

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

Civil Appeal
Case No. 19/3155 CoA/CIVA

BETWEEN: NUVI IATA
First Appellant

AND: LEITAU IATA
Second Appellant

AND: MOSES KAMUT
Third Appellant

**AND: TANNA COFFEE DEVELOPMENT
COMPANY LIMITED**
Respondent

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John Hansen
Hon. Justice White Richard
Hon. Justice Oliver A. Sakak
Hon. Justice Viran Molisa Trief*

Counsel: *Mr Edward Nalyal for the Respondent
Mr Justin Ngwele for the Appellants*

Date of Hearing: *13th February 2020*
Date of Judgment: *20th February 2020*

REASONS FOR JUDGMENT


1. This is an urgent application for this Court to delay delivery or defer delivery of its judgment this afternoon in the civil appeal 3155 of 2020. It is on the basis that in 2013 a director of the respondent made a complaint about the appellants to the police. It appears the police officer concerned went to Fiji and, only just recently, the criminal complaint has been reactivated.
2. Reliance is made on the decision in this Court in *Air Vanuatu Operations Limited v Sliano Leasing Company Limited* [2019] VUCA 36. The difficulty facing this application is that the very matters the subject of the complaint to the police were also the subject

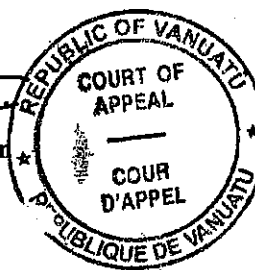
of the counter claim in the Court below. That counter-claim was heard and dismissed by the trial judge. A cross appeal was lodged out of time. No leave was sought. When this was raised with Mr Nalyal in the substantive appeal, he took instructions and he then withdrew that appeal. So the matters the subject of the police complaint had been fully canvassed in the course of the proceedings.

3. This matter can be readily distinguished from the *Air Vanuatu* case where judgment was deferred because criminal charges had been laid against named individuals. In this particular case there has only been a complaint and no charges have been laid. Furthermore, it is well established law that the findings in a criminal case, even if there was one, are not binding in a civil case. (We received no submissions but subsequently discovered the matter is governed by s:11B of the Civil Evidence Act 1968 (U.K) so our view was incorrect. Although it is irrelevant here as there are no convictions).
4. In all of those circumstances, this is a misguided application. It is dismissed. There will be costs to the appellant on this application in the sum of 15,000 VT.

DATED at Port Vila this 20th day of February, 2020.

BY THE COURT


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HON. Justice John Hansen



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom, separated by two stars. In the center, it reads "COURT OF APPEAL" and "COUR D'APPEL" with a horizontal line between them.