

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

**Civil Appeal  
Case No. 20/2975 CoA/CIVA**

**BETWEEN:** Barnabas Boe, Margaret Terry,  
Rosalina Andre, Mathew Tasale,  
Jeffery Tila, Alma Wensi, Marianne  
Berukilukilu, Jessica Palo and  
Esther Saul

Appellants

**AND:** Telecommunications  
Radiocommunications Regulator

Respondent

**Date of Hearing:** 17 November 2020

**Coram:** Hon. Justice J. Mansfield  
Hon. Justice R. Young  
Hon. Justice O. Saksak  
Hon. Justice D. Aru  
Hon. Justice V.M. Trief

**Counsel:** Mr J. Tari for the Appellants  
Mr J.C. Malcolm and Mrs S. Motuliki for the Respondent

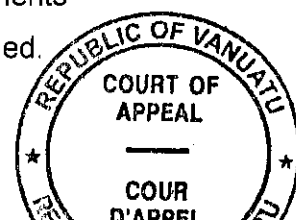
**Date of Decision:** 20 November 2020

---

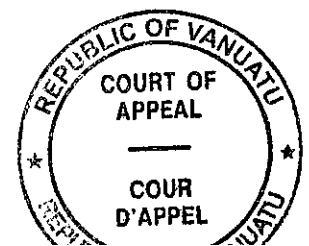
**JUDGMENT**

---

1. This is a claim alleging either constructive or improper dismissal of the Appellants by the Respondents. In addition, there are claims alleging defamation. These claims have something of a procedural history but for the purpose of resolving this appeal only a description of recent events is called for.
2. On 18 January 2019, the Respondent made an application to strike out the claims either in whole or in part. The Judge in the Supreme Court, having made an order consolidating the eight cases into one litigation, then invited sworn statements and submissions relating to the strike out application. These were exchanged.



3. Eventually, the Court heard the application for strike out on 24 April 2019. The hearing was before Justice Felix. When Justice Felix left the Judiciary in March 2020, no judgment had been given on the application for strike out.
4. In September 2020, another Judge of the Supreme Court received this file for review. On the file that he was provided with, the last record of any action was on 8 February 2019 when directions were given relating to the strike out application. The Supreme Court Judge then noted "*a perusal of the file makes it regrettably plain that the applications have not been considered by the Court*". He therefore noted that the claimants had not filed any evidence relating to the strike out applications since March 2019. There was an unexplained delay of over 18 months. Given the claimants had taken no steps to advance their cases for those 18 months, in terms of Rule 9.10(2)(b), the Judge struck out each of the claims.
5. It is clear, therefore, that the Judge in the Supreme Court who struck out these proceedings did not know that the Appellants had filed their relevant statements with respect to the strike out and did not know that Justice Felix had heard the application for strike out but had not delivered a decision.
6. Accordingly, the basis for this appeal was that Rule 9.10 in the circumstances had no application. The claimants (here the Appellants) had not failed to take steps because they, along with the Respondents, were waiting for a decision from a Judge in the Supreme Court who had heard the application for strike out.
7. In the circumstances, the Respondent advised that he did not oppose the appeal. The Respondent was anxious to have the matters resolved as soon as possible.
8. We therefore allow the appeal. We return the file to the Supreme Court. We see no reason why the Judge, who struck out this claim, should not now have the responsibility to case manage this litigation as it progresses. We invite him therefore to, as a first step, hear the application for strike out again.



9. Given the circumstances which gave rise to allowing this appeal, it would not be appropriate to make any order as to costs.

**DATED at Port Vila this 20<sup>th</sup> day of November 2020  
BY THE COURT**

  
Justice J. Mansfield

