accept the evidence of Mr George, the FR8 Ltd's driver of the vehicle, as he was not made available for cross-examination. The primary judge disregarded much of what Mr Kernot, the principal behind FR8 Ltd, had stated in his written evidence, as it was largely in the nature of legal argument rather than assertions of fact. The primary judge accepted the evidence of Corporal Seru, the police officer present at the time the vehicle was stopped and subsequently seized.
14. Relying on the admissible and reliable evidence, the primary judge found the warden had been assisting police officer Seru, and accordingly the warden was legally authorised to stop and subsequently detain the vehicle. Further it was found that, due to the absence of the road tax sticker and other documents, police officer Seru and the warden had acted lawfully throughout. The primary judge did not expressly deal with the ticket issued nor the 21-day detention.
15. In the result, the Claim was dismissed with costs.

#### **E. Appeal**

16. FR8 Ltd submits that the core event which led to the vehicle being detained and seized is that there was no road tax sticker displayed. It is contended that the vehicle did not display a 2020 road tax sticker as the Government had exempted all vehicles from paying such tax due to the impact of Covid-19. Accordingly, there was no requirement, in FR8 Ltd's submission for such sticker to be displayed.
17. This Court does not accept that contention. The relevant legislation makes no mention of the section 38 requirement being suspended. Indeed, attached to the sworn statement of Mr Kernot in support of the fresh evidence application is Public Notice 2021/01 issued by the Director of Customs & Inland Revenue. That sets out clearly that, although vehicles are exempt from paying road tax, the vehicle will still require a sticker, which will be issued once roadworthy inspection certification is presented. We point out further, that there is no such road tax exemption for the 2020 year, which is when the present events took place.
18. Mr Boe, without being able to point to evidence adduced before the primary judge supporting his contentions, rehearsed the basis for the Claim as set out above at paragraph 10. Those contentions are no more than a non-acceptance of findings made below. To undermine



those findings, Mr Boe was required to demonstrate they were made in error. To merely repeat the allegations found to have no credibility does not enhance the contentions.

19. We see nothing in the point relating to the fine emanating from PVMC rather than the police. The MOU entered into between PVMC and the police confirms the legislation that PVMC is able to assist in road block checks and enables PVMC to impose fines on behalf of the police. In relation to the 21-day seizure, we comment that FR8 Ltd is the author of its own misfortune. Paying the fine is insufficient to achieve the relinquishing of the vehicle. What is required is the production of documentation to demonstrate the vehicle is lawfully permitted to be on the road. FR8 Ltd, was well able to produce such documentation in less time than it did. It chose to not do so, and must accept responsibility for that delay.
20. Even if there were merit in his contentions, those aspects cannot rectify the fundamental failings in FR8 Ltd's evidence. The primary judge found the Claim had no validity as there is a complete lack of evidence supporting the contention of malice. We agree there is no such evidence and that the Claim therefore had to fail.

**F. Appeal**

21. We see nothing in the points argued on appeal. The appeal is dismissed.
22. Costs are to follow the event. We set them at VT 75,000, to be paid within 21 days.

**Dated at Port Vila this 13<sup>th</sup> day of May 2022**

**BY THE COURT**



Chief Justice V. Lunabek

