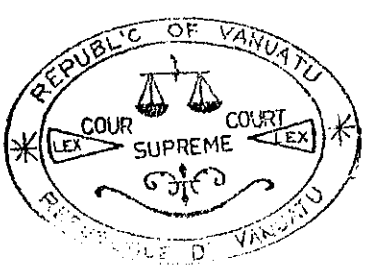
IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

CIVIL CASE No. 155 OF 1996

BETWEEN:	**ANDRE FRANCOIS**
	First Applicant
AND:	**DANTE LENISA and CATHERINA LENISA**
	Second Applicants
AND:	**SELB PACIFIC LIMITED**
	Third Applicant
AND:	**JURIS OZOLS**
	First Respondent
AND:	**THE HONOURABLE JUSTICE ROBERTSON**
	Second Respondent
AND:	**THE HONOURABLE JUSTICE MUHAMAD**
	Third Respondent
AND:	**THE HONOURABLE JUSTICE DILLON**
	Fourth Respondent
AND:	**DANIEL MOUTON**
	Fifth Respondent
AND:	**JOHN MALCOLM**
	Sixth Respondent



AND: **MS SUSAN BOTHMANN BARLOW**

Seventh Respondent

AND: **GARRY BLAKE**

Eighth Respondent

Coram: Mr Justice Oliver A. SAKSAK

Mr Andre Francois appears unrepresented
Mr Dante Lenisa not present
Mr Jonathan Baxter-Wright for the Third Applicant
Mr Juris Ozols representing himself and Fifth Respondent
Mr John Malcolm for himself as the sixth Respondent
Ms Susan Barlow for herself as Seventh Respondent
Mr Mark Hurley for Eight Respondent
The Second, Third and Fourth Respondents are not represented.

JUDGMENT AS TO COSTS

The Court having struck out SELB Pacific Ltd as Third Applicant to the Petition and the Petition in its entirety, the Respondents claimed for costs.

Submissions on costs were heard by the Court on 2nd October 1997.
Mr Hurley for the Eighth Respondent did not wish to be heard separately but indicated that whatever orders the Court made as to costs would be abided by.

Ms Barlow, the Seventh Respondent did not make any submissions as to costs but indicated that she would abide by any orders which the Court would make.

Mr John Malcolm, Sixth Respondent does not claim any costs against SELB Pacific Ltd but claim costs against the First and Second Applicants and their solicitor, Mr de Robillard. He submits that the Court having ruled that the Petition is an foundation, is frivolous and vexatious and that there has been an abuse of process it is proper to claim from the Applicants and their solicitor. He submits that the Petition is an attack on ethics and

integrity of 90% of the local Bar and also the entire Court of Appeal of Vanuatu. He submits that the Court should not treat such attack lightly. He refers the Court to Order 65 of the High Court Rules 1964 which reads:

> "*1. Subject to the provision of these Rules, the costs of and incident to all proceedings in the Court ... shall be in the discretion of the Court ...*"

Further he refers to Order 65 Rule 8 which reads:-

> "*8. If in any cause it shall appear to the Court that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any Judgment or order, or of any misconduct or default of the advocate, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may call on the advocate of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the advocate and his client, and also (if the circumstances of the case shall require) why the advocate should not repay his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require.*"

He further refers to Halsbury's Laws Vol. 44, para. 115 and Vol. 37, para. 719 to further substantiate his claim for costs on a solicitor own client basis. And Mr Malcolm submits his itemised Bill of Costs showing an amount of VT1.468.800. He asks that this sum be paid within 14 days. Mr Malcolm refers the Court to a letter sent by facsimile dated 1st October 1997 a copy of which was tendered. Mr de Robillard has requested that the orders of the Court dated 1st October be stayed for 14 days in order to allow his clients to lodge an appeal. Mr Malcolm was totally opposed to such a stay being granted.

Mr Ozols appearing for himself as First Respondent and Mr Mouton, Fifth Respondent submitted an itemised Bill of Costs in the sum of VT1.555.100. He seeks costs on a joint and several basis against the First, Second and Third Applicants. He submits that he and his client are entitled to costs from the Applicants in a case which he submits was a backdoor attempts to stymie the continuation of the Appeal process in Appeal Case No.2 of 1995.

Mr Ozols refers also to Order 65 Rule 8 and submits that the Court should make separate orders as regards costs against the Applicants and their costs. Mr Ozols submits that SELB should be liable for costs because the Company took the benefit of delaying tactics from December 1996 to October 1997. He submits that it was only after he had written to the Registrar of the Court on 18th September 1997 that SELB gave instructions to Clayton Utz to withdraw from this action. Mr Ozols totally opposed any orders for stay of execution of orders of 1st October 1997 as requested by Mr de Robillard in his letter of 1st October. He asks that their costs be paid within seven days.

Mr Baxter-Wright for the Third Applicant in response submits that it would be unjust to make any order for costs against SELB. He argues that SELB like all the other Respondents be allowed costs against the First and Second Applicants. Counsel submits that the Petition was issued without the knowledge of SELB under its new management and refers to the affidavit of Mr Andre Desplat sworn on 18th July 1997 which is annexed as "G" in the affidavit of Jonathan Baxter-Wright sworn on 24th September 1997. I have seen that annexure and I am satisfied that SELB was joined without knowledge and authority. But the fact is that SELB having been aware of this from their "Protocole d'Accord" did nothing about their being named as the Third Applicant in December 1996 until September 1997 some eleven months later. I therefore accept the arguments and submissions of Mr Ozols that SELB should be responsible for the costs of the First and Fifth Respondents jointly and severally with the First and Second Applicants.

Mr Baxter-Wright submits that SELB should be allowed costs also together with the other Respondents against the First and Second Applicants and against their advocate. He refers the Court to Order 65 Rules 1 and 8.

Mr Baxter-Wright submits that SELB should not be liable for costs as it was open to all Respondents to file a summons or motion to have the Petition dismissed as being without foundation, frivolous or vexatious since December 1996 but none did so until SELB filed a summons on 24th September 1997 to be struck out of the Petition. I accept that submission but in so far as costs to the Sixth, Seventh and Eighth Respondents are concerned.

Mr François appeared unrepresented speaking through an interpreter was given an opportunity to be heard in relation to costs. He submits that the

costs presented are exaggerated and he submits that the Court should have them taxed. As regards the datelines for payment, he asks that he be allowed one month to pay. The Court understands and accepts this submission by Mr Francois as an admission of liability but that he disputes the amounts of at least the two Bill of Costs which have been submitted and are before the Court.

The Court is unable to accept this submission that the costs are exaggerated. The Court is satisfied that these costs have been improperly incurred indeed without any reasonable cause. Secondly the Court is satisfied that there has been undue delay in the proceedings. The First and Second Applicants have only themselves to blame. Had they obtained proper legal advices in the first place and not filed the Petition these costs would not have been incurred. But having done so, and this Court has ruled that the Petition is without foundation, is frivolous and vexatious, it is now time to face the consequences as regards costs.

The Court is therefore satisfied that the two itemised Bill of Costs submitted by the First, Fifth and Sixth Respondents reflect costs reasonably incurred by them determined on a broad average rate and geographical principles. The Court accepts and takes judicial notice of the fact that the going rate of costs on a party and party basis in Port Vila is VT20.000 per hour for consultation. This Court follows the decision in Civil Case No.16 of 1996, VCMB -v- Edwin Lessegman (unreported Judgment dated 21st August, 1997). Any amount above VT20.000 rests solely on the discretion of the Court whether to allow it or not. Here the circumstances of this case merit that any amounts claimed by the Respondents in excess of VT20.000 is allowed to compensate the Respondents for the damage caused to their integrity and reputation brought about as a result of an unwarranted Petition. Mr Francois's application for taxation of costs is therefore refused and the itemised costs submitted by Mr Ozols and Mr Malcolm are allowed in their entireties. The other Respondents who have not specified their costs will also claim their full costs and there will be no taxation of those costs for the same reasons here given, and I so order.

Mr de Robillard has held himself out to be an advocate. I have held in my Judgment that he does not represent the First and Second Applicants in Civil Case No. 155 of 1996. Appeal Case No.2 of 1995 arose out of the primary case No.42 of 1994. The appeal was partly heard in 1996 and adjourned to the next Court of Appeal sitting which was in October this year. On 17th October 1997, Mr de Robillard appeared for SELB with its

former directors being the First and Second Applicants. SELB with its new directors was represented by different advocates.

It has been raised in the course of submissions that Mr de Robillard is entitled to act for the First and Second Applicants in this matter under the terms of his temporary practising certificate. This Court does not agree. The Legal Practitioners (Form of Temporary Practising Certificate) Order No.30 of 1988 establishes the conditions in the schedule thereto. Under paragraph B (e) it is provided:

> "*This Certificate shall cease to have effect upon final determination by the Supreme Court or the Court of Appeal, as the case may be of the case matter or cause mentioned above.*" (emphasis added).

Civil Appeal No.2 of 1995 which stemmed directly from Civil Case No.42 of 1994 did not end in 1995 or 1996. The appeal was heard in part and it became res judicata until October 1997. The Court of Appeal gave its final decision on 17th October 1997. Under the Regulation Mr de Robillard's entitlement on a temporary basis ended on the 17th October 1997.

To file a Petition in December 1996 when clearly the case was not concluded is as has been held to be nothing but an attempt to pervert to course of Justice. The case bears a different number being Proceedings No.155 of 1996. Clearly it is a new and different case which in the Judgment of this Court Mr de Robillard is not entitled to appear at all on behalf of the First and Second Applicants. But the fact that he has held himself out to represent them, he has brought himself under the provisions of Order 65 Rule 8 and orders as to costs may issue against him. He failed to show cause as he should have on 2nd October. He filed the Petition in December 1996 and then went out of the jurisdiction for a period of 10 months and then sends a letter by fax on 30th September 1997 one day before the hearing seeking an adjournment. He sends another letter on 1st October asking that all order be stayed and informing that he has been in Court all day in Sydney the day before and that he could not be available at court on 2nd October. The Court is unable to accept these excuses.

This Court wishes to remind advocates in this jurisdiction that it is a clear requirement under the law that an applicant for registration as a legal practitioner in this jurisdiction must be a resident. The Legal Practitioners Regulation (Qualifications)(Amendment) Order No. 29 of 1988, section 2 reads:

"2. *The qualification required for an applicant for registration as a legal practitioner shall be -*

(a) a law degree from a University or such other appropriate institution recognised by the Law Council, and

(b) at least two years relevant post graduate legal training acceptable to the Law Council,

PROVIDED that the applicant is resident in Vanuatu." (emphasis added).

The term "resident" in the real and strict sense of the word must mean that the person applying to be registered as legal practitioner be living physically in a residential home of his own in Vanuatu. It is not enough for someone to merely open an office and then fly out and return occasionally to do business and living either in hotels or with friends. That cannot in my Judgment be within the meaning of the word "resident" as required by the law.

Having said all that, the Court is satisfied that the Respondents have incurred reasonable costs as a result of their unwarranted, frivolous and vexatious Petition. And the Respondents are rightly entitled to be paid their costs by the First, Second and Third Applicants.

IT IS THEREFORE ORDERED THAT:-

(1) The First, Second and Third Applicants be jointly and severally liable to pay the costs of the First and Fifth Respondents in the sum of VT1.555.100 to be paid by Wednesday 31st December 1997.

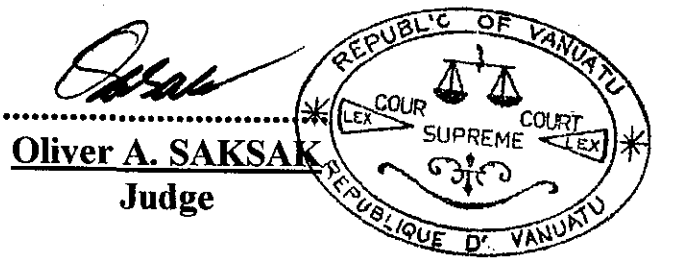
(2) The First and Second Applicants be jointly and severally liable to pay the costs of the Sixth Respondent on a solicitor-own-client basis in the sum of VT1.468.800 to be paid by Wednesday 31st December 1997.

(3) The First and Second Applicants be jointly and severally liable to pay the costs of the Second, Third, Fourth, Seventh and Eighth Respondents on a solicitor-own-client basis, to be paid 30 days from the date of receipt of any such Bill of Costs.

There is no Order as to costs against Mr Roger de Robillard. It is open to the Applicants to take whatever action they is against him if they so wish.

Dated this 17th **day of** November **, 1997.**

BY THE COURT



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Oliver A. SAKSAK
Judge