

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

**Civil Appeal**  
**Case No. 21/3916 SC/CIVA**

**BETWEEN:** ELVIRA CULLWICK BULU  
STEPHANIE JAMES  
ROLLANSON TABI  
ELISCA SAM MOLBAH  
DIEGO MOLBAH  
QWENNIE WATAS  
JAILES LINI  
LYNROSE TABI  
ANGELA TOKIO  
MORRISON TARI  
FIGO LOUGHMAN  
LINDA KALONIER  
YVONNE TEVI  
CAROLINE KASSO  
TESSIE NAMBIT  
MAHANA GEORGE  
MORINE LAPSAE

Appellants

**AND:** TEACHING SERVICE COMMISSION  
First Respondent

**AND:** REPUBLIC OF VANUATU  
Second Respondent

**Date of Hearing:** 12<sup>th</sup> August 2022

**Date of Decision:** 19<sup>th</sup> August 2022

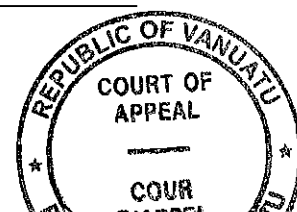
**Before:** Hon. Chief Justice V. Lunabek  
Hon. Justice John Mansfield  
Hon. Justice Oliver A Saksak  
Hon. Justice Mark O' Regan  
Hon. Justice Dudley Aru  
Hon. Justice Viran Molisa Trief  
Hon. Justice Edwin Goldsbrough

**Counsel:** Mr Eric Molbaleh for the Appellants  
Ms Jelinda Toa for Respondents

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**JUDGMENT**

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## **Introduction**

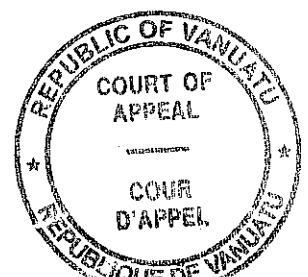
1. This is an appeal against the whole judgment of the Supreme Court dated 21<sup>st</sup> October 2021 which dismissed the appellants' claim for unpaid wages for the years 2015 and 2016.

## **Background**

2. The 17 appellants were among 35 newly qualified teachers who were engaged to teach as primary and secondary school teachers in 2015 and 2016 by the Principals and the School Councils of the schools concerned.
3. Elvira Cullwick Bulu and Stephanie James Tangat taught at Ulei Junior Secondary School. Mahana George and Figo Loughman taught at Lenakel Presbyterian College. Elisca Sam Molbah and Diego Molbah taught at Arep Junior Secondary School, Rollanson Tabi was engaged at Bwatnapni Junior Secondary School, Jailes Lini at Menevulu Junior Secondary School, Morrison Tari at Ambaebulu School, Linda Kalonier at Emau School, Yvonne Tevi at Atavtabanga School, Caroline Kasso at Itaku Primary School and Tessie Nambit at College de Molivalio.
4. The appellants alleged in the Supreme Court that there was agreement between them and the Teaching Service Commission ( the TSC) to pay their salaries and that the TSC had failed to pay their salaries as agreed, causing them to suffer loss and damage.
5. They claimed their employment entitlements including salaries and housing allowances, interest and costs.

## **The Decision**

6. The primary judge received evidence from 18 witnesses for the appellants and 2 witnesses for the respondents and decided the claim on the papers on the invitation of Counsel, Mr James Tari and Ms Jelinda Toa.
7. The primary judge decided the claim filed and dismissed it with costs fixed at VT 200.000.



8. In relation to the issue of whether there existed an agreement between the appellants and the TSC the Judge said at [43] as follows:

*"There is no documentary evidence to show there was any agreement between the Claimants and the TSC. The claimants rely on oral statements made by certain individuals, one of whom was the previous chair of the TSC. As against that, there is the documentary evidence of the Claimants being employed in 2017. The difference is stark. There is no explanation why there is no similar evidence for the employment in 2015 and 2016, save in the instances of Mr and Mrs Molbah. The lack of such evidence supports the defence position that the TSC did not employ the claimants in 2015 and 2016."*

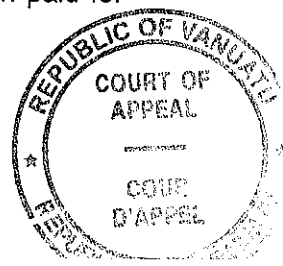
9. The primary Judge in [46] found on the balance of probabilities *"that there was no agreement between the Claimants and the TSC for the Claimants to work as teachers in 2015 and 2016 school years without salary in return for the TSC making up the individual shortfalls once the TSC had available funding to be able to formally support them as salaried teachers. There is accordingly no liability for back pay, nor for the claimed housing allowance."*

### **The appeal**

10. The appellants appealed against that decision on 2 grounds firstly, that the judge had erred by dealing with the matter on the papers. Secondly that there were facts in dispute that warranted a trial hearing to test the weight and credibility of witnesses and that having omitted to do so, the Judge had erred.

### **Discussion**

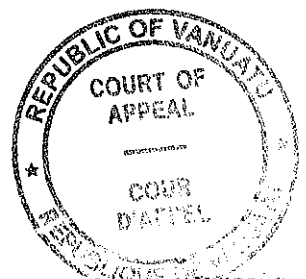
11. The appellant's original lawyer was Mr Sakiusa Kalsakau who filed their Notice and Grounds of Appeal.
12. When Mr Molbaleh took over the case on appeal and filed written submissions on 15<sup>th</sup> July 2022, he did not file any amended Grounds of Appeal.
13. In his written submissions Mr Molbaleh made submissions on completely new issues not raised in the grounds of appeal filed by Mr Kalsakau.
14. Mr Molbaleh submitted the main issue was whether his clients should have been paid for the school years 2015 and 2016.



15. Mr Molbaleh submitted that sections 46 and 49 of the Education Act No. 9 of 2014 should be read to infer that the TSC and the Republic were responsible and liable to pay the appellants' salaries and entitlements retrospectively upon their formal appointments in 2017. He argued that the Principals, School Councils and the TSC were all part of the Government so, whichever of them hired the individual appellants, the Republic became liable to pay them from the time they were appointed.
16. Sections 46 and 49 states as follows:-

**"46 Responsibilities of the Principals**

- (1) *The principal of a school is responsible for:*
- (a) *the day to day administration and management of the school; and*
  - (b) *the well-being of students and staff at the school; and*
  - (c) *the professional development of teaching and other staff at the school; and*
  - (d) *reporting to the Education Authority or Provincial Education Board on matters relating to the school as required by the Authority or the Board.*
- (2) *Without limiting subsection (1), the principal of a school must:*
- (a) *ensure that the school buildings and grounds are kept clean and tidy, and are well maintained; and*
  - (b) *in consultation with the staff, school committees, school councils and school community associations, develop rules for the school to ensure the well being of students and staff; and*
  - (c) *provide guidance and counselling to students, and advice to parents, on matters affecting a student's progress at the school; and*
  - (d) *identify school aged children within their community who are not attending school and work with the relevant family, school community association and school council to ensure any such children attend school regularly; and*
  - (e) *ensure a written report is provided to parents in relation to student performance including effort, press and achievement, at least twice a year, and*
  - (f) *keep and maintain accurate records of student and staff attendance, student reports and disciplinary issues; and*
  - (g) *keep and maintain all other records required by or under this Act ; and*



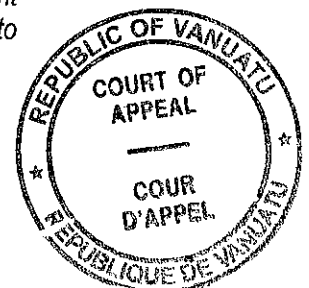
(h) provide the Director General with such information about the school as he or she requires for the purposes of this Act or the regulations.

(3) The Director General may determine the form and content of the written report to parents referred to in paragraph (2)(e) and the records referred to in paragraph (2)(f)."

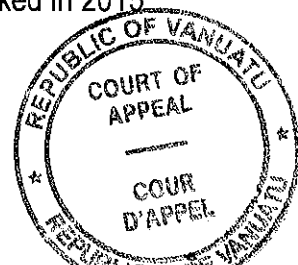
**And**

**"49 School Councils**

- (1) An Education Authority or a Provincial Education Board must establish a school council for each of its schools to assist the principal in the management and administration of the school;
- (2) An Education Authority or a Provincial Education Board is to determine for each school council:
  - (a) the membership of the school council, which must wherever possible include both male and female members; and
  - (b) the functions and responsibilities of the school council.
- (3) In determining the membership of the school council, an Education Authority or a Provincial Education Board must ensure that a person appointed as a member of the school council has met the criteria prescribed by the Minister;
- (4) The Minister may prescribe the criteria of appointment of a member of a school council;
- (5) A school council is to regulate its procedures and conduct its business in accordance with any relevant Regulations, determinations or guidelines made under subsection 12(3);
- (6) Subject to subsection (7), a member of a school council is not entitled to any salary or other remuneration, including by way of allowances, for his or her services provided to the school council;
- (7) Subject to the availability of funds at a school, a member of the school council is to be reimbursed for expenses properly incurred when engaged on the business of the school council;
- (8) A school council may identify school aged children not attending classes at school within its community and work with the relevant family members, school principal or any school community association established under section 52 to ensure that such children attend classes at school;
- (9) A School council may from time to time arrange for a member of the student representative body to attend any school council meeting and to contribute to any discussions and deliberations at the meeting."



17. There is nothing in these sections to indicate that either the TSC or the Republic becomes liable to pay unregistered teachers when they are hired by a principal or a school council. To read those sections in the way submitted by Mr Molbaleh would be contrary to the intention of Parliament.
18. For the appellants to succeed on their appeal they had to demonstrate that the Judge was wrong in finding there was no agreement between the claimants and the TSC that their salaries would be paid.
19. The Court had put a specific question to Mr Molbaleh whether he had any evidence and could produce the agreement they pleaded in paragraphs 7, 8, 9, 11, 13, 14, 15, of their Supreme Court claim.
20. Mr Molbaleh responded in the negative.
21. The Court also raised with Mr Molbaleh section 20 of the Employment Act which makes the appellants claim for salaries for 2015 to be time-bared. Counsel did not appear to have turned his mind to that factor.
22. The appellants as claimants had that onus of proof before the primary Judge and the Judge found against them in paragraph 46 of the judgment.
23. The appellants have not persuaded this Court that the primary judge had erred in his findings.
24. In their submissions the appellants submitted they were entitled to be paid on a quantum meruit basis. Unfortunately they did not plead this in their Supreme Court claim and therefore having raised it in their submissions before the primary judge who considered the legal maxim in paragraphs 41 and 42 of the Judgment and concluded, the "*maxim has no application to this case.*"
25. The judge was plainly correct.
26. We are sympathetic to the appellants for the circumstances they find themselves in. However, in the absence of any agreement with the TSC to pay them for their work prior to their registration as teachers, there is no proper basis on which the TSC can be liable to pay them for the 2015 and 2016 years. Moreover it was acknowledged that the Claimant teachers had received some payments as wages from the schools they had worked in 2015



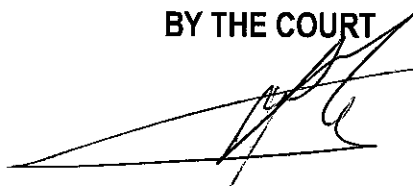
and 2016. The extent of those payments were not disclosed, so any such adjustment on the evidence would not have been possible.

**The Result**

- 27. The appeal is dismissed.
- 28. The respondents are entitled to costs which we fix at VT70,000. The appellants are to pay the costs within 28 days from the date of this judgment.

**DATED at Port Vila, this 19<sup>th</sup> day of August 2022**

**BY THE COURT**



**Hon. Chief Justice Vincent Lunabek**

