IN THE SUPREME COURT OF

THE REPUBLIC OF VANUATU

(Civil Jurisdiction)

**Constitutional Case No. 21/4126 SC/CIVL**

BETWEEN: **Louis Kalnpel**

Applicant

AND: **The Republic of Vanuatu**

Respondent

**Constitutional Case No. 22/932 SC/CIVL**

BETWEEN: **Louis Kalnpel**

Applicant

AND: **The Government of the Republic of Vanuatu**

Respondent

*Date of Judgment:* 23 September 2022

*Before:* Justice EP Goldsbrough

*Distribution:* Claimant in person

Bong F for the Respondent AG Chambers

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## Judgment

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1. Louis Kalnpel is the applicant in both of these matters. He requested that both be consolidated and that request was granted. Both matters arise from civil proceedings

concluded quite some time ago brought by ANZ bank resulting in orders allowing ANZ to take possession of property the subject of a mortgage and to sell it.

2. These proceedings have not proceeded to trial but are at the first conference stage. An initial conference was ineffective through lack of notice and subsequent arrangements derailed by the effects of covid19. The applicant moved to Luganville and thereafter has appeared only by AVL. The second application was filed and the matters consolidated. The hearing the subject of this decision was the first conference for both matters whilst at the same time was listed for the hearing of an application brought by the respondent to strike out the first matter. Notice of that application was given to the applicant.

3. As to the second application, it purports to name as defendants a particular judge of the High Court and ANZ bank as respondents. Under the Constitutional Procedural Rules made under section 66 of the Judicial Services and Courts Act no. 54 of 200 in 2003 the parties to a Constitutional application shall be the applicant and the Republic of Vanuatu as respondent. After hearing submissions as to why the applicant sought to name both a judge and ANZ Bank, the Court determined that both named persons should be removed as parties in accordance with the Rules. It noted that should it be necessary at some later stage to serve either of those parties with the application, an order could be made for that to be done in accordance with the Rule 2.8 (e).

4. The decision in those proceedings brought by ANZ, set out in a judgment delivered on 6 December 2016 in Civil Case 110 of 2015, is not and has never been the subject of any appeal. There was an attempt to appeal against an earlier interlocutory order made in those proceedings (which became Civil Appeal Case 1612 of 2016). That was brought without seeking the required leave. The decision sought to be appealed was the decision not to stay the civil proceedings when the parties entered into an agreement on terms for the repayment of the initial loan during the course of the proceedings.

5. Whilst ANZ wanted the substantive matter adjourned to allow the opportunity to see if the new terms were kept, the appellant thought the whole claim should be dismissed because of the new agreement and regardless of whether it was observed or not. That application was refused hence the appeal. When the appellant did not obtain exactly that which he felt entitled to he stopped co-operating, stopped making payments under the new arrangement and eventually found himself at the wrong end of an adverse

judgment for the increasing debt he owed to the bank. No leave was ever sought to file the notice of appeal against what is clearly an interlocutory order and thus the appeal was never progressed. No application was ever made to the Court of Appeal to allow the matter to be brought without seeking leave as required by Rule 21 of the Western Pacific Court of Appeal Rules, 1973.

6. Rule 21 provides:-

> "**Leave to appeal required in interlocutory matters.**
>
> **21.** (1) No notice of appeal against any interlocutory order of the High Court, whether made at first instance or in exercise of its appellate jurisdiction, in any civil case or matter shall be filed unless leave to appeal has first been obtained from a judge of the High Court, or in the case of the Gilbert and Ellice Islands Colony, a judge of the High Court or the Senior Magistrate, or, if such leave be refused, from the Court of Appeal.

7. Rule 18 provides:-

> "**Conditions precedent to appeal.**
>
> **18.** Subject to the provisions of rule 16, the Court of Appeal shall not entertain any appeal made under the provisions of this Part unless the appellant has fulfilled all of the conditions of appeal as hereinafter set out:
>
> Provided that, notwithstanding the generality of the foregoing, the Court of Appeal may in its discretion for cause shown entertain an appeal under the provisions of this Part upon any terms it may consider just.

8. In submissions, the applicant describes the decision of the trial judge that the appeal has not been properly brought as the judge dismissing the appeal when that would be wrong, as it would be the same judge dismissing an appeal against his own decision. Yet, in whatever words used, an interlocutory appeal without leave can never be effective without further order. In truth, without leave, the Notice of Appeal was never effective and should not have been filed. The trial judge used the term 'disallowed' to describe

the situation and its effect. Another term which might be used is 'stayed by operation of the Rules'. Neither amounts to a dismissal of something that was never properly brought and the situation will not invoke the prohibition against a judge determining an appeal in a judgment of his or her own matter.

9. Not the subject of any appeal is the substantive decision given in December 2016 which notes that no defence to the claim had been filed and no counterclaim, only the issues raised as outlined earlier that the parties had agreed a restructuring on 12 February 2016 not a settlement. The judgment goes on to set out the number of payments thereafter not made by the appellant in accordance with the restructuring agreement. It concludes by entering judgment against the appellant, in favour of ANZ bank to sell and transfer the leasehold property the subject of the proceedings.

10. Subsequent to that judgment, for which this applicant was present, an enforcement order was eventually made. It is against steps taken under the enforcement order that these two Constitutional applications are made.

***Application 21/4126***

11. Constitutional case 21/4126 concerns an application made to stay enforcement proceedings. The enforcement proceedings are a result of the judgment from 2016 referred to earlier about the repossession and sale by the ANZ bank of mortgaged property.

12. The application to stay enforcement was filed on 22 November together with a sworn statement in support. The matter was listed before a judge and heard on 23 November 2022. An order was made on the same day and that order was served on the applicant.

13. On its face, the order recites the presence of the applicant at the hearing, together with a representative from the claimant bank. The applicant asserts that he was not told of the hearing of 23 November until after it had taken place. There is no evidence of any Notice of Hearing issued between the filing of the application and its hearing nor any evidence of service of a notice of hearing or attempt to contact the applicant.

14. There are no notes of the hearing recorded by the judge who heard the matter, only a resultant order. In the circumstances, this Court accepts that the probability is that the

applicant was not present at the hearing and was not given notice of the hearing. That is because there is no notice of hearing available nor any evidence of attempts to try and inform the applicant of the urgent hearing being conducted.

15. Even without parties being present on 23 November 2022, the judge dealing with the application was able to determine that there was no merit in it. The order made reflects that position and is set out in full below: -

    1. The application to stay enforcement proceedings is based on an alleged failure by this Court to hear an application to stay Civil Case 15/10. That was apparently based on the fact that an appeal was filed - Civil Case 16/1612.

    2. The stay application provided in support of the current application indicates decisions of 19 April 2016 and 4 August 2016 are challenged. As Saksak J did not give judgment until 6 December 2016, it is clear that the challenges were in relation to interlocutory matters. In order to challenge such matters leave is filed required. There is no application for leave provided to support the current application.

    3. Further the material supplied in support of the current matter is a very poor copy, such that Court stamps are not visible. Accordingly, the provenance of the supporting documents is questionable.

    4. Lastly, there is no explanation provided why a 2016 remedy is being raised 5 years later. If there was merit in this issue it could/should have been raised far sooner than the day before the enforcement of the judgment is being executed.

    5. The current application for stay is denied and is dismissed.

    6. There is no order as to costs.

16. The order was served on the applicant the same day. Later on that same day, the applicant filed a notice of appeal against that order, which became Appeal Case 21/3887. This Constitutional application refers to that appeal as a reason to grant an order staying all enforcement proceedings within Civil Case 110 of 2015 where the order for repossession was made.

17. Appeal case 21/3887 was listed for a case management review on 16 December 2021. The matter was adjourned to 20 December 2021 to allow the applicant to address the issue of leave to appeal, as the court considered that the appeal was against an interlocutory decision and thus required leave. The applicant was served personally with a notice of hearing and did attend the resumed hearing on 20 December 2021.

18. In a document filed for the purpose of that hearing, the applicant submitted that the appeal did not require leave as, in his view, it was not an interlocutory decision and leave was not required. He raised a further issue that the review judge was the same judge who made the order of 23 November and therefore should not deal with an appeal against his own decision. The applicant made reference to errors on the face of two minutes produced by the judge which both appeared to suggest the applicant was present in person at hearing when he was not.

19. The first error is dealt with earlier in this judgment. The second similar error made in the minute of 16 December 2021 appears indeed to be an identical error given that the matter was adjourned to allow the applicant to attend a later hearing. Nothing turns on this second error, given that the applicant was invited to attend a later hearing when the final order was made.

20. After hearing the applicant, the review judge issued a further minute setting out various matters raised and concluding that "as this present matter relates to an interlocutory determination, namely the stay of an enforcement warrant, leave is required. No application for leave has been made – the Notice and Grounds of Appeal document has simply been filed with the Court. The legal effect of what has occurred is that the Notice and Grounds of Appeal is a nullity and the matter cannot be entertained."

21. This minute, dated 21 December 2021 was also served personally on the applicant after it was published. It demonstrates that the appeal was not dismissed by the review judge as seems to be suggested in submissions, but that it was pointed out to the applicant that the effect of filing a Notice and Grounds of Appeal of Appeal without seeking leave. The Rules provide (in Rule 21 (1) ) that no notice of appeal shall be filed unless leave has first been obtained. If it is filed in contravention of that prohibition, it will be deemed ineffective and shall not be entertained by the Court of Appeal (Rule 18).

22. That is what happened here. The appeal progressed no further given that the applicant, even now, has not sought leave to appeal.

23. What then, should be the effect of the applicant not being given notice of the hearing which took place on 23 November 2022? From the minute, it is clear that the judge took into account the material filed by the applicant in his decision. This suggests that the applicant was heard, to the extent that his filed material told his story, even though not present and not aware that the hearing was taking place.

24. Article 5 of the Constitution of Vanuatu sets out fundamental rights and freedoms of the individual and section 6 how those rights are to be enforced. This claim asserts that the rights set out in 5 (1) (d) and (j) have been infringed. They are: -

> **5. Fundamental rights and freedoms of the individual**
>
> (1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –
>
> (d) protection of the law;
>
> (j) protection for the privacy of the home and other property and from unjust deprivation of property;

25. Protection of the law as set out in section 5 (1) (d) is further defined as applying to criminal charges and trials. Section 5 (2) provides: -

> (2) Protection of the law shall include the following –
>
> (a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;
>
> (b) everyone is presumed innocent until a court establishes his guilt according to law;
>
> (c) everyone charged shall be informed promptly in a language he understands of the offence with which he is being charged;
>
> (d) if an accused does not understand the language to be used in the proceedings he shall be provided with an interpreter throughout the proceedings;
>
> (e) a person shall not be tried in his absence without his consent unless he makes it impossible for the court to proceed in his presence;
>
> (f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed;
>
> (g) no-one shall be punished with a greater penalty than that which exists at the time of the commission of the offence;
>
> (h) no person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial

26. None of those provisions apply to this case, which is not criminal in nature. As for section 5 (1) (j), the decision complained about itself does not deprive the applicant of

his property. That decision, to repossess the property, was made in 2016. Whether the decision was unjust is a matter best dealt with on appeal, not in proceedings seeking to stay enforcement when no appeal has been filed.

27. This complaint, in 21/4126, is the subject of an application to strike out brought on behalf of the respondent Republic. It cites the grounds of no prospect of success and abuse of process as reason why the application should be brought to an end without a full trial of the matter. The applicant contends that the application should proceed to trial.

28. The essence of this complaint is that the applicant was not given notice of the hearing of his application for a stay of enforcement proceedings. That hearing, which had been requested by the applicant as urgent, took place the day after the application was filed as a matter of urgency as requested given that the enforcement was scheduled to take place imminently.

29. The applicant was not given notice, but his matter was heard and his sworn statement in support was considered and the matter determined. It is not clear what additional material would have been made available to the Court by the applicant if he had attended the hearing after notice.

30. It is significant in that respect that the applicant does not now, on this hearing, submit that there was any additional material that he could have submitted to a hearing if he had been given the opportunity. In that regard, it must be the case that when it made a decision on 23 November 2021 that there was no merit in the application for stay, the Court had available to it all the material that was to be presented on the application.

31. Nothing could, therefore, have been gained, by delaying the hearing of the application to allow notice to be given to the applicant and a time convenient to him to be fixed to allow him to be present, save a further delay of the enforcement. Is there a constitutionally guaranteed right not only to be heard through written materials but also to be physically present when an urgent application is heard in a civil matter? There is nothing in the defined protection of the law provisions which offers such a guarantee and nothing in the second provision referred to concerning unjust deprivation of property.

32. The Supreme Court deal with urgent *ex parte* applications on a regular basis. Most applicants do not seek a physical hearing. They file the application together with a sworn statement in support and the more optimistic also file a draft of the order that they seek. Often when the order is granted, that draft is signed thus confirming the application has been successful after which the order becomes effective on service. When the application is not granted without a hearing it is either dismissed, allowing the applicant to renew it in some other form, or adjourned after conversion to an *inter partes* hearing.

33. Later in this judgment there is a discussion of how the hearing of these two applications were arranged. The applicant expected to be told of a hearing not by receiving written notice but through the telephone. He provided a contact number for that purpose. He was, of course, no longer living at the residential address the subject of these proceedings. Urgent matters are often arranged either electronically or telephonically. That often works effectively, but it does not work in every case. There are references within these combined files of other people answering the telephone number provided or it not being answered at all.

34. This hearing did not take place as soon as it might have done, given the difficulty faced in giving notice to the applicant. That was not through any fault of the Court. It was because of the difficulty of locating the applicant who did not respond to telephone calls. That delay meant that the first conference did not take place within the time provided by the rules. A choice had to be made, whether to hold the conference in the absence of the applicant or delay the conference until he could be located and given notice.

35. It seems, therefore, when dealing with matters filed as urgent, that there has to be a balance struck between the need for a swift hearing and the requirement to delay until the applicant can be located and invited to attend. When all the material which is to be considered has already been filed by way of sworn statements, the balance in favour of hearing the application without notice to the applicant shifts.

36. There is a submission that this decision to hear the application without giving notice to the applicant was motivated, not by the judicial officer who made the decision to hear the matter without giving notice but by the spiteful decision of the Registrar and staff of the Office of the Sheriff. No material to support that submission has been provide

and it therefore fails. There is nothing to suggest that anyone other than the judicial officer who heard the matter was involved in the decision to proceed in the absence of the applicant.

37. Evidence in civil proceedings is received through sworn statements and that evidence from the applicant served in support was received and considered when his application was heard. In those circumstances his application for breach of his constitutionally protected rights is not made out and the application brought by the Republic for strike out is granted. The application is struck out with no order as to costs, as counsel for the Republic suggested.

***Application 22/932***

38. The second Constitutional application brought by the same applicant concerns a minute dated 21 December 2021 indicating that the judge reviewing appeals to the Court of Appeal considered that, in the absence of any application for leave to appeal, the Notice and Grounds of Appeal filed by the applicant were of no effect.

39. The appeal was intended to be against the decision on November 2021 not to grant a stay of enforcement proceedings. That decision is the subject of Constitutional Application 21/4216 as set out above.

40. Simply put, the review judge determined that the appeal was against an interlocutory decision and therefore leave was required. The applicant was told of this requirement, and was given notice that a further hearing would take place at which he could make an application for leave. The applicant attended that hearing and made no such application for leave, arguing that leave was not required as the appeal was not against an interlocutory order.

41. The review judge ruled that the Notice and Grounds of Appeal should not have been filed without leave and that the appeal was in effect a nullity because of that deficiency. Elsewhere in this judgement, the relevant rules are set out.

42. It was open to the applicant to seek an appeal of the decision of the single judge of the Supreme Court in this matter but no such appeal has been filed. Instead, the applicant asserts that his constitutional rights have been infringed and he seeks damages and an order that the appeal be listed before the Court of Appeal.

43. This is the first conference for this Constitutional application. The applicant attended as did a representative of the Attorney General's chambers as the matter was consolidated at the request of the applicant with 21/4216. In the same way as 21/4216 the applicant cites breaches of section 5 (1) (d) and (j).

44. Again, in the same way, there is nothing in section 5 (1) (d) that can assist the applicant in this civil case, and the case does not seek to deprive the applicant of his property, which was done in the earlier civil case which ended in December 2016 with a final judgment against the applicant.

45. There is no merit in this application. Notice was given to the applicant concerning the requirement to seek leave, he was permitted a further hearing to allow him to attend to that matter and he attended that hearing. He made the choice not to seek leave and then made the choice not to appeal the decision of the single judge made on 21 December 2021 to the Court of Appeal, instead instituting these proceedings.

46. During the first conference of both of these matters, the applicant referred to an earlier Constitutional application which he submitted he had made. He had no reference to those earlier matters to hand and agreed that he would file details of the previous constitutional cases to allow the court to find out how, if at all, they had been disposed of. To the date of judgment, the applicant has not filed any material to identify those earlier cases.

47. The essential complaint made in both of these applications relates to the final judgment entered against the applicant when his house was repossessed. That judgment is a decision of the Supreme Court on 16 December 2016, discussed elsewhere in this judgment. That final judgment has never been the subject of an appeal. During that claim, there was an attempt by the applicant to seek an appeal of an interlocutory decision which did not proceed. It did not proceed because the applicant did not seek leave to appeal. His appeal was therefore deemed ineffective. It progressed no further. It was not dismissed as the applicant asserts. There was nothing in law to dismiss given that under the Rules the notice should never have been filed before leave was sought.

48. But the applicant participated in the remainder of the trial and was aware of the outcome. He filed a Constitutional case following the decision, as opposed to an appeal. That was dealt with in December 2019 in 19/3214. For completeness, it is attached. For this judgment, it is assumed that this is the case referred to by the

applicant for which he said he would file identifying particulars.

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

Constitutional
Case No. 19/3214 SC/CON

BETWEEN: Louis Kalnpal
Applicant

AND: Republic of Vanuatu
Respondent

Date: 11 December 2019
Before: Justice G.A. Andrée Wilkins
Counsel: Applicant in Person (absent)
SLO for the Defendant (absent)

JUDGMENT

A. Introduction

1. This Constitutional application was filed on 25 November 2019. A First Conference, pursuant to Rule 2.5(3) of the Constitutional Procedures Rules 2003 to consider the matters specified in Rule 2.8, was scheduled for 1.30pm on 1st December 2019.

2. Although there was no appearance for either side, the application has no merit; and accordingly I dismiss the application of my own motion.

B. The Law

3. Rule 2.7 provides for a first filter to be run across all constitutional applications. This is so as to ensure: firstly, an expeditious hearing is scheduled to determine allegations of constitutional breaches; and secondly, to avoid the waste of Court time or the expenditure of unnecessary resources if the allegations cannot properly be considered to be constitutional.

4. To ensure the matter receives timely but appropriate judicial attention, the Rules provide for the First Conference to be set not before 14 days has elapsed following filing but no later than 21 days after the application has been filed.

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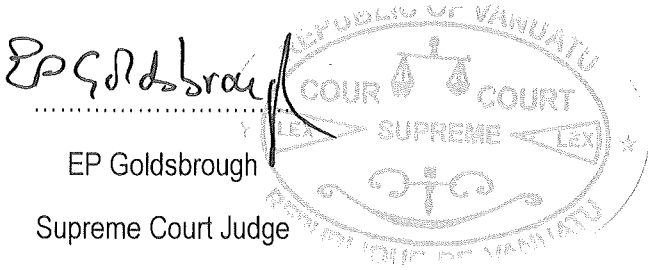
49. That judgment sums up the state of affairs after the first judgment in this matter. Since then, little was done until enforcement loomed large in 2021. Then efforts were made to have enforcement stayed, which efforts have not been successful. In that regard the remarks made by the judge in 19/3214 are apposite. In the electronic version of this judgment, it is necessary to double click on the judgment above to see all four pages. In the hard copy published for the parties, all four pages are printed at the back of the judgment

50. There has emerged within these two Constitutional applications a pattern of conduct apparently designed to delay the inevitable consequences of a final judgment. In that the judgment has not been put into effect even now in September 2022 it has been successful even though entirely without merit.

51. Constitutional application 22/932 is hereby struck out as having no merit. There is no order as to costs.

**Dated at Port Vila this 23rd day of September 2022**

**BY THE COURT**



EP Goldsbrough

Supreme Court Judge

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

Constitutional
Case No. 19/3214 SC/CON

BETWEEN: Louis Kalnpel
Applicant

AND: Republic of Vanuatu
Respondent

*Date:* 11 December 2019
*By:* Justice G.A. Andrée Wiltens
*Counsel:* Applicant in Person (absent)
SLO for the Defendant (absent)

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## JUDGMENT

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### A. Introduction

1. This Constitutional application was filed on 25 November 2019. A First Conference, pursuant to Rule 2.5(3) of the Constitutional Procedures Rules 2003 to consider the matters specified in Rule 2.8, was scheduled for 1.30pm on 11 December 2019.

2. Although there was no appearance for either side, the application has no merit; and accordingly I dismiss the application of my own motion.

### B. The Law

3. Rule 2.7 provides for a first filter to be run across all constitutional applications. This is so as to ensure: firstly, an expeditious hearing is scheduled to determine allegations of constitutional breaches; and secondly, to avoid the waste of Court time or the expenditure of unnecessary resources if the allegations cannot properly be considered to be constitutional.

4. To ensure the matter receives timely but appropriate judicial attention, the Rules provide for the First Conference to be set not before 14 days has elapsed following filing but no later than 21 days after the application has been filed.

5. Rule 2.8 sets out a series of measures the Court may consider at such a First Conference to achieve the goals earlier described – and, the first of those is to deal with any strike out application.

6. Accordingly, the merits of any constitutional application therefore deserve close scrutiny at an early stage.

C. The Application

7. Mr Kalnpel rightly pointed to Articles 6 and 53 of the Constitution as giving jurisdiction for the Court to deal with any alleged breach or breaches of the Constitution.

8. The application sets out under various headings the matters he alleged were breaches of his constitutional rights:

   - The Right to Appeal,
   - The Right to a Fair Trial,
   - The Right for Protection under the Law, and
   - The Right to Equal Treatment under the Law or Administrative Action.

9. In his application Mr Kalnpel set out the facts of his case, which were relatively brief. The nub of the allegations was that Mr Kalnpel was sued by ANZ Bank in Civil Case no. 15/110 before Justice Saksak. Mr Kalpel states that the case was settled between the parties out of Court, but that Justice Saksak continued on to "...wilfully and biasedly the No case scenario [sic] and gives [sic] orders to continue the case with ANZ who hold on to a double standard supported by the judge against the principles of impartiality of our judicial system."

10. Mr Kalnpel requested an independent judge or group of judges deal with this matter. He alleged constitutional breaches by the previous Chief Registrar Mr Obed Alilee, the previous Acting Registrar Mr Shemi Joel, Justice Saksak, Deputy Master Aurelie Tamseul and the Chief Justice Vincent Lunabek.

11. For reasons somewhat difficult to fathom he then cited Sections of the Judicial Services and Courts Act No. 54 of 2000 and "Articles" [sic] 38 and 40 of the Judicial Services Act Cap 270.

12. Mr Kalnpel then went into a long discourse on the vertical effect of constitutional applications and quoted, at length, an article by Myranda Forsyth in the School of Law Pacific Journal. Interesting as the article is, it does not promote Mr Kalnpel's case in any way.

13. Lastly, Mr Kalnpel sought a wide range of relief, which can be summarised as:

   - A stay of Justice Saksak's decision of 6 December 2019 granting ANZ Bank the ability to enter and sell,
   - An order quashing the enforcement in ENF Case 18/2346 by Deputy Master Tamseul,

- A Declaration that all those listed in paragraph 8 above are or were biased,

- An order removing those listed from the Bench or the administration,

- All the arears on Mr Kalnpel's loans from ANZ be wiped; and, where paid, be reimbursed to Mr Kalnpel,

- Damages, and

- An order setting aside the terms of the restructured loans with those sums to be paid by ANZ to Mr Kalnpel.

D. The Sworn Statement in Support

14. Mr Kalnpel borrowed funds from ANZ Bank in 2007 to enable the purchase of property, and in return granted ANZ Bank a mortgage over the property. He subsequently also arranged other banking facilities, which were tied to his property loan.

15. In 2014 Mr Kalnpel sought an explanation from ANZ Bank as to why the principal sum owing continued to grow rather than diminish despite his repayments towards his loans. He alleged ANZ Bank did not respond to his queries, and as a result he stopped all payments. That led to Civil Case no. 15/110 with ANZ Bank seeing to foreclose.

16. Mr Kalnpel alleges that there was an agreement eventually reached with ANZ Bank on 12 February 20016 with a resultant restructuring of the loans. Despite that, Justice Saksak issued his judgment on 6 December 2016 empowering ANZ Bank to enter the property and sell it to recover its debts. Mr Kalnpel alleges bias on the part of Justice Saksak and double standards on the part of ANZ Bank. He sought leave to appeal of an interlocutory matter and also sought a stay pending the appeal – both were declined by Justice Saksak.

17. Mr Kalnpel continued on that he had sought assistance from the Chief Justice and the Court Registrar, but no assistance was forthcoming.

18. ANZ Bank then sought enforcement of the judgment through the Deputy Master, which was alleged to equate to "daylight robbery" when comparing the sums awarded against Mr Kalnpel with the original loan.

19. Mr Kalnpel considered the restructured loans as an over-riding new agreement, and that all the other conditions set out in previous documentation could simply be put to one side.

20. A number of documentary exhibits are appended to the sworn statement, which demonstrate the initial offer of funding by ANZ Bank and the subsequent restructuring. A number of Justice Saksak's directions are included, which demonstrate a series of adjournments, either by consent or due to non-attendance at the Conference by Mr Kalnpel.

E. Discussion

21. It is apparent that Mr Kalnpel has an incorrect understanding of the loan restructuring arrangements. They were not and are not an answer to his failure to repay the ANZ Bank

loans as and when due. They do not constitute a settlement of Civil Case no. 15/110. Justice Saksak was not wrong to decline the application to dismiss the case due to it being settled.

22. Justice Saksak granted any number of adjournments to enable the parties to resolve their differences – despite what many would see as delay and avoidance by Mr Kalnpel to address the issues. There is no obvious apprehension of bias on the part of Justice Saksak – even though Mr Kalnpel may think otherwise, the test involves a reasonable, independent person with full knowledge of the facts making that assessment. There is nothing in that allegation; nor in the suggestion that those named in paragraph 8 were anything but appropriately carrying out their respective functions.

23. ANZ Bank continued on with their Claim, despite the restructuring, as it was entitled to do. Justice Saksak did no more than deal with the applications before him – as he was required by his oath to do.

24. The various matters complained of cannot properly be seen as constitutional in nature. This litigation commenced by Mr Kalnpel is little more than a disgruntled litigant attempting to blacken the reputations of others in the hope that something will stick and he will get relief. In reality his problems are self-inflicted. It was Mr Kalnpel's decision to cease payments, contrary to his obligations. Further, he has been the cause of much of the delay inherent in this case. The ultimate size of the debt is an escalation due largely to Mr Kalnpel's inaction.

25. Further, it is trite law that if remedies are available to a proposed litigant, other than by way of constitutional application, those other remedies must be first pursued - refer to the various statements as to that in *Republic of Vanuatu v Bohn* [2008] VUCA 6; *Nari v Republic of Vanuatu* [2015] VUSC 132; and the particularly strong advice of the Privy Council in *Jaroo v AG of Trinidad and Tobago* [2002] 1 AC 871.

26. There are several alternative steps Mr Kalnpel could take to present his concerns before the Courts.

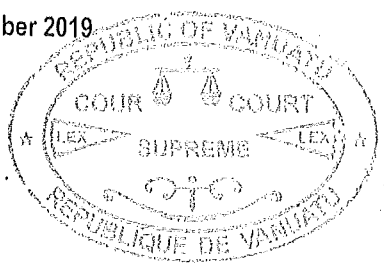
27. Lastly, the relief sought is inappropriate. This Court cannot dismiss employees of the justice sector – it has no power to remove judicial officers from the bench. The ANZ Bank is entitled to recover it's debts – it should hardly be ordered to become a generous benefactor to Mr Kalnpel by paying him instead.

F. Result

28. There is no merit in the current constitutional application. The application is hereby dismissed.

29. There is no order as to costs.

**Dated at Port Vila this 16th day of December 2019**
**BY THE COURT**




Justice G.A. Andrée Wiltens