

(Civil Jurisdiction)

**BETWEEN: NORTHERN ISLAND STEVEDORING
COMPANY LIMITED (NISCOL)**

First Claimant

**AND: SANDY KALVEN, HENRY NIN, JOHN
MORRISON WILLIE, LIVO LANGI, TIRO VANUA,
KARL DAVID of on behalf of NISCOL Board of
Directors**

Second Claimants

**AND: JOHN MORRISON WILLIE CEO of and for
NISCOL**

Third Claimant

AND: LEON KATTY WARSAL

First Defendant

AND: MARTIN MAHE AND MATAI SEREMIAH

Second Defendants

Mr Justice Oliver A. Saksak

Mr James Tari and Mr Eric Sciba for the Claimants
Mr Ronald Warsal and Mr George Boar for the Defendants

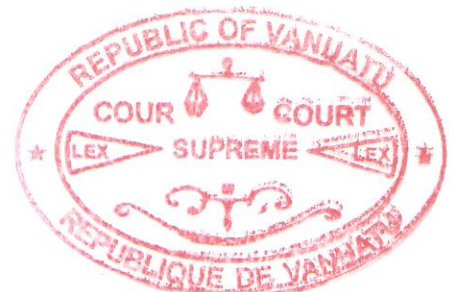
Date of Hearing and Decision: 8th February 2013

DECISION

1. Having hearing Counsel this morning, it is recorded that –

(a) The following sworn statements were agreed by Counsel to be admitted into evidence as read without objections:-

(i) By the Claimants, sworn statements of –



- Luke Shem dated 5/02/013.
- George Andrews dated 6/02/013.
- Joel Path dated 23/01/013.
- John Morrison Willie dated 23/01/013.

(ii) By the Defendants, sworn statements of –

- Martin Mahe – 25/01/013.
- Calisto Cevuard – 25/01/013.
- Leo Katty – 25/01/013, 28/01/013 and 5/02/013.

2. The Court also heard Counsel in relation to their written submissions including responses.
3. This decision is made based on those submissions in light of the evidence as agreed and admitted.
4. The Defendants raised two issues which the Court has considered and will answer as follows:-

(a) Whether the Claim and Pleadings filed by Claimants disclose a reasonable Cause of Action?

From the Amended Claims of the Claimants filed on 29/01/013, the Claimants have shown a cause of action against the First Defendant in paragraphs 4, 10, 11, 12, 13, 14 and 18 of their pleadings, and in relation to the Second Defendants the causes of action against them are implied in paragraphs 14, 15 and 16.

Those are enough to answer this issue in the affirmative.

(b) Whether the Claimants are entitled to the Declaration Sought given the Breaches of their Duties as Directors?



Except for damages and loss claimed under paragraph 6 of their reliefs which are excluded, the Claimants are entitled to the declarations sought under paragraphs 1, 2, 3, 4, 5 and 7 of their claims as amended.

That is the answer to this issue.

5. The Claimants raised the following issues –

- (a) Whether the Shareholders that appointed the Board of Directors led by the Chairman Sandy Kalven is the lawful representative of the Shareholders?

From the evidence by Joel Path and George Andrews, the answer to this issue is “Yes”.

The Claimants claims are founded on the Memorandum of Association duly registered by the Financial Services Commission. The decision of the Financial Services Commissioner has not been challenged by the Defendants properly by a Counter-Claim or by Judicial Review. Unless and until a Court so declares it invalid, the Memorandum of Association remains a valid and legal document that establishes the current Shareholders of NISCOL.

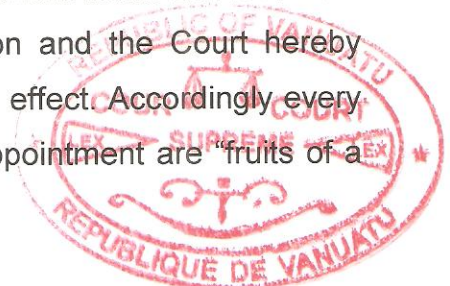
- (b) Whether the Board of Directors of NISCOL which Sandy Kalven is Chairman is legally established and constituted?

From the evidence of Luke Shem and George Andrews, the answer to this issue is “Yes”.

- (c) Whether the Shareholders that appointed the Board of Directors led by Chairman Leo Katty Warsal is a lawful representative of the Shareholders?

The answer to this issue is in the negative.

The First Defendant relies on the letter of appointment dated 26 November 2012. This appointment has no legal foundation and the Court hereby declares it unlawful null and void and of no legal effect. Accordingly every subsequent actions flowing from that letter of appointment are “fruits of a



poison tree” and are hereby declared unlawful null and void and of no legal effect.

(d) Whether the Board of Directors of NISCOL which Leo Katty Warsal is Chairman legally established and constituted?

The answer to this issue is “No.”

(e) Having answered “NO” to the issue in (d) –

(i) Whether the termination of the Board of Directors Led by Sandy Kalven by Leo Katty was unlawful and should be quashed?

The answer is “Yes”. Accordingly, those terminations are called up and hereby quashed as unlawful, null and of no legal effect.

(ii) Whether the suspension of the CEO of NISCOL, John Morrison Willie was unlawful and should be quashed?

The answer to this issue is “Yes”. Unless and until his suspension and/or termination is done in accordance with relevant legal provisions, the purported suspension and/or termination of Mr Morrison is hereby declared to be unlawful, null and void and of no legal effect, and accordingly it is hereby quashed.

6. The Claimants are therefore successful in their claims against the Defendants and are entitled to the following orders:-

(a) That they be entitled to return to their respective work and offices forthwith free from any interferences or hindrances by the Defendants.

(b) The First Defendant is not a member of the Board of Director of NISCOL and similarly he is not the Government Representative of Shareholders on the NISCOL Board.



(c) The appointments of the Second Defendants are unlawful, null and void and of no legal effect.

(d) The Claimants are entitled to their costs of and incidental to this actions against the Defendants personally, jointly and severally, on the standard basis as agreed or be taxed by the Court.

7. Further reasons will be published by the Court.

DATED at Luganville this 8th day of February 2013.

BY THE COURT



OLIVER A. SAKSAK

Judge

