



It is conceded by Counsel for the Plaintiff that the claim is time-barred by Section 3 of the Limitations Act No.4 of 1991 (the Act) but the argues that under that provisions of Section 15 of the Act the time limit can be extended.

The Plaintiff filed an affidavit in which he gives evidence to the fact that he did not know that he may have had a claim in negligence which would give him the right to recover damages for the injuries he had sustained against the driver of the vehicle from which he fell. This knowledge was not gained until the Plaintiff consulted the Public Solicitor on 3rd October 1996.

First I set out below the relevant legal provisions which have to be construed in determining the issues before the Court:-

1. Section 3(1)(a) reads:-

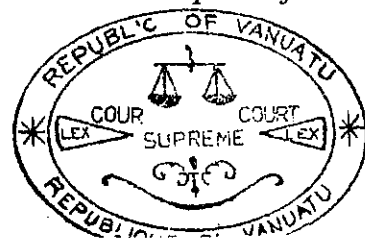
*"The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say -*

*(a) actions founded on simple contract or on tort...,  
provided that -*

*(i) in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or such provision) where the damages claimed by the Plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years, ..."*

2. Section 15 reads:-

*"(1) The provisions of subsection (1) of Section 3 shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which -*



(a) *the Court has whether before or after the commencement of the action, granted leave for the purposes of this section, and*

(b) *the requirements of subsection (3) are fulfilled.*

(2) *This section applies to any action for damages for negligence, nuisance or breach of duty (whether he duty exists by virtue of a contract or of provision made by or under any Act or independently of any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.*

(3) *The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which -*

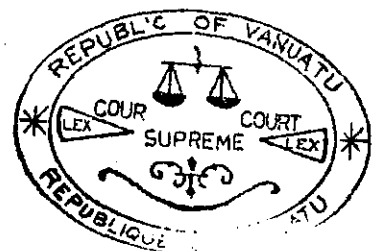
(a) *either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period, and*

(b) *in either case was a date not earlier than twelve months before the date on which the action was brought.*

(4) *....*

(5) *Nothing in this section shall be construed as excluding or otherwise affecting -*

(a) *any defence which, in any action to which this section applies may be available by virtue of any provisions of any Act other than those contained in subsection (1) of Section 3 (whether it is an Act imposing a period of limitation or not) or by virtue of any rule of law or equity or (emphasis, mine)*



*(b) the operation of any Act or of any rule or law or equity which, apart from this section would enable such action to be brought after the end of the period of three years from the date on which the cause of action accrued.* (emphasis, mine)

3. Section 16 of the Act reads:-

*“(1) Any application for the leave of the Court for the purposes of section 15 shall be made ex parte, except in so far as rules of Court may otherwise provide in relation to applications which are made after the commencement of a relevant action.*

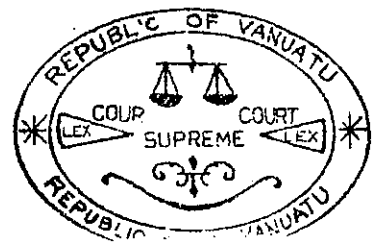
*(2) ...,*

*(3) Where such an application is made after the commencement of a relevant action, the Court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the Court that, if the like evidence were adduced in that action, that evidence contrary, in the absence of any evidence to the contrary, be sufficient -*

*(a) to establish the cause of action, apart from any defence under subsection (1) of section 3; and*

*(b) to fulfil the requirements of subsection (3) of section 15 in relation to the cause of action and it also appears to the Court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had accrued on such a date as, apart from the last preceding section, to afford a defence under subsection (1) of section 3.*

*(4) In this section “relevant action” in relation to an application for the leave of the Court, means any action in connection within which the leave sought by the application is required.”*

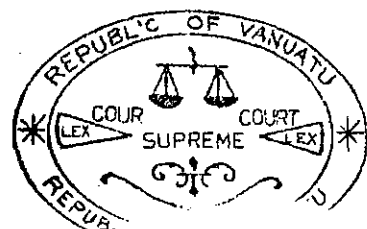


The above are the relevant provisions of the Vanuatu Act which came into force in 1991. It is an Act which adopts virtually word for word the corresponding provisions of the United Kingdom Limitation Act 1939 as amended by the 1963 and 1975 Acts. Both Acts were subsequently repealed and replaced by the 1980 Act. Its provisions are, to use the words of Lord Pearson "notoriously difficult to construe". See Central Abestos Co. Ltd -v- Dodd [1972] 2 All ER 1135 at p.1148.

The whole Act is unnecessarily complex and deplorably obscure in its language. This is the result of perhaps an oversight by the Vanuatu draftsman not taking into account the amendments made in the U.K. legislation before submitting the Bill in 1991. This law needs to be revised and simplified to suit local circumstances. The Court has been urged by Counsel for the Plaintiff to construe and apply the Act in its current form. And he has referred the Court to the Central asbestos Case (Supra) and in particular the judgment of Lord Reid at p.1139 who said that it was clear that the Act extends the three years time limit in cases where some fact was for a time after damage was suffered outside the knowledge of the Plaintiff, if that fact was material and decisive. Before a person can reasonably bring an action he (or his advisers) must know or at least believe that he can establish -

- (a) that he has suffered certain injuries;
- (b) that the defendant (or those for whom he is responsible) has done or failed to do certain acts;
- (c) that his injuries were caused by those acts or omissions, and
- (d) that those acts or omissions involved negligence or breach of duty.

Whilst this is good law in England it is my view that it cannot be good law in Vanuatu simply because it places too high a burden on a plaintiff in Vanuatu who in most cases would be unschooled, unlearned and unaware of such matters. Local circumstances here are, very much different from those in the United Kingdom that to apply such law here directly as the provisions of the Vanuatu Limitation Act does, creates a gross injustice. In Vanuatu there is a category of persons called "grassroots", who are usually the uneducated and unlearned in many of the introduced ways of life. I do not say they are 'ignorant' but simply because they have been brought up in a different society, culturally, socially and environmentally different, they are unable to comprehend the elements of these complex legal provisions. Why should such persons be made victims of these foreign and complex legal provisions ?



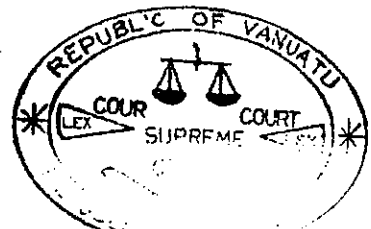
Section 15 (3) of the Vanuatu Limitation Act places so great a duty on the plaintiff in our local circumstances that it becomes an unreasonable legal provision.

\*In the present case the plaintiff was not a "grassroot" so called. He was a teacher and may still be, but even as a teacher he did not know that he could bring a claim in negligence against the defendant until he had received advice from the Public Solicitor. If it takes a teacher not to comprehend that fact then it cannot be assumed that a "grassroot" would know either.

There is no difficulty by the plaintiff establishing that he has suffered injuries as a result of the accident. There is no difficulty by him establishing that the defendant had done or failed to do certain acts and that by these acts or omissions the plaintiff received his injuries. He had difficulty with knowing about negligence and what it involved and his right to claim damages. Should his claim fail because he did not know this and only knew it later after the time allowed had expired? In my Judgment it ought not be denied him.

In his affidavit evidence the plaintiff says that he pursued a claim through other agency in or about November 1997. His accident occurred on 10th July 1993. A letter was written on his behalf by his trade union which is Annex "A" in his affidavit. On or about July 1996 a claim was made to QBE Insurance which the Firm denied liability by facsimile transmission dated 19th July 1996 exhibited in evidence as Annex "B". These are all actions taken by the plaintiff. That of November 1994 was well within the time limit. It was not an action to claim damages for negligence or breach of duty but does it matter? Law would have us say that it does matter. I say this is a matter to be decided on equity and therefore the Court does not have to consider what are the meanings of "Material Facts Relating to a cause of Action" under Section 18, or what "Facts of a Decisive Character" are under Section 19 of the Vanuatu Act.

Here I am satisfied from the plaintiffs pleadings in his Writ of summons filed on 23rd September 1997 that he has and has established a cause of action as required by Section 16 (3) of the Vanuatu Act, and further that the provisions of subsection (3) of Section 15 of the Act have been fulfilled based on equity pursuant to or by virtue of Section 15 (5). This is why I have earlier on in this Judgment emphasized Section 15 (5) (a) and (b).




The plaintiff may not have known that he had a claim in damages against the defendant but he did take action within the time limit to publish his claim whether or not to the appropriate authority does not matter. Equity demands that he only takes action to pursue a claim and it need not be a claim for damages or for compensation as is most commonly known. This he did and he did within the time allowed by the law. He acted within the requirements of Section 20(1)(b) of the Act. It is therefore within the discretion of this Court based on equity that leave should be granted.

For those reasons, leave is granted to the plaintiff to bring his action against the defendants and I so order. Costs will be costs in the cause.

Dated at Port Vila, this 30<sup>th</sup> day of December 1997.

BY THE COURT

  
.....  
**Oliver A. SAKSAK**  
Judge

