



**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

Civil Case N° 4 of 1995

BETWEEN: TROY DAVID HARRIS

Plaintiff

AND THE ATTORNEY GENERAL

First Defendant

**AND THE PRINCIPAL IMMIGRATION
OFFICER**

Second Defendant

Coram: The Chief Justice
Mr John Malcolm for the plaintiff.
The Attorney General, The Hon Patrick Ellum for the defendants.

JUDGMENT

The plaintiff, Mr Troy Harris entered Vanuatu in May 1993, and was the owner director of a business called Island Constructions Ltd and is what is commonly known in Vanuatu, as an investor. On or about the 12 January 1995, he received a letter dated 14 December 1994, from the Principal Immigration Officer, Mr François Batick purporting to cancel his residency permit. The letter stated that this was done "As directed by the Honourable Prime Minister, Minister Responsible for Immigration in his letter of 30 November 1994". No other reason is stated in Mr Batick's letter, and the plaintiff is requested to leave Vanuatu not later than the 15 January 1995. The letter of the Prime Minister is not in fact phrased in terms of a directive but of an authority to cancel the plaintiff's residency permit. Be that as it may, nothing in the Immigration Act allows or permits the Prime Minister as Minister responsible for Immigration, to direct or authorise the Principal Immigration Officer to cancel a resident's permit. By letter from his solicitor dated 13 January 1995, the plaintiff purports to appeal the decision of the Principal Immigration Officer. Section 21 of the Immigration Act states:-

Any person aggrieved by a decision of the Principal Immigration Officer under this Act may appeal against such decision to the Minister who, in his discretion may confirm, vary or overrule the decision of the Principal Immigration Officer. The

appeal shall be by way of petition in writing and shall be made within 14 days of the decision appealed against.....

The decision appealed against was dated 14 December, and the "appeal" appears to have been lodged out of time. That is explained by the fact that the plaintiff was not notified of the decision until the 12 January 1995. It is implicit in the section of the Act, although not expressed as such, that the time runs as from service or notice being given of the decision to be appealed, any other interpretation would create a grave injustice. The appeal must also be by way of a petition, which was not strictly adhered to on behalf of the plaintiff, but in the circumstances of this case, one need not be troubled by this, for reasons I will state later.

There appears to be no record of any appeal having been heard or decided by the Minister responsible for Immigration. Instead, on the 18 January 1995, the plaintiff was served with a letter signed by the Acting Minister responsible for Immigration, dated the same day, pursuant to section 17(1) of the Immigration Act purporting to order the deportation of the plaintiff from Vanuatu in the following terms:

"Shall on Wednesday 01 February 1995 being the 14 days of this notice upon him excluding the date of service, or may leave at such earlier time as he may consent to, be removed from, and remain out of Vanuatu indefinitely"

Section 17(1) of the Act states:

Notwithstanding any other provisions of this Act, the Minister in his discretion may make an order in the form prescribed under this Act that any person, whether or not he is lawfully present in Vanuatu, shall, on the expiry of 14 days or such longer period as the Minister in his discretion may specify from the date of service of the order on such person be removed from and remain out of Vanuatu, either indefinitely or for a period to be specified in that order.

The plaintiff brings proceedings based on procedural fairness and on grounds of breach of natural justice. The defence is set out in simple terms and claims that the second defendant, namely the Principal Immigration Officer, was acting pursuant to section 13(3)(a) of the Immigration Act, in that the decision that he came to on 14 December 1994 was based on the fact that the plaintiff had made a false declaration in respect of his application for a residential permit. This was the first time that these reasons had been given for the cancellation of the plaintiff's residential permit, whereas the original letter of 14 December 1994, states clearly that the principal Immigration Officer was acting "in accordance with the direction" given "by the Honourable Prime Minister, Minister responsible for Immigration in his letter of 30 November 1994."

I need not look further than or behind the letter of the 14 December and the expulsion order of the 18 January 1995. Under the Act, the discretion to cancel a residency permit rests with the Principal Immigration Officer alone. The Minister may have certain discretions under the Act, but he certainly does not have the power to authorise, let alone to direct the Principal Immigration Officer to revoke a residency permit. Albeit that the letter from the Prime Minister was not a directive, that is how it was understood by the Principal Immigration Officer, who failed to exercise any

discretion at all under the Act. He merely purported to obey orders received. The plaintiff sought to appeal by letter not by petition. If this matters and any objection is taken on that ground, it could be said that since the cancellation order was void, as it was ultra vires the Act, it was not a proper exercise (in fact, not an exercise at all) of any discretion by the Principal Immigration Officer, and therefore no appeal need have been pursued. The order was void and the court if asked would have declared it to be so. As for the Order of the 18 January 1995 from the Acting Minister, that too was not in accordance with the provisions of section 17(1) of the Act and was a defective order. It too is ultra vires and void since it does not conform with the provisions of section 17(1) of the Act. I need not therefore look into the facts of the case or consider any of the evidence, as there are errors on the face of the Orders themselves, made against the plaintiff, which renders those orders void.

I am invited to and I therefore declare as follows:

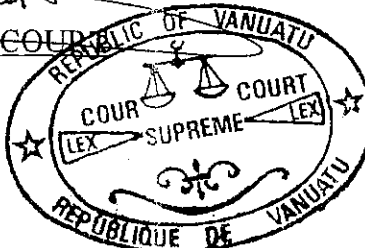
- 1) The order dated 14 December 1994, cancelling the residency permit of Mr Troy Harris is ultra vires the Act, and is null and void.
- 2) The Order of the Acting Minister dated 18 January 1995 ordering the removal of the plaintiff from Vanuatu is ultra vires the Act and is null and void.

It is further ordered as follows:

- 3) The first and second named defendants, their servants or agents are restrained from:
 - (a) in any way interfering with the full rights and privileges of the plaintiff to remain, reside, work, leave, return and move in or out of the Republic of Vanuatu pursuant to any passport or permit issued; until such time as proper consideration has been given, by the appropriate authority, as to his immigration and residency status in Vanuatu, or until further order.
- 4) The defendants to pay the plaintiff's costs of this action. Such costs to be taxed or agreed.

BY ORDER of the Court dated this 17 day of May 1995

Charles Vaudin Jimecour
CHARLES VAUDIN JIMECOUR
Chief Justice



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. In the center, the words 'COUR SUPREME' and 'COURT SUPREME' are written, with 'LEX' on either side of the central emblem. Two stars are positioned on the left and right sides of the seal.