

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil jurisdiction)

Judicial Review  
Case No. 21/133 JR/CIVIL

**BETWEEN:** FR8 Logistics Limited  
Claimant

**AND:** Harold Tarosa  
First Defendant  
The Department for  
Customs  
Second Defendant

*Date:* 25 February 2021  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr J. Boe with Mr C. Kernot (Director) for the Claimant  
Mr F. Bong for both the Defendants, with the Director of Customs, Mr H. Tarosa

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**Judgment**

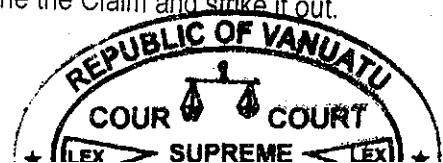
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A. Introduction

1. This was an application for judicial review in relation to alleged omissions by the Director of Customs to grant two Custom Controlled Area Licences on the September 2020 application by the Claimant. The complaint centred on the licences still not having been granted.

B. Rule 17.8

2. As required by Rule 17.8 of the Civil Procedure Rules, a Conference was held to investigate whether this matter was an appropriate case for the Supreme Court to hear. It was immediately evident that the mandatory orders sought were not available. It is not possible for the Court to direct the Minister of Customs to take steps that are discretionary. Secondly, the application for the licences was amenable to an appeal pursuant to section 195 of the Customs Act. Accordingly, under Rule 17.8, the Court was required to decline the Claim and strike it out.

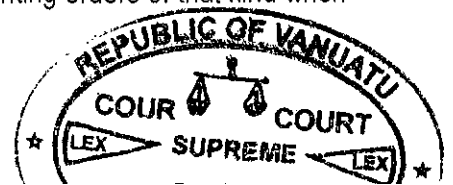


C. Alternate Steps

3. However, to simply strike out the application would not solve the dispute between the parties. Accordingly, I adjourned the Rule 17.8 hearing for further enquiries to be made, and hopefully for remedial steps to also have been taken, to resolve the matter.

D. Outcome

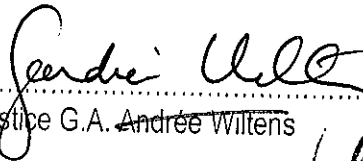
4. In the short period of the adjournment, the Director of Customs issued one of the licences sought by the Claimant.
5. The second licence was not issued as the area in question apparently did not meet the necessary criteria, and that was spelled out in a letter of 2 November 2020 to the Claimant. Those compliance matters are apparently now being attended to so that the second licence may issue in due course.
6. It is of considerable concern to the Court that Mr Kernot's extensive sworn statement in support of the application appended numerous documents but not the letter of 2 November 2020.
7. Someone has written on it in hand "received by email 23/12/20" and subsequently "By hand 3/1/21". While it is unclear who wrote that, what is evident is that the letter is genuine and not a recent creation.
8. The contents of the letter are highly relevant to the application.
9. If the Court was certain that Mr Kernot had the letter in his possession but did not disclose it as part of the application, there would be severe consequences for Mr Kernot including possible criminal charges relating to attempting to pervert the course of justice. However, I cannot be certain of the core facts. Accordingly there is no ability to take the matter further.
10. Mr Boe disavowed all knowledge of the letter so there can be no blame attached to him.
11. The point remains that this application was at least partly based on falsehood. Mr Kernot deposed to no explanation having been received as to why the licences were not issued, and further that he had been orally advised that both locations did meet the criteria for a licence to issue. To have effectively concealed the letter, if that is what occurred, would have amounted to an abuse of the Court process.
12. In the event, as one of the licences has now been issued, and the second currently unable to be issued, the first order sought in the judicial review in relation to this aspect was no longer applicable.
13. Mr Boe confirmed there was no longer any need for an order compelling the Director to issue an invoice so that it could be paid and the licence issue.
14. The second order sought was to prohibit the Director of Customs and the Customs Department to refrain from blocking the usage of the 2 licences. Given that the one licence that has been issued is less than a week old, there is no suggestion of any "blocking" other than the historical matters Mr Kernot deposed to. This Court is not amenable to granting orders of that kind when



there is no clear and unambiguous evidence of such activity. This part of the application is premature, at best.

15. Mr Boe accepted there was also no need for the Court to consider the second order sought.
16. There was discussion with the Director of Customs regarding the inordinate length of time involved in the processing of the application for the licences, and the obvious lack of communication (if not good will) between the parties. He assured me that the processes involved have been reviewed and improved.
17. In the circumstances, I am now obliged to dismiss the application for judicial review.
18. I discussed with both counsel my views regarding costs. Both agreed with the views expressed.
19. Accordingly, the costs involved will lie where they fall.
20. The file is now closed.

Dated at Port Vila this 25th day of February 2021  
BY THE COURT

  
Justice G.A. Andrée Wiltens

