

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**

(Civil Appeal Jurisdiction)

Civil Appeal Case No. 18 of 2012

BETWEEN: KALFAU MOLI
First Appellant

AND: SAILAS ROCROC
JOEL PAUL
GALISTO CEVUARD
Second Appellants

AND: NORTHERN ISLAND STEVEDORING
COMPANY LIMITED (NISCOL)
First Respondent

AND: KUVU NOEL, JOHN NOEL, LIVO LANGI,
LONSDALE HINGE, JOHN MORRISON WILLIE,
HENRY NIN and GRAHAM TAVUE
Second Respondents

Coram: *Hon. Chief Justice Vincent Lunabek
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki*

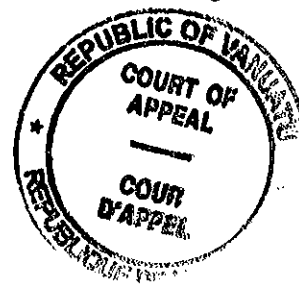
Counsel: *Mr. Saling N. Stephen for the First and Second Appellants
Mr. George Boar for the First and Second Respondents*

Date of Hearing: *2nd May 2012*

Date of Decision: *4th May 2012*

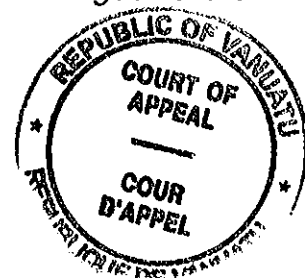
JUDGMENT

1. The facts giving rise to the issues in this matter are closely related to those giving rise to the appeals to this Court in Civil Appeal Cases Nos. 15, 16 and 17 of 2012. This appeal was listed for hearing at the same time as those appeals, and the outcome of this appeal turns on the decisions in the other appeals.
2. Judgment in Civil Appeal Cases 15, 16 and 17 of 2012 is being delivered immediately ahead of delivery of this judgment.



3. All four appeals arise out of the facts surrounding and following the making on 9 March 2012 of a series of orders by the Minister of Internal Affairs relating to the SANMA, MALAMPA, PENAMA and TORBA Local Government Councils (the LGCs). The orders, by their terms, suspended the exercise by each LGC of all its powers commencing on 9 March 2012 and expiring 30 June 2012. The minister then appointed in the case of each LGC a public servant (the Commissioner) to exercise the powers of the Council.
4. Each of the LGCs and the Government were shareholders in Northern Island Stevedoring Company Limited (NISCOL) who in earlier times had appointed the First Appellants to be directors of NISCOL.
5. On 16 March 2012 the Commissioners on behalf of the LGC's and the Government, exercising their rights as shareholders, terminated the appointment of the Second Appellants as directors of NISCOL, and appointed other people to be the directors of the company (the 'new directors').
6. The First Appellant prior to 16 March 2012 was the Chief Executive Officer of NISCOL. On their appointment the new directors dismissed the First Appellant from his employment with NISCOL. The new directors believed that the First and Second Appellants and their relatives and friends might protest their dismissals and that breaches of the peace or trespass to the land and property of NISCOL might occur. They took proceedings in the Supreme Court seeking injunctions against them. Injunctions in the following terms were granted first on an interim basis, and then, after hearing counsel for the Appellants, confirmed on an interlocutory basis.

"1. The First and Second Defendants including their friends, agents and servants are restrained from coming within 100 meters of the First Claimant Office premises at Government Wharf and damaging and or causing any damages to the said premises;



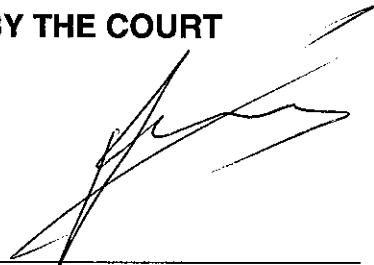
2. *The First and Second Defendant including their friends, agents and servants are restrained from assaulting and threatening the Second Claimants and their wives, children and relatives;*
3. *The First and Second Defendants including their friends, agents and servants are restrained from coming within 100 meters of the Second Claimant residence and or damaging and destroying the Second Claimants residences;*
4. *Police are authorized to arrest any persons for contempt of this Orders;”*
7. The Appellants instituted the present appeal to have these and other incidental orders made in the Supreme Court set aside.
8. When the appeal came on for hearing counsel for the Appellants informed the Court that the appeal by the First Appellant was withdrawn.
9. After discussion with the Court, counsel agreed that the outcome of the appeal by the Second Appellants turned on the outcome of the appeals in Civil Appeals 15, 16 and 17 of 2012 in which three of the LGCs challenged the validity of the orders of 9 March 2012 made by the Minister of Internal Affairs. It was agreed that if the Court of Appeal set aside those orders, the appointments of the Commissioners would be invalid, as would be the steps the Commissioner took to remove the Second Appellants as directors of NISCOL. On the other hand if the Court of Appeal upheld the validity of the orders it was agreed that the attack on the power of the Supreme Court to make the injunctions would fail. In this event the Second Appellants acknowledged that the injunctions should, for the time being at least, remain in place.
10. The Court of Appeal in the judgment just delivered in Civil Appeal Cases 15, 16 and 17 of 2012 has upheld the validity of the orders of the Minister made on 9 March 2012.



11. It follows that this appeal should be dismissed and the Court so orders. The Respondents are entitled to costs, but on a conservative basis. We fix the costs at VT30,000 payable as to VT10,000 by the First Appellant and VT20,000 by the Second Appellants.

DATED at Port Vila, this 4th day of May, 2012.

BY THE COURT



Chief Justice Vincent Lunabek

