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

Company  
Case No. 18/858 SC/COMP

**BETWEEN:** Vanuatu Broadcasting and Television Corporation (VBTC)  
Claimant

**AND:** Vanuamadia Digitalmedia Limited  
Defendant

**Date of Hearing:** 6 August, 2018  
**Before:** Justice GA Andrée Wiltens  
**Counsel:** ~~Mark Hurley for the Claimant~~  
Silas Hakwa for the Defendant

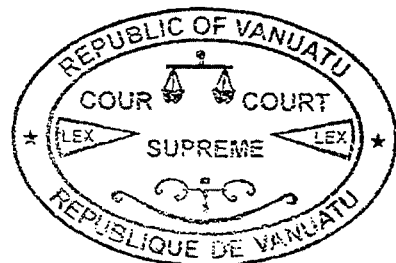
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**JUDGMENT**

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**A. INTRODUCTION**

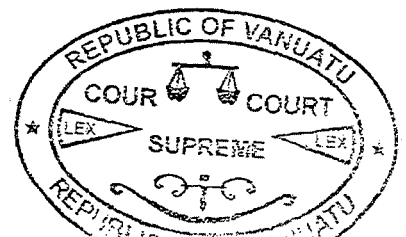
1. A joint venture project between Vanuatu Broadcasting and Television Corporation ("VBTC") and Guilin Ceke Communication Equipment Co. Ltd ("CEKE") involved the incorporation on 2 December 2015 of a new entity in Vanuatu, namely Vanuamadia Digitalmedia Limited ("VDL"). The project was intended to set up a digital television broadcast network throughout Vanuatu.
2. Prior to the incorporation of VDL on 18 August 2015, a contract had been entered into by VBTC and CEKE setting out how the joint venture was to operate and dealing with the obligations of both parties.



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3. VBTC, on 23 March 2018, sought to liquidate VDL due to alleged failures to comply with the contractual obligations and serious unresolvable governance issues. The application was made under section 15 (2) (c) of the Companies (Insolvency and Receivership) Act No. 3 of 2013.

**B. TIMETABLE OF EVENTS**

4. The claim to liquidate VDL was filed on 23 March 2018, together with a sworn statement by Mr Herman. The matter was listed before a Master for 10 am on 21 May 2018. Notice of that hearing was served on 11 April 2018 on one of VDL's directors Mr Zheng Wu Wei. It was acknowledged as served by Mr J. Malcolm, previous counsel instructed by VDL, on 19 April 2018.
5. A "Defence" was filed on 11 May 2018 – 7 days out of time. On 8 May 2017 and 14 May 2018 counsel for VBTC pointed out that the "Defence" was out of time.
6. On 18 May 2017 previous counsel for VDL ceased to act.
7. At the hearing before Master Cenac on 21 May 2018 the late filing of the "Defence" was again raised by VBTC. The case was then transferred to the Supreme Court on 24 May 2018, with a conference scheduled for 25 June 2018.
8. Current counsel for VDL filed a Notice of Beginning to Act on 8 June 2018. Counsel filed 3 applications on 22 June 2018:-
- Leave to file defence out of time;
  - Leave to join CEKE as a party, and
  - Leave to join Hong Kong Madia Investment Manage Co. Limited ("HKMIML") as a party.
9. As current counsel for VDL had only recently been instructed, the Court directed, on 24 May 2018, that sworn statements in support of all 3 applications were to be filed by 4 pm on 9 July 2018. Counsel was "... put on notice that these timetabling directions are to be strictly complied with"



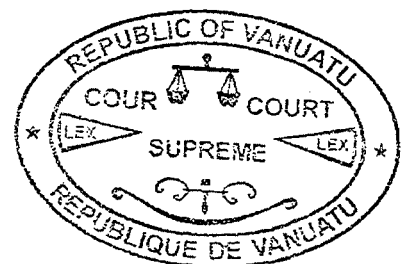
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given the delays evident on the file. The Court further advised counsel that: *"failure to do so will very likely lead to drastic orders by the Court"*.

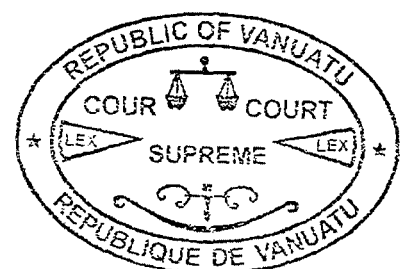
10. On 2 August 2018, Mr Zheng Wu Wei filed 4 sworn statements, 3 of which related directly to the applications filed on 22 June 2018.
11. On 6 August 2018 the matter was heard and determined. I advised I would give later written reasons for my decisions. These are they.

**C. APPLICATION FOR EXTENTION OF TIME**

12. The timetable of events earlier described demonstrates that the "*Defence*" document was filed 7 days out of time – according to Regulation 14 of the Companies (Insolvency and Receivership) Regulation, order 111 of 2015, it must be filed within 14 days of service. Regulation 17 therefore has application, and it requires an extension of time to be granted or VDL is not permitted to appear at the hearing.
13. In determining whether or not to grant the extension sought helpful guidance is provided in *Mocha Ltd v. Iriki Island Holdings Ltd* [2017] VUSC 76. These certain criteria to be taken into account are set out:-
  - Length of delay;
  - Explanation for the delay;
  - Degree of prejudice which may be suffered by either party in the event of leave either not being granted or granted;
  - Any explanation as to why special leave is required;
  - Prospects of success for applicant for special leave.



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14. Mr Hurley quite properly accepts that 7 days is a modest period.
  15. Mr Zheng Wei Wu explains in his sworn statement that he did not receive notice, due to being overseas, until 16 April 2018. He instructed previous counsel the following day, and counsel inexplicably filed the "Defence" late. Mr Zheng maintains that no exception was taken to the late filing.
  16. There is no evidence from previous counsel. Given Mr Zheng's other conduct, I do not accept that he instructed counsel one day after he had notice of the claim. In the circumstances, I am left without any credible explanation as to why the "Defence" document was filed out of time.
  17. It is quite apparent from the evidence before me, both from Mr Zheng and Mr Herman, that the purpose of which VDL was incorporated is now unattainable. There has been such a breakdown between the parties that the company's substratum has failed, and there is a clear management vacuum. It is also clear from the evidence that these issues cannot be reversed. I agree with Mr Hurley's submission that there is no prejudice to anyone if the application for extension is declined and a liquidator appointed.
  18. I also agree with Mr Hurley's submission that the prospects of VDL successfully defending the claim are poor.
  19. To grant the application is an exercise of discretion. The failure to properly or adequately explain the reason for the late filing, the absence of prejudice and the poor prospects of defending the claim all militate against exercising that discretion in favour of the applicant. However, I also take into account that current counsel, when pressed by the Court, attributed a delay of instructions for the late filing of the directed sworn statements in support of the application. As mentioned earlier, my suspicion is that Mr Zheng has dragged his heels in respect of a number of the matters involved – he is clearly responsible for the delay between 9 July 2018 and 2 August 2018 in circumstances where every effort ought to have been made to comply.



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20. Mr Hakwa did his best – but he had little ammunition with which to do it. Try as he might, he failed to convince me that I should exercise my discretion in his client's favour.

21. The application to extend time is accordingly declined.

**D. THE APPLICATIONS TO JOIN**

22. Mr Hakwa, pursuant to Rule 17, thereafter no longer had a right to be heard. In the circumstances, with no defence filed to the substantive application, there was no merit whatever in joining other parties.

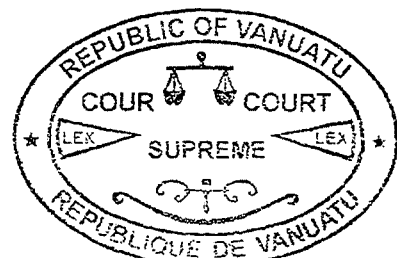
23. Both applications to join CEKE and HMML are therefore also dismissed.

**E. SHOULD VDL BE LIQUIDATED?**

24. I accept the various allegations made by Mr Herman as to the management vacuum at VDL and the failure of the contracting parties to make the joint venture work. In fact Mr Zheng confirms much of that evidence.

25. I accept the various *obiter dicta* set out in the following authorities as to what constitutes the grounds for a "just and equitable" winding up of a Company's affairs:-

- *Ebrahimi v. Westbourne Galleries Ltd* [1973] AC 36;
- *The Commissioner of Inland Revenue v Everitt* [2009] NZHC 475;
- *In the matter of Catombal Investments Pty Ltd* [2012] NSWSC 775;
- *Re Nestor Pty Ltd* (1981) 6 ACLR 114;
- *In the matter of Amazon Pest Control Pty Limited* [2012] NSWSC 1568.



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26. To my mind this company's purpose for being has evaporated. I accept that there is no good commercial reason for this company to not be liquidated. In that way all the affairs of the company can be properly investigated and all the remaining assets of the company properly dealt with. Further it alleviates the contracting parties of any of their obligations under the original contract and enables both to fully understand their legal positions.
27. I accept that VDL's substratum has failed and that there is a management vacuum. I further accept that both aspects are irreversible. It is therefore just and equitable that VDL be liquidated.

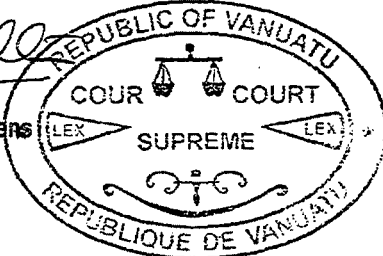
F. **DECISION**

28. VDL is to be wound up under section 15 (2) (c) of the Companies (Insolvency and Receivership) Act No. 3 of 2013.
29. Maxwell Macgill, having agreed to act, are hereby appointed the liquidators of VDL.
30. Costs are awarded to claimant. They are either to be set with agreement by Mr Hakwa or taxed.

DATED at Port Vila, Vanuatu this 20<sup>th</sup> day of August, 2018.

BY THE COURT

*Gandhi Uilo*  
Justice G.A. Andrée Wiltens

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written in an arc at the top, and "REPUBLIQUE DE VANUATU" at the bottom. In the center, "COUR" is on the left and "COURT" is on the right, with "SUPREME" below them. The word "LEX" appears on two banners flanking the central text.