

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

Civil
Case No. 23/2983 SC/CIVL

BETWEEN: AARON BONGMIAL HANGHANGKON
Claimant

AND: ANZ BANK LIMITED
Defendant

Date: 7 October 2024
Before: Justice M A MacKenzie
Counsel: Claimant – Self-represented
Defendant – Mr G Blake

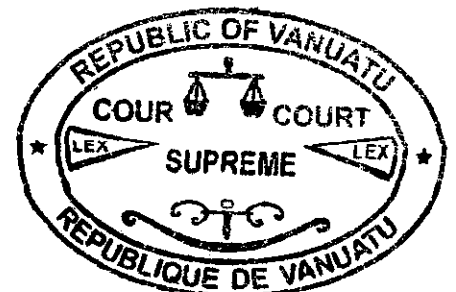
DECISION

The issue

1. On 11 March 2024, Hastings J struck out Mr Hanghangkon's claim against the ANZ Bank. He now seeks leave to appeal out of time, and to stay the decision striking out the claim. The application for leave to appeal out of time was filed on 19 August 2024, 5 months after the decision was delivered.
2. Leave to appeal out of time is required because Mr Hanghangkon did not file an appeal within the timeframe provided in the Court of Appeal Rules 1973.
3. The applications are opposed by the ANZ Bank.

Result

4. After hearing argument, I declined both applications and said I would give written reasons. These are my reasons.

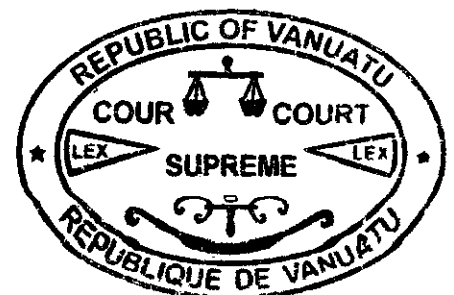


Background

5. In the claim, Mr Hanghangkon alleged that the ANZ Bank owed a duty of care to provide independent audited ANZ bank financial statements, and conspiracy to defraud his late father's estate.
6. The claim was struck out because it did not disclose a cause of action. Hastings J said that the claim disclosed no cause of action, and that what Mr Hanghangkon wanted could be achieved by corresponding with the bank to obtain account statements. The background circumstances are set out in His Lordship's decision. Mr Hanghangkon suspects his brother stole money from accounts at the ANZ Bank. In essence, the claim arises out of a request by Mr Hanghangkon for documents. As Mr Blake said in his oral submissions opposing the application, the ANZ Bank bent over backwards to accommodate Mr Hanghangkon's request for bank statements.
7. All Mr Hanghangkon needed to do was to write letters to the bank in his capacity as administrator of his late father's estate, and in his capacity as a director of H&D company, asking them to identify the accounts his father and H&D had with the bank, and ask the bank for bank statements relating to those accounts.

The Law

8. In accordance with rule 20 of the Court of Appeal Rules, an appeal against a decision must be filed within 30 days after the decision was delivered. There is a discretion to extend the time for filing an appeal, by virtue of rule 9.
9. Applicable principles include;
 - a. The rules and the time limit are not to be lightly overlooked; *Toara v Simbolo* [1999] VUCA 6.
 - b. Permission to appeal out of time is entirely discretionary.
 - c. The factors to be taken into account include length of delay, reasons for delay, prospects of success and the degree of prejudice to the potential respondent that might arise; *Laho Ltd v QBE Insurance (Vanuatu) Ltd* [2003] VUSC 26.
 - d. There may be reasons of public interest to extend time to appeal; *Neel v Blake* [2004] VUCA 6 and *Nalau v Mariango* [2007] VUSC 55.



Discussion

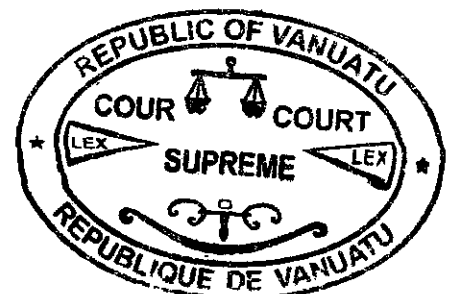
10. I will start by considering the factors discussed in *Laho v QBE Insurance*.

Length and reasons for delay

11. The decision was delivered on 11 March 2024. The application for leave to appeal out of time was filed approximately 4 months after the time to appeal expired. Mr Hanghangkon gives no reason at all for the delay.
12. At this juncture, it is not for me to decide the merits of the appeal. Mr Hanghangkon's application seems to focus on what he perceives to be the shortcomings of Hastings J's decision. His position is that His Lordship erred in law and fact by not considering the request for default judgment and not considering the request for the deceased's independent audited financial statements.
13. Hastings J accepted that the ANZ Bank did not owe a legal duty to provide independently audited financial statements to Mr Hanghangkon, and that there was nothing pleaded to support an alleged conspiracy to defraud. He needs evidence on which to base any such claim. Whether or not there is such evidence is entirely in Mr Hanghangkon's hands. It is up to him to correspond with the ANZ Bank in the manner detailed by His Lordship in his decision.
14. Given the circumstances described above, in combination with the matters Hastings J took into account, it is unsurprising then that the claim was struck out because it disclosed no cause of action. The fact that a default judgment was not entered is a moot point because the claim was struck out due to a lack of a cause of action. In that situation, default judgment could never be entered.
15. As such, there is very little chance of an appeal succeeding.

The degree of prejudice to the potential respondent

16. If time to appeal out of time is granted, the prejudice to the ANZ Bank arises from being put to further expense in taking part in an appeal, which appears to be without merit.
17. After considering these factors, I can see no reason to grant leave to appeal out of time. There have been no reasons given for the delay, an appeal has very little prospect of success, and there is likely prejudice to the ANZ Bank. There are no



public interest considerations either which point towards leave being granted. The public interest favours finality.

Stay of decision

18. Pursuant to rule 26(1)(a) of the Court of Appeal Rules, an appeal shall not operate as a stay of a proceeding. With respect, there are no grounds to stay the decision of 11 March 2024, as the Court has declined to grant leave to appeal. Further, striking out the claim has no effect whatsoever on Mr Hanghangkon's ability to obtain information from the ANZ Bank.

Result

19. The application to appeal out of time is declined and dismissed.
20. The application to stay the decision striking out the claim is declined and dismissed.
21. Costs are reserved.

DATED at Port Vila this 7th day of October 2024
BY THE COURT

Mackenzie

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Hon. Justice M A Mackenzie

