

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

Judicial Review
Case No. 24/2752 SC/JUDR

BETWEEN: Vanuatu Teachers Union (VTU)
First Applicant

**AND: Norah Naviti Wells, Leiwia
Caroline James Pakoa, Fred
Ottiman, Walter Bong, Jean
Marie Virelala, Timothy Mahit,
Daniel Steel, Rhonda Natapei,
Kalo Tasso, Fitu Natouivi,
Bryent Forau, Sigal Iaruel, Paul
Sam, Jesynta Saribo Buleman,
Honore Enock, John Graham
Frezher, George Kalman,
Molley Alice Avok and Jack
Morris Reuben**
Second Applicants

AND: Teaching Service Commission
First Defendant

AND: The Republic of Vanuatu
Second Defendant

Date of Hearing: *13th day of December, 2024*

Date of Decision: *16th day of December, 2024*

Before: *Justice E.P Goldsbrough*

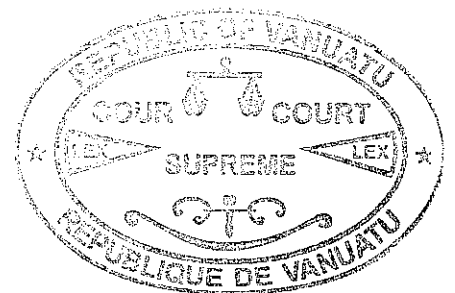
In Attendance: *Bal, A for the Applicants
Huri, L for the Respondents*

DECISION

1. On 12 December 2024, the first and second defendants applied for leave to appeal against the interlocutory orders of 28 November 2024, which stayed the effect of the suspension and dismissal of the second applicants.



2. The application was heard *inter partes* together with another related application. It was supported by a sworn statement from the acting chairman of the first defendant and a counsel from the Attorney General's Chambers, Mr Aron. Counsel for the first and second applicants filed a response to the application.
3. The orders of 28 November 2024 stay the effect of suspensions from teaching pending disciplinary proceedings and, in some cases, dismissal from office based on participation in industrial action against the employer, the first defendant. The first defendant has determined that the industrial action is unlawful. The 1st applicants assert that the action is lawful.
4. Legislation affords employees a degree of protection from the consequences of participating in legitimate industrial action. This can be found in, for example, the Trade Disputes Act, Trade Unions Act, and Employment Act. In any event, it appears that no action would have been taken against any employees taking part in legitimate and lawful industrial action. That is evidenced by the earlier decision of the 1st defendant raised in the 6th September 2024 application for relief.
5. The proposed appeal focuses on an abuse of process argument based on the earlier application for relief, which was refused on 10 September 2024. In that decision, the Court determined that the application was premature. Since that date, a lot has changed, and it is now clear that the disciplinary proceedings are based on nothing but participation in the strike. More teachers have been suspended, and some disciplinary proceedings have concluded, some resulting in reinstatement and others in dismissal from the teaching profession.
6. In my view, seeking to renew an application based on a change in circumstances is not an abuse of process. Nor can the applicants be said to be judge-shopping, given that the same judge heard the further application. Thus, *Chen Jinqui v Ly Nu Loung* [2019] VUCA 13 is not helpful.



7. The Judicial Review has been further amended to include the fact of dismissal, and so the point made by the proposed appellants that the interim relief grants relief from something not pleaded must fall away.
8. In my view, the decision to proceed with the hearing, regardless of the counsel's objection, does not amount to a denial of natural justice. A reading of the decision itself will assist in that regard.
9. Finally, the disciplinary proceedings are not interdicted, merely the suspension. The subsequent dismissals are challenged as final orders. Given that the first defendant had the option not to suspend pending the disciplinary proceedings, it cannot be correct to submit that the effect of the interim relief is to render the disciplinary proceedings themselves nugatory.
10. The application for leave to appeal is refused. Under the Court of Appeal rules, the application may be renewed to the Court of Appeal. Should that be considered and required, counsel are asked to advise the Registrar of the Court of Appeal so that directions may be made before the February 2025 sitting.
11. The first defendant is ordered to pay the applicants the costs of and incidental to this application, such costs to be agreed or taxed.

DATED at Port Vila this 16th day of December, 2024.

BY THE COURT

E.P. Goldsbrough

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E.P Goldsbrough

Judge of the Supreme Court

