

BETWEEN: PAIA POROU, KEN JORAM and YAVRO BOAZ
representing Santo Presbytery Trading as Santo
Community Store
Appellant

AND: SUNG EUN JOO
First Respondent

AND: PASTOR TUENI WAN
Second Respondent

Coram: ***Hon. Chief Justice Vincent Lunabek***
Hon. Justice John von Doussa
Hon. Justice Daniel Fatiaki
Hon. Justice Ronald Young
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop

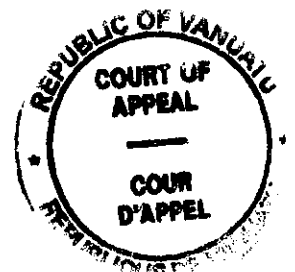
Counsel: ***Saling Stephens for the Appellant***
Edward Nalyal for the Respondents

Date of hearing: 28th March 2014

Date of judgment: 04th April 2014

JUDGMENT

1. The Appellants, who claimed to be representing the Santo Presbytery, sued the respondents arising from the operation of the Santo Community Store. The respondents raised a preliminary point in the Supreme Court; that the appellants did not represent the Santo Presbytery and therefore should not have brought nor be allowed to continue these proceedings. The Judge in the Supreme Court concluded that the three named claimants had no authority from the Santo Presbytery to bring and maintain the claim. The Judge dismissed the proceedings.



2. The appellants' grounds of appeal are:

- (a) The Judge had previously decided (7 August 2012) that the appellants did have standing to bring and continue the proceedings. The respondents could not challenge nor the Judge revisit this decision in the Supreme Court.
- (b) The evidence from the respondents as to the appellants' standing was, contrary to the conclusions of the Judge, challenged.
- (c) The respondents had clearly breached their contract with the appellants and the Court should allow the proceedings to continue.
- (d) A decision of the Santo Presbytery of 12 February 2014 resolved to allow the appellants to pursue the case against the respondents.

3. As to ground (d) the appellants sought leave to adduce fresh evidence at the appeal. The evidence was in the form of the sworn statement by Paia Porou. He said that on 12 February 2014, the members of the Presbytery had met. Mr. Porou said that at the meeting the Presbytery voted 14 to 9 votes to support further action by the appellants against the respondent.

4. There were two significant problems with this evidence. First the evidence relates to events after judgment was entered. The Judge had to decide whether, as at 5 February 2014, (the date of his judgment) the appellants were authorised to bring the proceedings. The fact there may have been authorisation by the Presbytery after the proceedings were dismissed does not support any appeal point.

5. The other difficulty with the evidence is that a note of the meeting records 14 votes in favour of the proposition that the Presbytery of Santo will not be involved in any proceedings against the respondents. There were 9 votes against the proposition and so the record of the vote in any event does not support the

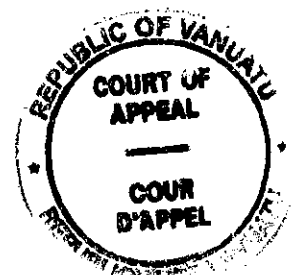
appellants' claim. We refuse the application for leave to call fresh evidence on appeal and accordingly reject this ground of appeal (d).

Previous Decision

6. On 19th June 2012, the appellants applied for and obtained a default judgment as to liability on the basis that the respondents had not filed a defence. Subsequently, the appellants obtained orders seizing the respondents' goods and a bank account together with the respondents' passports. The respondents applied to set aside these orders. The first ground in support of the application was that the appellants were not authorised to bring these proceedings.
7. In his judgment of 7 August 2012, the Judge in the Supreme Court recorded the claim (and denial) that the appellants lacked authority to bring the claim. However the Judge did not directly rule on this point. He refused the application on other grounds.
8. We are therefore satisfied that, prior to his decision of 5 February 2014, the Judge had not decided that the appellants had standing to bring these proceedings. Further, even if such an earlier decision had been made, it could be renewed and reconsidered if new compelling evidence came to light. We reject ground of appeal (a).

Did the Appellants challenge the Respondents' evidence?

9. The Judge in his decision noted that the evidence from George Aki, the clerk of the Santo Presbytery, was that the terms of appointment of each of the appellants to the finance committee had been terminated. It was only through their membership of that committee that the appellants could have had the authority to bring these proceedings. Mr. Aki exhibited correspondence which confirmed the decision to dismiss the appellants from the committee. Mr. Joram filed an affidavit in response denying that the Presbytery had the authority to dismiss him from the committee.



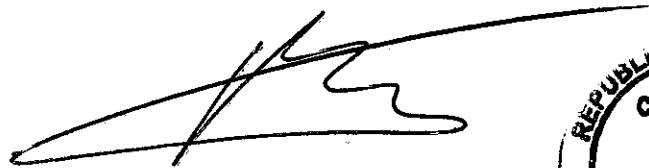
10. The Judge in the Supreme Court was entitled to prefer the evidence of Mr. Aki to that of Mr. Joram. Mr. Joram's claim was that in effect the Presbytery (the governing body of his church) could not dismiss him from his chairmanship of the finance committee. That was unlikely to be correct. . We reject this ground of appeal (b).

A clear contractual breach

11. The fact the appellants claim that the respondents had clearly breached their contract does not assist the appellant in this appeal. The Judge's decision was about standing to bring the proceedings not about the merits of the claim. The fact that the contract was initially made by the three appellants is not to the point as they were at the time acting as agents for the Presbytery. We reject ground of appeal (c).
12. For the reasons given the appeal will be dismissed. The respondents are entitled to costs on a standard basis.

Dated at Port Vila this 4th day of April 2014

FOR THE COURT



Hon. Chief Justice Vincent Lunabek

