

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

Civil Case No. 144 of 2011



**BETWEEN :** LORD MAYOR, WILLIE P.  
SAETEAROTO, DEPUTY LORD MAYOR,  
RUBEN OLUL, PAKOA FRED, CHARLIE  
SAKARAI AH, JENNY TASALE, HARRY  
NAKO, NOEL LANGO, VAI MAKI, PAUL  
A. HUNGAI, CHARLES QUENSELL,  
JERRY ESROM, ULRICH SUMPTOH,  
TONY WRIGHT, GEORGE W.SIRI  
Claimants

**AND:** THE MINISTER OF INTERNAL AFFAIRS  
First Defendant

**AND:** OLGA TARI  
Second Defendant

**AND:** ATTORNEY GENERAL  
Third Defendant

Coram: Justice Aru  
Date of Hearing: 24<sup>th</sup> August 2011

Counsel: Mr. C. Leo for the Claimants  
Mrs. V. M. Trief, Solicitor General for the Defendants

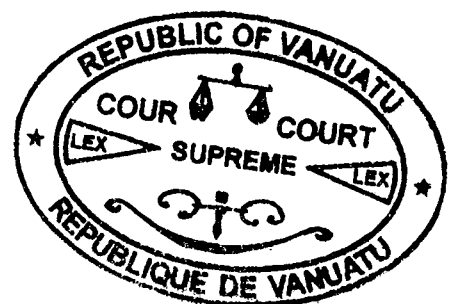
**REASONS FOR STRIKING OUT JUDICIAL REVIEW CLAIM**

On 24 August 2011 the court made the following Orders that:

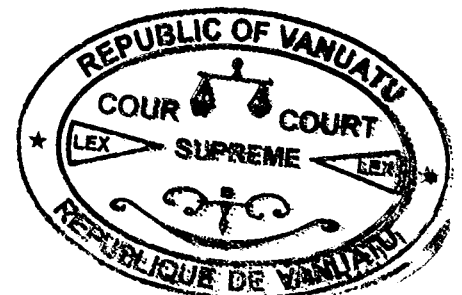
1. The Claimants claim for Judicial Review is struck out as the Claimants do not have an arguable case against the Defendants.
2. The Defendants are entitled to their costs to be agreed or taxed.

I now give my reasons.

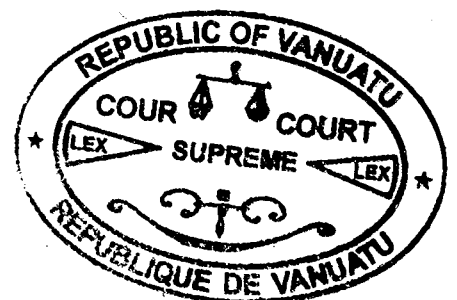
1. On the 28 July 2011 the Claimants filed a claim for Judicial Review of a decision made by the First Defendant on 22 July 2011.



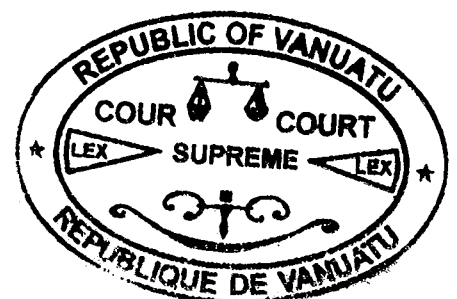
2. That decision was to suspend the exercise of the powers of the Port Vila Municipal Council by the Council and was made by order No. 162 of 2011.
3. The Claimants sought the following relief :
  - (1) That the decision of the First Defendant to suspend the Port Vila Municipal Council until 31 October 2013 and the decision of the First Defendant to appoint the Port Vila Municipal Council Commissioner pursuant to Order No 162 of 2011 be called up and quashed ;
  - (2) That the decision of the First Defendant to appoint Mr. Pierro Willie to enquire in certain matters of the Port Vila Municipality pursuant to Order No 156 of 2011 be called up and quashed in circumstances where the ministerial directives were issued in the absence of a report from Mr. Willie;
  - (3) A declaration that the decision of the First Defendant to suspend the Council until 31 October 2013 was based on irrelevant considerations and failed to take into account those considerations the Minister was required to have regard to under section 61 (3) a) of the Act;
  - (4) A declaration that the matters constituting relevant considerations for the purpose of any decision of the Minister's suspension of the Port Vila Municipal Council are :
    - i) Whether there was any inquiry pursuant to section 61 (1) and (2) of the Act before the Minister could enliven its discretionary powers under section 61 (3) (a) of the Act;
    - ii) The matters set out in section 61 of the Act.
  - (5) A declaration that the decision of the First defendant :
    - i) Was not a decision aimed at providing good governance and providing sound administrative integrity to the Port Vila Municipal Council in circumstances where the Claimants have complied with the First Defendants directives;



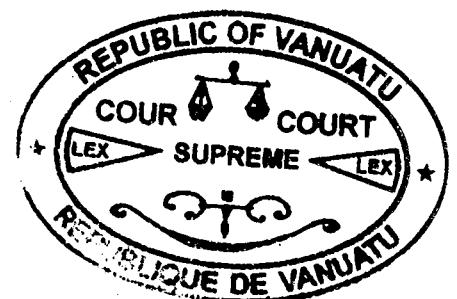
- ii) Was not a decision based upon the relevant considerations to which the First Defendant were to have regard to under section 61 of the Act ;
  - iii) In the premises was improperly based upon irrelevant considerations; and was in all circumstances, ultra vires the powers of the First Defendant.
- (6) Alternatively, an order prohibiting the First Defendant from further suspending and /or interfering in the Council's administrative functions unless it is done in accordance with the spirit of the Act.
4. On 12 August 2011 the Claimants applied for various interlocutory orders but were refused by the Court.
  5. The Defendants filed their Defence on 17 August 2011 stating that the Claimants were not entitled to the relief sought and filed an Application on 19 August 2011 to have the matter struck out.
  6. On 24 August 2011 a conference was called pursuant to rule 17.8 of the Civil Procedure Rules.
  7. In brief, Rule 17.8 3), 4) and 5) requires that the Claimants have to show to the satisfaction of the Judge that the Claimants have an arguable case and that they are directly affected by the decision complained of and that there was no undue delay in making their claim. To be satisfied the Judge may consider the papers filed and hear arguments from the parties.
  8. If the judge is not satisfied then he must decline to hear the claim and strike it out.
  9. At the Conference I heard argument from the parties. At the outset the Claimants informed the court that they had some "housekeeping" matters to raise. I was then informed by the Claimants Counsel that upon instructions he had served a letter on the Chief Registrar requesting that I disqualify myself from hearing the case due to my previous employment with the State Law Office and working together with the Solicitor general.



10. The request was then withdrawn thereafter by Counsel following discussions with the Solicitor General.
11. The second matter raised by the Claimants was objections to parts of sworn statements of Olga Tari filed on 8 August 2011 and Cherol Ala filed on 19 August 2011 on behalf of the Defendants. The objections relied on James Ulas & Ors v Minister of Internal Affairs & Or, Civil Case No 013 of 2005.
12. The Solicitor General informed the court that in James Ulas, the case referred to by the Claimants, consideration of the evidence and objections to evidence filed were made during the hearing of the claim but not at a conference pursuant to rule 17.8. I was referred to the Court of Appeal decision in Kalran Loparu & Ors v Thomas Sope & Ors Civil Appeal Case No 26 of 2004. In Kalran Loparu the Court pointed out that “under rule 17.8 (4) the judge is not required to hear the Claimants evidence at the first conference but may consider the papers filed in the proceedings and hear argument from the parties”.
13. The objections were overruled and the court proceeded to hear the arguments.
14. The facts which were not disputed are that :
  - (i) On 1 October 2010, the First Defendant pursuant to section 61(1)a) b) and c) of the Municipalities Act [CAP 126] signed Order No 69 of 2010 appointing Mr. Pierro Willie to enquire into certain matters of the Port Vila Municipal Council;
  - (ii) On 4 October 2010 the First Defendant issued directives in writing to the Port Vila Municipal Council;
  - (iii) On 18 October 2010 Mr. Pierro Willie produced for the First Defendant his report pursuant to his appointment.
  - (iv) On 3 May 2011 the First Defendant pursuant to s. 61 (1) a), b) and c) of the Municipalities Act by Order No 85 of 2011 appointed Mr. Pierro Willie to enquire into certain matters of the Port Vila Municipal Council;



- (v) On 10 May 2011 Mr. Pierro Willie produced for the First Defendant his report into the investigation of certain matters of the Port Vila Municipal Council pursuant to his appointment;
- (vi) On 28 June 2011 the First Defendant pursuant to s. 61 (1)a),b)andc)of the Port Vila Municipalities Act by Order No 148 of 2011 appointed Mr Pierro Willie to inquire into certain matters of the Port Vila Municipal Council;
- (vii) On 6 July 2011 Mr. Pierro Willie produced for the First Defendant his report on the investigation into certain matters of the Port Vila Municipal Council pursuant to his appointment;
- (viii) On 12 July 2011 the First Defendant wrote to the Lord Mayor giving directives to improve the financial status of the Port Vila Municipal Council.
- (ix) On 13 July 2011 the First Defendant suspended the exercise of the powers of the Port Vila Municipal Council by the Council by Order No 155 of 2011 made pursuant to s. 61(3) a) of the Municipalities Act and conferred those powers on the Second Defendant.
- (x) On 20 July 2011 the Lord Mayor responded to the First Defendant's letter of 12 July 2011;
- (xi) On 21 July 2011 the First Defendant by Order No 161 of 2011 made pursuant to s.61 (3) a) of the Municipalities Act revoked the suspension made on 13 July 2011;
- (xii) On 22 July 2011 the First Defendant by Order No 162 of 2011 made pursuant to s. 61 (3)a) of the Municipalities Act suspended the exercise of the powers of the Port Vila Municipal Council by the Council and conferred those powers on the Second Defendant.



15. The relevant provisions of section 61 of the Municipalities Act are as follows:

**“61. Inquiries and suspension**

(1) *If the Minister –*

(a) *has cause to suspect that a council has failed to observe and perform any of the duties and powers conferred or imposed upon it by the provisions of this Act or any other law; or*

(b) *has cause to suspect that a council has done or performed any act, matter, or thing without due authority; or*

(c) *is otherwise of the opinion that an investigation should be made into the affairs of a council;*

*he may in his discretion, appoint a person or persons to inquire into such matter.*

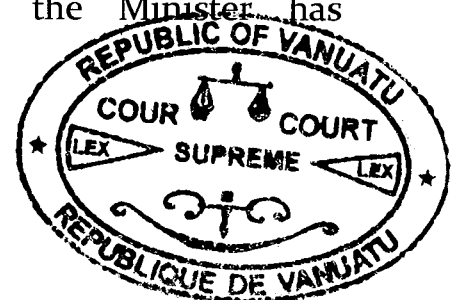
(2) *If upon an inquiry under this section the Minister is satisfied that the council has done or suffered any of the act, matter and things contained in paragraphs (a) and (b) of subsection (1), he may by directive in writing require the council to remedy the same within such time as he may appoint.*

(3) *If a council fails to comply with the terms of a directive of the Minister made under subsection (2) or if the Minister, having appointed a person or persons to make an inquiry under subsection (1) considers it expedient so to do, the Minister may in addition to any other powers conferred upon him by the provisions of this Act –*

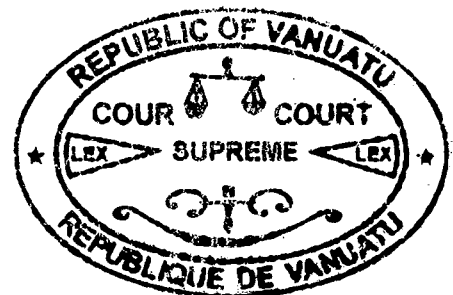
(a) *suspend the exercise by the council of any of the powers conferred upon it by this or any other act for such period as he may think fit; or*

(b) *dissolve the council and....”*

16. The Claimants’ arguments are that firstly they do not dispute the powers of the Minister to suspend under s. 61 of the Act but say that such powers can only be exercised once the Minister has




- conscientiously considered all the documentation placed before him for consideration.
17. Secondly the Claimants say that they have an arguable case as the First Defendant did not give due consideration before exercising his powers to suspend under s. 61. The Claimants relied on the Court of Appeal decisions in *Ifira Trustees Ltd v. Family Kalsakau & Ors, Civil Appeal Case No. 5 of 2006* and *Turquoise Ltd v. Philip Kalsakau & Ors Civil Appeal Case No. 21 of 2008*.
  18. Thirdly the Claimants argued that the First Defendant's decision to suspend was biased but this was not a ground raised in their claim for seeking Judicial Review.
  19. For the Defendants, it was argued that firstly the claim is misconceived as there was no suspension of the Council as alleged by the Claimants in their Claim therefore it must be struck out as the decision complained of is a decision to suspend the exercise of the powers of the Port Vila Municipal Council by the Council which was made pursuant to s. 61 (3) a) of the Act. Secondly it was argued that the First Defendant had complied with S. 61 of the Act.
  20. Having heard the arguments, the facts which are not disputed show that the First Defendant pursuant to s. 61 1) appointed Mr. Pierro Willie on a number of occasions to inquire into the affairs of the Port Vila Municipal Council and on each occasion a report was produced by Mr. Pierro on his inquiry.
  21. The directive in writing issued by the First Defendant on 12 July 2011 to the Lord Mayor was in compliance with s. 61 2) of the Act as it required the Council to remedy, certain matters raised by the time given.
  22. Finally the decision made by the First defendant to suspend the exercise of the powers of the Port Vila Municipal Council by the Council was made pursuant to s.61 3).



23. Having considered the papers filed, I find that the claim as filed was misconceived as there was no decision to suspend the council. Secondly pursuant to Rule 17.8 (5) I was not satisfied that the Claimants had an arguable case therefore I declined to hear the claim and struck it out making the above orders.

**DATED at Port Vila this 24<sup>th</sup> day of August 2011.**

**BY THE COURT**

  
.....  
D. ARU  
Judge

