

BETWEEN: **FR8 Logistics Limited**
Claimant

AND: **Director of Customs**
First Defendant

AND: **Attorney General**
Second Defendant

Date of Hearing: 1st July 2024

Before: Justice Oliver A. Saksak

Counsel: Corrine Hamer for the Claimant
Nadya Robert and Denny Jonah for the Defendants

Date of Decision: 8th July 2024

JUDGMENT

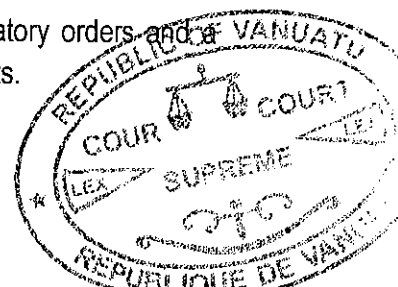
Introduction

1. The hearing in chambers on 1st July was a Rule 17.8 hearing. This rule requires that the claimant must show to the court's satisfaction that –
 - (a) He has an arguable case; and
 - (b) He is directly affected by an enactment or decision of the defendants; and
 - (c) There has been no undue delay in making the claim; and
 - (d) There is no other remedy to resolve the matter fully and directly.

2. If the claimant is not able to satisfy the court on the four criteria, the court must decline to hear the claim and to strike it out.

Background

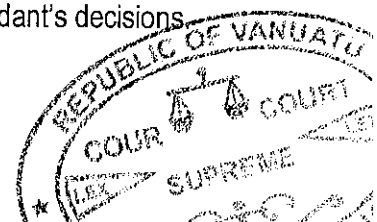
3. The claimant filed an initial claim on 22 August 2023 seeking two declaratory orders and a mandatory order against the First Defendant, damages with interest and costs.



4. The pleaded grounds are contained in paragraphs 1 – 74 inclusive. A supporting sworn statement was filed on 28 November 2023.
5. The defendants are named as Director of Customs, First Defendant and the Attorney General as Second Defendant.
6. On 14 February 2024 the Defendants filed a defence essentially denying the claimant's entitlement to the orders sought alleging the claim was vexatious and an abuse of process, and should be struck out with costs at VT100,000.
7. On 15 February 2024 the defendants filed a supporting sworn statement by Collins Gesa.
8. A strike out application was filed by the defendants earlier on 26 September 2023 with a supporting sworn statement of Joylee Seresere on the basis of the judgment in CC19/2702 between FR8 Logistics Ltd. v Ifira Ports Development & Services Company Ltd.
9. The claimant however sought leave to amend their claim and leave was granted on 17 April 2024. Subsequently on 28 May 2024 the claimant filed an amended judicial review claim. A supporting sworn statement was filed on 4 June 2024 by Christopher Kernot. They filed a reply to the defence on 4 March 2024.
10. The amended claim now seeks 4 declarations, a mandatory order and costs. The grounds pleaded are reduced from 79 to 63 paragraphs.
11. On 19 June 2024 the defendants filed their amended defence. They filed a supporting sworn statement from Ronald Noah and Stanley Trief on 19 June 2024. And they filed synopsis of submissions on Rule 17.8 matters on 4 April 2024. The defendants maintained their position that the claim was vexatious and should be struck out with costs of VT300,000.
12. On 27 June 2024 the claimant filed a reply to the defendants' amended defence.

Complaints of the Claimant

13. The claimant's complaints are as submitted by Mrs Hamer that:
 - (a) The First Defendant's extensive delays to provide the inspection report regarding his licensed customs controlled area dated 14 May 2019 until 15 February 2024 had jeopardized the claimant's status and therefore was unlawful;
 - (b) The failure by the First Defendant to provide the inspection report until 15 February 2024 was a denial of natural justice to the claimant denying it for using its licensed premises, and causing serious economic disadvantage to the claimant;
 - (c) By repealing Part 16 of the Customs Act 2013 in 2019 the claimant was denied the right of appeal to the Customs Appeal Tribunal against the First Defendant's decisions.

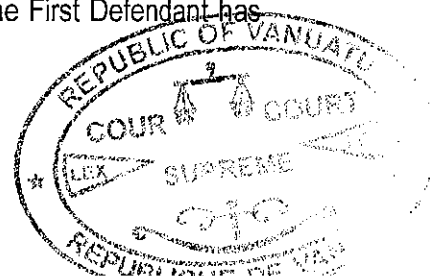


Submissions

14. Mrs Hamer submitted the complaints by the claimant show that the claimant has an arguable case, that they are directly affected by the failures and delays taken by the First Defendant.
15. The defendants through the Attorney General filed written synopsis of submissions on 4 April 2024. They submitted that the claimant has not fulfilled the 4 criteria in Rule 17.8(3) and that the claimant was estopped in bringing this proceeding due to the principle of res judicata in light of two previous Judicial Review Cases CC19/2701 FR8 Logistics Ltd. v Ifira Ports Development and Services Company Ltd. and CC21/133 FR8 Logistics Ltd v Harold Tarosa & Customs Department and CAC21/745 as an appeal case. They further submitted the proceeding was an abuse of process and should be dismissed with costs of VT200,000. They relied on Family Kalmet v Kalmet CAC17/3627 in support of their res judicata submission.

Consideration and Findings

16. I accept the submissions by the Attorney General on behalf of the defendants. I find no cause of action available in the Amended Judicial Review claim filed on 28 May 2024 against the Attorney General.
17. The period of delays complained about is from 14 May 2019 to 15 February 2024. I accept the defendant's submissions based on the Kalmet Family case that the claimant had the opportunity or raise its complaint in JR Case 19/2702 and CC21/133 which was appealed as CAC21/745 in 2019 and 2021. The claimant failed to do so. And they did not do so in 2022. It was only on 22 August 2023 that they filed their initial claim and amended it a year later on 28 May 2024.
18. Rule 17.5(1) provides clear time period of 6 months from the date of enactment or decision for a claim to be filed for judicial review. Rule 17.5(2) provides for a discretion on the Court to grant leave to extend the time if it is satisfied substantive justice requires it. Regrettably this claim is well outside the 6 months period and the claimant had not at any time sought leave to extend the time. Under Rule 17.8(3)(c) therefore there has been undue delays by the claimant in filing their JR claim.
19. As to whether the claimant has no other remedy that resolves the matter fully and directly, contrary to what the claimant submitted, the Court finds that the claimant has other remedies.
20. In their own submissions the claimant made a reference to the Court of Appeal decision in FR8 Logistics Ltd. v Ifira Ports Development and Services Company Ltd. [2021] VUCA 37 where the Court of Appeal held that FR8 Ltd. was entitled to pick up both containerized and non-containerized cargo from the wharf and unpack at is Customs Controlled Area at Wharf Road and to deliver to anywhere outside of Port Vila. The complaint is that the First Defendant has



continued to disallow that to happen. This is amenable to contempt of court proceeding or a claim for damages. This Court cannot review what the Court of Appeal has already held.

21. Finally whether or not the claimant is directly affected by the failures and/or omissions of the First Defendant? It is my view that he may be, but their remedy is not by way of declarations through a judicial review claim, but it is more so a claim for damages as an attentive remedy.

Conclusion

22. For the foregoing reasons, I am not satisfied, about the matter in sub rule (3) of Rule 17.8. I therefore decline to hear this claim further and order that it be struck out with costs.
23. I fix the costs at VT200,000 payable by the claimant within the next 28 days from the date hereof.

Dated at Port Vila, this 8th day of July, 2024.

BY THE COURT

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Hon. Justice Oliver A. Saksak

