

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

(Civil Jurisdiction)

CIVIL CASE No.45 OF 2002

IN THE MATTER OF A CONSTITUTIONAL PETITION

BETWEEN:	JOSHUA PANKETO <u>Petitioner</u>
AND:	HON. JOE NATUMAN , Minister of Internal Affairs in charge of Police and Immigration <u>First Respondent</u>
AND:	THE ACTING COMMISSIONER OF POLICE , Mr. Api Jack Marikempo, Police Head Quarter <u>Second Respondent</u>
AND:	THE PRINCIPAL IMMIGRATION OFFICER , Mr. Leslie Garae, Immigration Department, Port-Vila, Vanuatu <u>Third Respondent</u>

Coram: Chief Justice Vincent Lunabek

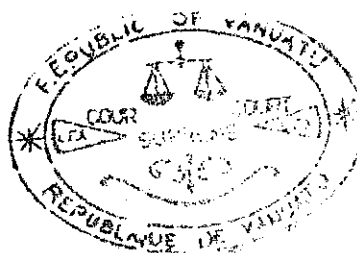
Counsel: Mr. Stephen Joel, Public Solicitor, for the Petitioner ✓
Mr. George Nakou for the Respondents

RESERVED JUDGMENT

THE INTRODUCTION

On 7th day of November 2002, the Court makes the following Orders:-

1. THAT, the Petitioner's claim that he be refunded properly with his money and possessions which are under the care and control of the police is granted partly only as follows:
 - (a) the Petitioner cannot be refunded properly with his moneys and possessions which are under the care and custody of police as



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they were lost and there is no assessment of properties other than monies were made ;

- (b) however, the Petitioner shall be compensated for the unjust deprivation of his properties and monies by the Respondents and the compensation is determined in the following way:
 - (i) the Respondents shall pay to the Petitioner an amount of 300,000 VT; and
 - (ii) the Respondents shall pay the Petitioner's air ticket to Solomon Islands.
2. THAT, the Petitioner shall not be deported until he was paid 300,000 Vatu and his airline ticket is purchased as ordered in 1(b)(ii).
3. THAT, the claim that the Petitioner chooses the country of deportation is refused.
4. THAT, there is no order as to costs.

The reasons of the judgment are set out below:-

This is a constitutional petition dated and filed on 15 March 2002. The Petitioner is Joshua Panketo, a Cameroon natural who entered Vanuatu on board a vessel M.V. Southern Cross, without lawful travel documents. The Respondents are the Minister of Internal Affairs, responsible for the Police and Immigration (First Respondent), the Acting Police Commissioner (Second Respondent) and The Principal Immigration Officer (Third Respondent).

THE CLAIM AND THE RELIEF SOUGHT

The Petitioner comes to this Court and petitions the Supreme Court to exercise its powers under Article 6(2) of the Constitution to grant the following relief:-

1. He be refunded properly with his money and possessions which are under the care and control of police.
2. He requests not to be deported until he is fully reimbursed.
3. He chooses his destination of deportation in regards to the International conventions and the law.



THE FACTUAL CIRCUMSTANCES

The circumstances surrounding the petition can be spelt out from the petition and are summarized as follows:

On 17 May 2001, the Petitioner entered Vanuatu unlawfully via Luganville, Santo without valid travel and Immigration documents and he sought political asylum.

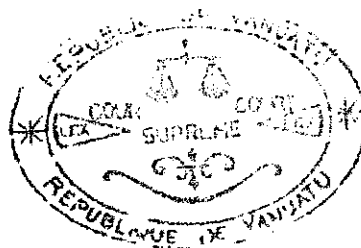
On 6 July 2001, after the Petitioner was arrested and transferred from Luganville to Port-Vila, the Petitioner went to the police station at Port-Vila. On 7 July 2001, before the local authority sent him into custody, the police officers checked him and took out from him his valuable properties.

The petitioner files an affidavit in support of his claim claiming that the following properties were removed from him by the police officers:

1. 50,000 Dahrans of United Arab Emirates
2. 10,000 Kenya shellings
3. 30,000 French Francs
4. 20,000 Dutch Mark
5. 300,000 C.A.F. (Central Africa Francs)
6. 2,250 Solomon Islands Dollars
7. 13,600 US Dollars
8. ANZ Bank Credit Card from PNG
9. A purse with photographs and documents.

The Petitioner says he signed the entries on the registration book.

On 27 July 2001, the Magistrate's Court in Port-Vila sentenced the Petitioner for six months imprisonment.



During his imprisonment period, the Petitioner was under the care and control of the second Respondent until he was released from custody on 9 January 2002.

On 9 January 2002, the Petitioner should be released from the custody. He should also recover his properties recorded at the care and control of the second Respondent and/or his representatives. At the request of the Petitioner, the second Respondent failed to release and return the Petitioner's properties to him as recorded on 7 July 2001.

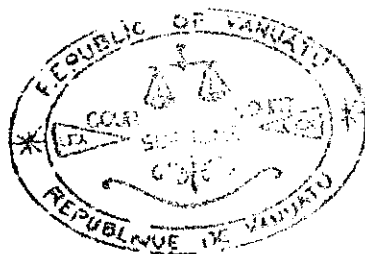
The petitioner, then, continued to stay in prison at the end of his imprisonment term because it would be easier for him to make enquiries about his properties and personal belongings taken out from him on 7 July 2001 by the police officers and he had no where to stay.

On 9 January 2002, the Petitioner talked to the Superintendent of prison, Vake Rakau, who directed the petitioner to go and see the Inspector Ian Hava as Superintendent Rakau would be attending courses overseas.

On the same date (9 January 2002) the Petitioner went to see Ian Hava first at the prison but as the Petitioner was not satisfied with Mr. Hava's responses about his missing properties, the Petitioner followed Inspector Ian Hava at the police Head Quarter. It is apparent that there was a handing over of responsibilities of the Administration of prison from Superintendent Rakau to Inspector Hava.

At the Police Head Quarters, Hava informed the Petitioner that he still found his way in the office. He told the Petitioner to go back the following day which the Petitioner did on 10 January 2002.

On 10 January 2002, Inspector Hava told the Petitioner the situation was risky. He was told his properties were stolen. He directed the Petitioner to seek assistance from Senior Inspector Pierre Carlot. The petitioner told Inspector Hava that it is not his responsibility to find out but it is the



responsibility of Inspector Hava to find out from Senior Inspector Pierre Carlot about the missing properties (the petitioner's).

From 9 January 2002 to 21 January 2002, the Petitioner obtained no response.

On 21 January 2002, the petitioner lodged a formal complaint statement to the police about his missing properties.

The Petitioner also wrote a letter on 21 January 2002 to the officer in charge of the Administration of prisons (Annexure B of his affidavit) to inform him and express his concerns about his missing properties. He further stated in the letter that it was his intention to use the money to pay for his travel and life expenses.

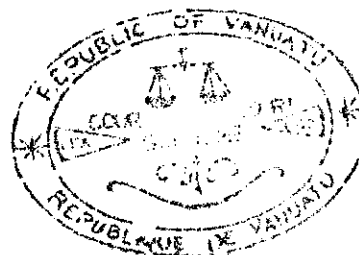
The copy of his complaint statement to the police cannot be obtained. From 21 January to 29 January 2002, he waited for a reply in the prison but in vain.

On 29 January 2002, Mr. Shem Rarua took the petitioner into a man's house. The petitioner was released from prison without his properties.

On 30 January 2002, the first Respondent, Minister of Internal Affairs who is responsible for the Police and Immigration issued a removal Order against the Petitioner from Vanuatu. The Notice of the removal Order was served on the Petitioner on 28 February 2002.

From 30 January 2002 to 28 February 2002, the petitioner's properties were not being released to him. The Petitioner is then facing the situation that he be deported from Vanuatu without his properties and monies given to the prison authorities before he served his prison term, returned to him.

The Petitioner petitioned the Supreme Court for help. The Petitioner submits that his constitutional right under Article 5(1)(j) is likely to be infringed by the action of the first, second and third Respondents. The Petitioner says that if



the third Respondent effectuated the Order of the first Respondent to remove him from Vanuatu, he will leave without his properties taken out from him and recorded by the police officers on 7 July 2001. The Petitioner says he will therefore, be unjustly deprived of his personal properties as a result of such a removal order.

The Petitioner says further that the reason for him to come to Vanuatu is to seek for political asylum on refugee status. The Petitioner says he is from Cameroon. His country is under repressive system. He flew from Cameroon in 1996. He went through several countries before he went to Solomons Islands. He lived in Solomons Islands during the civil unrest. He was accused of training militants of a partion group. The Petitioner, then, sought refuge to the Church of Melanesia. There, a priest from Vanuatu told the Petitioner to come to Vanuatu. The Petitioner then, came in Vanuatu on board the ship "Southern Cross" as shown by the affidavit of the Principal Immigration Officer, Mr. Leslie Garae.

The Petitioner finally says that he believes that there are countries in the region that can process an application of asylum or refugee status if Vanuatu cannot process such an application.

It is on that basis that the Petitioner asks for the third relief in the Petition which is for him to choose the country of his deportation by relying on Article 5(1)(c) of the Constitution (security of the person).

THE RESPONSE

The Respondents by counsel say that they endorsed the evidence of the Petitioner. There are some facts that they need to place before the Court. The Respondents filed three (3) affidavits materials (Leslie Garae's of 16th April 2002 and two (2) from Prison Officer Tom Paul of 29th May 2002 and 10th June 2002).



The Respondents' case is in essence that the Petitioner's properties are stolen from the police lawful custody (see affidavit of Tom Paul). Therefore they are subject to a separate cause of action and not a case that raises the question of constitutional infringement guaranteed under Article 5(1)(j) of the Constitution. The Respondents say the Petitioner entered illegally Vanuatu and is an undesirable immigrant in Vanuatu.

The Respondents admitted that there are some properties of the Petitioner which are recorded by the police on the 6th or 7th July 2001 but not returned to him when he requested them as they were stolen while they were under police custody.

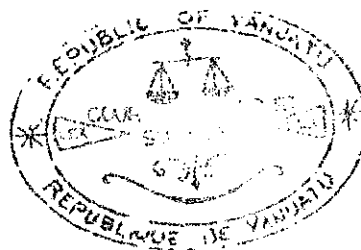
The Respondents by counsel conceded that it is more difficult for the Petitioner to recover his properties. They say that it is unacceptable that the Petitioner is making a condition that he will not be deported until his goods are recovered. They say it is unfair for the State to be responsible for the goods removed by someone who is not under the control of the State.

THE DISPUTED FACTS AND FINDINGS

The facts as alleged in this case are not in essence disputed. The only disputed point of facts are the items of foreign currencies and amounts as claimed by the Petitioner.

I have perused the list of the properties the Petitioner claimed were taken of him on 6 or 7 July 2001 and under the custody of the police while he was kept in custody and as he said he signed the registered book on.

I have perused the relevant pages of the Prison Entry Register Book of inmates' properties. The properties of the Petitioner were recorded on 7/7/2001 before he went in custody. I find the Petitioner's signature are on the Entry Book. There were substantial discrepancies in the amount of foreign currencies he claimed and the amount of foreign currencies recorded on the Prison Entry Register Book on 7 July 2001 with the Petitioner's signature. I do



not accept the amounts of foreign currencies as claimed by the Petitioner to be the true record of his monies given and kept by the Police while he was in custody.

I accept the following to be the properties of the Petitioner registered into the Prison Entry Register Book on 7/7/2001 bearing the signatures of the petitioner and the amounts he deposited in the police custody before he went into the custody:

Foreign currencies (Notes)

1. 3 x 10,000 French Francs
2. 1 x 1,000 Kenya shellings
3. 1 x 5 Dahran of United Arab Emirates
4. 5 x 50 Dollars (Solomon Islands \$)
5. 1 x 20 Dollars (Solomon Islands \$)

Other Items:

6. 1 ANZ Access Blue Card
7. 1 Papua New Guinea Banking Corporation
8. 1 ANZ Bank Account Details
9. 1 small white booklet of Papua New Guinea Banking Corporation
10. 1 white Hi Clean Pty Ltd Card
11. 1 Black Plastic Save Card
12. 1 Black purse
13. 1 small photo of petitioner's girl friend.

The above listed properties were not returned to the Petitioner when he was released from jail. He requested his properties to be returned to him but in vain.

THE LAW AND ITS APPLICATION

Article 5 (1) (c), (d), (j) and (k) of the Constitution provides:-



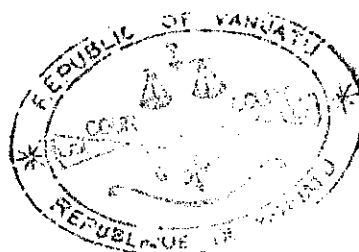
"The Republic of Vanuatu recognizes, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health,

- (a) ...
 - (b) ...
 - (c) *security of the person;*
 - (d) *protection of the law;*
 - (e) ...
 - (j) *protection for Property and from unjust deprivation of property;*
 - (k) *equal treatment under the law or administrative action ...*
-"

Article 6 of the Constitution provides:-

- "6. (1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.*
- (2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right."*

Article 5(1)(j) of the Constitution outlines the protection for property and from unjust deprivation of property. This provision applies to citizen and non-citizen alike. All persons in Vanuatu including undesirable immigrants are entitled to the protection of the law in relation to their own security and from unjust deprivation of their properties from the actions of the State authorities, State agents or representatives.



I accept, as a general proposition the Respondent's submissions that the properties of the Petitioner were stolen therefore, they should not be fallen under the protection of Article 5(1)(j) of the Constitution.

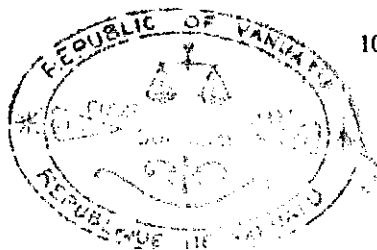
However, the circumstances of this case warrant that it be treated as a special case and came under the ambit of the Protection of Article 5(1)(j) of the Constitution.

If the Petitioner's properties were given to him when he was requesting them, there will be no difficulty. The matter became problematic when his properties were under the custody of Prison authorities and they were stolen. He requested them. He could not have them returned to him. He was instead given a notice to be deported from Vanuatu without his properties returned to him nor he be compensated from the loss sustained before his deportation from Vanuatu nor reasonable time be given to him to explore other possible legal remedy available to him to obtain justice.

The effect of his removal without his properties returned to him is that he will be unjustly deprived of his properties and monies by the actions of the Respondents to remove him out of the country. There will be no other recourse of justice available to him to reclaim his lost properties and even if there is one available, it will be impossible for him, taken his status in Vanuatu as an undesirable immigrant, once he will be deported by the Respondents.

Under such circumstances, the Petitioner's right under Article 5(1)(j) is likely to be infringed. He is then founded and justified to petition the Supreme Court for redress before he got deported from Vanuatu. The Petitioner is entitled to be compensated for the likely infringement of his right under Article 5(1)(j). The law must stand as it is. If the Respondents wish to deport him without his properties, the respondents must compensate him for his lost properties first.

On the facts before me, it was difficult to make an accurate assessment of the total compensation of the petitioner's properties. I made an approximate assessment of the total loss of the Petitioner's amount of about 300,000 Vatu



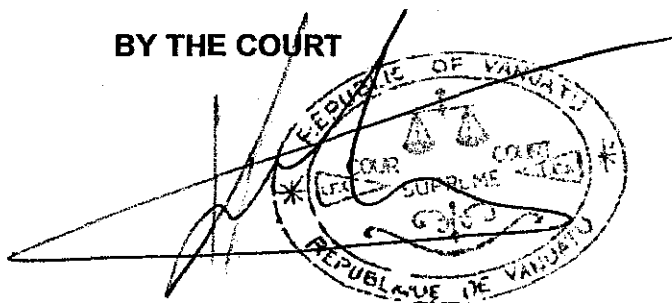
as the reasonable compensation for his losses on the factual evidence before me. The Petitioner is to be paid the amount of Vatu 300,000 to compensate for his lost properties.

The Petitioner shall not be deported until he was paid 300,000 Vatu and in addition the respondents shall pay him a one way ticket to Solomon Islands (the country he came from). The claim by the Petitioner to choose the country of his deportation is refused.

These are the reasons for the Order issued on the 7th Day of November 2002.

Dated at Port-Vila this 19th Day of August 2003

BY THE COURT



**Vincent LUNABEK
Chief Justice**