

Registry

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(CIVIL JURISDICTION)**

CIVIL CASE NO. 108 OF 2012

BETWEEN: RONIE LELE
Claimant

AND: REPUBLIC OF VANUATU
Defendant

Coram: Justice Mary Sey

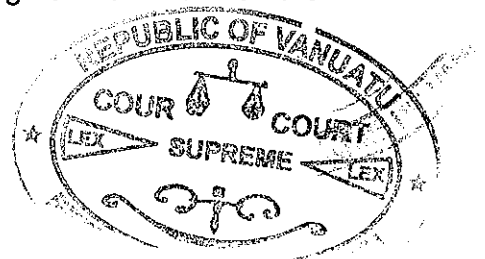
Counsel: Daniel K. Yawha for the Claimant
Kent T. Tari for the Defendant

Date of Judgment: 30 June 2014

JUDGMENT

1. The Claimant herein instituted civil proceedings against the Defendant by a Supreme Court Claim, dated at Port Vila on the 27th day of June 2012, in which he claimed the following reliefs:
 - “1. An Order for loss of business in the sum of VT 93,907,800.
 2. An Order for unlawful arrest and false imprisonment assessed at VT 5,000,000 in total.
 3. Interest of 5% per annum for damages in Orders 1 and 2.
 4. Cost
 5. Any other Orders deem just.”

2. To understand the Claimant's case with respect to the reliefs sought, it is necessary to provide some background facts leading to the arrest of the Claimant on 15 April 2011.



Background

3. On 8th February 2011, the Claimant entered into an Agreement with Carl and Martha Beldon trading as Dreamtime Shipping of Honiara, Solomon Islands to lease their ship known as MV Christie Leigh for a period of 2 years for an agreed price of VT1,350,000 per month. The Agreement was entered into in Port Vila while the ship was anchored alongside BP Wharf, having arrived in Vanuatu from Solomon Islands in late December 2010.
4. At that stage, no maritime certificate had been issued to either the Beldons or the Claimant, nor was the ship de-registered from the shipping registry of the Solomon Islands.
5. The Claimant instructed his lawyer, Mr. Robin Tom Kapapa, to obtain relevant permits and licenses from the Defendant in order for the Claimant to commence his shipping business with the MV Christie Leigh.
6. The Claimant said that on 23 March 2011, his lawyer called him into his office and handed him a letter from the Minister of Infrastructure & Public Utilities, late Harry Iarissau, authorising him to operate the ship in Vanuatu waters.
7. For ease of reference, the letter is reproduced hereunder as follows:

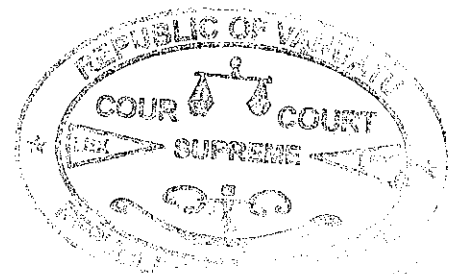
*"Henry Wareck
Principal Licensing Officer
Vanuatu Maritime
Port Vila*

AND TO: SHIP OWNERS & LESSEE OF MV KAONA & MV CHRISTIE

Dear Sir(s)

RE: Authorisation for MV Kaona & MV Christie to operate in the Sea of Vanuatu

I write to you in relation to the above herein matter as the Minister responsible for Transport and all shipping in Vanuatu. It is important to the shipping industry that serious decisions are taken to promote the services of shipping in Vanuatu.



My office was furnished with all the relevant documents in relation to the two vessels namely MV Kaona & MV Christie and my decisions are set forthwith below. It is my instructions that both vessels operated immediately and as follows:

1. *MV Kaona and MV Christie Leigh be permitted to commence legal operations in the Republic of Vanuatu from 23rd March 2011.*
2. *Both vessels to be issued with 12 month validity Vanuatu safety/ Survey Certificate of Operation.*
3. *This order for vessels to operate in Vanuatu to be effective for a period of 5 years from today's date.*
4. *Both vessels to be issued with Vanuatu registration, permitted to fly Vanuatu flag and de-registration from Solomon Islands registry must be affected within 3 months of this ministerial order.*
5. *Vanuatu Coastal Shipping Services is the registered owners of the two vessels on the Vanuatu Registry of ships with Port and Harbours Department.*
6. *As per Tariff heading 4601-4602 both vessels as being built in Solomon Islands is permitted to be imported into Vanuatu duty free under MELANESIAN SPEARHEAD GROUP (MSG) TRADE AGREEMENT.*
7. *Both vessels will enjoy the shipping rights as apply to every other Vanuatu registered vessel.*
8. *Both vessels remain under the laws and authority of the Republic of Vanuatu and that you are directed to issue proper certificates to operate forthwith.*

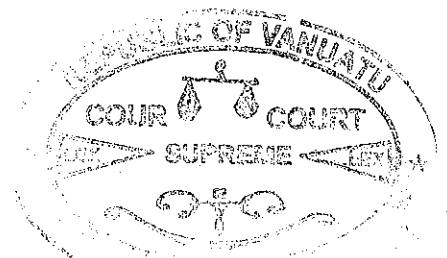
Given my instructions as the Minister responsible, it is in the mutual interest that parties do cooperate and to finish all legal requirements within the next 3 months. I wish to thank all parties in sorting out this long outstanding matter, and all parties are advice to consult my office should you have any queries.

Yours faithfully,

Hon. Harry Iaris Iauko

Ministry of Infrastructure & Public Utilities"

8. On 28 March 20011, the Director of the Department of Customs and Inland Revenue issued an exemption approval of Customs Duty and VAT to the Claimant in relation to the vessel MV Christie Leigh.



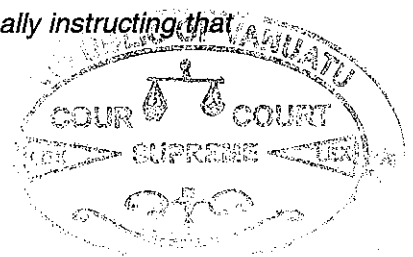
9. On 30 March 2011, the Claimant received a letter from the Director revoking the exemption granted on 28 March 2011.
10. Following the revocation of the exemption, a meeting was convened at the Ministry of Infrastructure & Public Utilities and present at that meeting were the Minister, late Harry Iaris Iauko, the then Acting Prime Minister Mr. Marcellino Pipite, the Principal Licensing Officer (PLO) Mr. Henry Worek, Mr. Chris Tavoa from the State Law Office, the Claimant and his lawyer Mr. Robin Tom Kapapa.
10. On 1 April 2011, another meeting was held at the Prime Minister's Office between the Acting Prime Minister, the Minister of Infrastructure & Public Utilities, the Claimant's lawyer and the State Law Officer. On the same day, the Claimant was advised by his lawyer to go ahead and sail and that a letter from the government will be forthcoming.
11. On 3 April 2011, MV Kaona and MV Christie Leigh departed from BP Wharf in Port Vila.
12. On 4 April 2011, the Minister wrote a second letter addressed to both the Director and the PLO of the Department of Ports and Harbour as follows:

"Dear Sirs,

**Subject/Objet: INSTRUCTION - INTERNAL DOMESTIC SHIPPING
SERVICE OPERATION FOR MV KAONA & MV CHRISTIE**

The Ministry of Infrastructure and Public Utilities under Cap 53 is responsible solely for the Vanuatu flag registered vessels under 500 tons operating in Vanuatu waters. As the Minister responsible, the ministry is finding ways to solve the matters concerning the above named vessels which are already in Vanuatu waters.

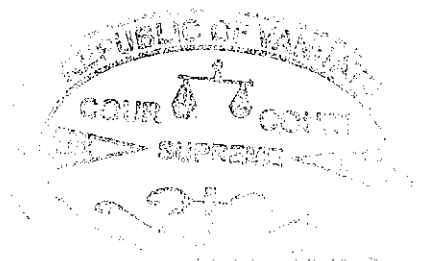
Based on facts presented by all parties and with the verbal instruction from the Prime Minister's office on Friday 1st April 2011, I am finally instructing that



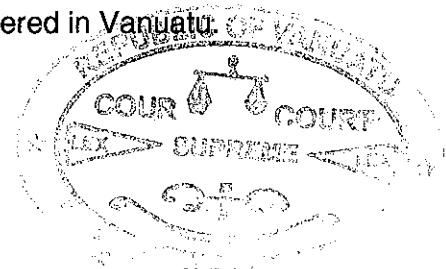
you accommodate and facilitate the above name vessels service operations locally in Vanuatu waters based on the normal legal compliance procedures and process. My letter to the Principal Licensing Officer in reference as "Authorization for MV Kaona & MV Christie to operate in the sea of Vanuatu" gives my standing points.

Since the two ships are already in Vanuatu, I am instructing that you impose a proposed penalty fine of VT350, 000 to be paid by the lessee of the Vessel in compliance to Cap 53."

13. On 5 April 2011, the PLO issued an official complaint to the Police and the Public Prosecution's Office alleging that the vessels were not registered in the Vanuatu domestic or international shipping registry to operate in Vanuatu waters. On the basis of that complaint, an arrest warrant was obtained to arrest the Claimant and to detain the vessel.
14. The claim is premised on the Claimant's reliance on the representation made by the Minister that he operates the shipping business "in the sea of Vanuatu" and pays "a proposed penalty fine of VT350,000". The Claimant alleges that the Defendant through its agents, particularly Customs Department, Vanuatu Police Maritime Wing, Vanuatu Maritime Authority and Vanuatu Ports and Harbour had jointly detained his vessel whereby he had suffered loss of business. Furthermore, the Claimant alleges that the police officers' conduct in arresting and detaining him amounts to unlawful arrest and false imprisonment.
15. The Claimant's evidence is that he started the first commercial voyage on 3 April 2011 from Vila to Epi Island then to Santo and Malekula before returning to Santo. He said that it was while they were at the Santo wharf that he and the crew of MV Christie were arrested on 13 April 2011 and escorted to Vila by the Paramilitary patrol boat RVS Tukoro. He went on to say that the ship was brought over to Vila on 15 April 2011 and that he, together with his captain, a crew member and the engineer were escorted into the police van and taken into the police cell around 9 am and that they were detained until 11 pm before they were released on bail by their lawyer.



16. The Defendant called the PLO, Mr. Henry Worek, as its witness. He said that the MV Kaona and MV Christie Leigh were not registered in the Vanuatu Domestic or International Shipping Registry to operate in Vanuatu waters.
17. Mr. Worek went on to say that all vessel owners in respect of vessels to be imported into Vanuatu for commercial purposes had to comply with the following procedures:
- a. Fill in an "Application for Importation" form (Approved only by the Minister for Infrastructure, Public Utilities.
 - b. Request for Initial Survey
 - c. An Initial Survey is conducted aboard the vessel while on slip by Vanuatu's Marine Surveyors
 - d. Upon return, a Survey report is done and sent to the Principal Licensing Officer for comment and recommendations, prior to being sent to the Honorable Minister for approval
 - e. Once the Minister's approval is given, the Shipping section then issues;
 - i. Provisional Safety Certificates
 - ii. Provisional Certificate of Registration
 - iii. Provisional Safe Manning Certificate
 - iv. Certificate of Delivery
 - v. Radio Certificate/Call Sign (issued by the Telecom Regulator)
 - f. The vessel may then set sail for Vanuatu after de-registering from their respective Registries.
 - g. Upon arrival in Vanuatu, The Principal Licensing Officer may then conduct a final survey aboard the vessel prior to issuing "Permanent Certificates" as mentioned above.
18. In answer to questions put to the witness under cross examination, he said that the Claimant had not complied with the procedures outlined above and that was the reason why he had lodged the complaint resulting in the arrest of the Claimant.
19. Mr. Worek then referred to his statement dated 5 April 2011 and annexed as "HW6" to Exhibit "D1" which is his sworn statement dated 21st May 2013. He said he had advised the Claimant to either take both vessels back to the Solomon Islands and get them de-registered from the Solomon Islands registry or to go to Fiji or New Caledonia for an initial survey to be conducted by Vanuatu Marine surveyors before the vessels could be registered in Vanuatu.



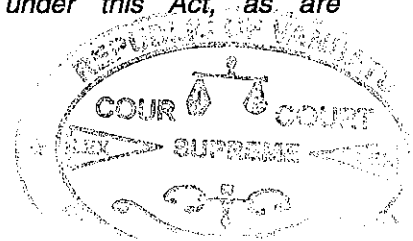
20. On the issue of the fine, Mr. Worek said he could recall that the Claimant had been fined VT350,000 but that he had stated that it was not legal for him to accept the fine because he did not know who had issued it. He also said that he had refused because no unregistered vessel was to be allowed to sail.
21. In summary, the Defendant submits that procedures for importing a foreign vessel to commercially operate in Vanuatu were breached. Further, that the *Shipping Act [CAP 53]* and the *Maritime Act [CAP 131]* do not confer any power on the Minister to authorize any shipping vessel to operate within the waters of Vanuatu.

Issues

22. The issues presented by the Defendant for the Court's determination are twofold:-
- 22.1 Whether the Minister has the power to authorize the shipping vessel to operate within Vanuatu's domestic maritime waters?
- 22.2 Was there an unlawful arrest and false imprisonment as pleaded in the Claimant's claim?
23. The Claimant accepts the accuracy of the Defendant's issues but adds, in his closing submissions, that "the directive from the Minister on 4 April 2011 was a joint and collaborative decision reached by the Defendant's stake holders and his legal counsel."
24. It is perhaps timely to look at the relevant provisions of the *Maritime Act* and the *Shipping Act*. Section 8 of the *Maritime Act* provides as follows:

"8. Authority to issue licences, certificates

- (1) *The Commissioner and every Deputy Commissioner are authorised to issue all such licences, certificates or other documents for officers and ship's personnel on vessels registered under this Act, as are*



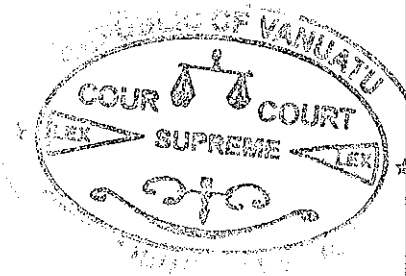
necessary or proper for carrying out the purposes of the maritime law or of any international convention to which Vanuatu is or may become a party."

"31. Conditions precedent to issuance of bareboat charter Certificate of Registry

- (1) Anything in this Act to the contrary notwithstanding a bareboat charterer of a vessel registered in a foreign registry may, where permitted by that foreign registry, obtain a bareboat charter Certificate of Registry for a period of not exceeding five years, on payment of a prescribed fee and upon presentation to the Commissioner or Deputy Commissioner of the following –
- (a) a written application;
 - (b) a copy of the charter party in a form satisfactory to the Commissioner or Deputy Commissioner and certified as true and correct by any person permitted to take oaths under section 21;
 - (c) proof of ownership, and consent of the registered owner of the vessel;
 - (d) consents of holders of all mortgages, hypothecations or similar charges against the vessel in the foreign registry;
 - (e) (repealed)
 - (f) written consent of the country of registry, or presentation of satisfactory evidence that such consent is not required;
 - (g) a certificate of ownership and encumbrance, transcript of registry, or other such document from the foreign registry showing all recorded liens and encumbrances.

25. It is the Defendant's submission that the Maritime Act provides bareboat charter agreement for vessels doing only international voyages and that the use of bareboat charter agreement for the purpose of operating vessels domestically in Vanuatu is outside the scope of the Act and vessels undertaking business of such nature should be considered unlawful.

26. The Shipping Act provides for the control and safety of Vanuatu vessels and it confers power on the Principal Licensing Officer to grant licenses and certificates under the Act. It provides in section 2 as follows:



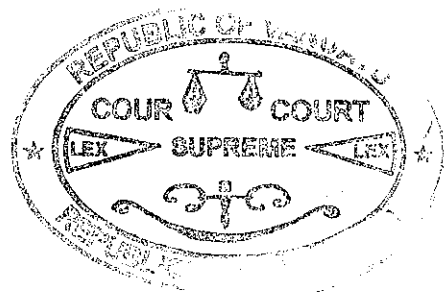
"2. Principal Licensing Officer and other licensing officers

- (1) *The Principal Licensing Officer must be the Commissioner of Maritime Affairs appointed under section 12 of the Vanuatu Maritime Authority Act [Cap. 253]. The Principal Licensing Officer may grant licences and certificates under the provisions of this Act and may appoint other licensing officers to grant such licences and certificates.*
- (2) *Subject to the provisions of this Act licensing officers shall exercise their powers, and shall discharge their duties subject to any general instructions which the Principal Licensing Officer may issue."*

27. The Defendant submits that the purported letter from the Minister to Mr Henry Worek, the PLO, instructing and/or directing him to issue certificates under the *Maritime Act* and the *Shipping Act* is unlawful, for reason that the Minister has no lawful authority to authorize the said shipping vessels to operate within the waters of Vanuatu.

28. To bolster his submissions, defence counsel Mr. Kent Tari referred the Court to case authorities such as **Moore v Harding** (1911) 30 NZLR 1227, a case in New Zealand involving legislation which authorised a licensing committee to make decisions on applications to sell liquor. The members of the licensing committee instructed a solicitor to refuse consent to an applicant, and he gave the decision. The Court issued certiorari to quash the decision because it was without legal authority, even though the solicitor had made it on the express instructions of the committee.

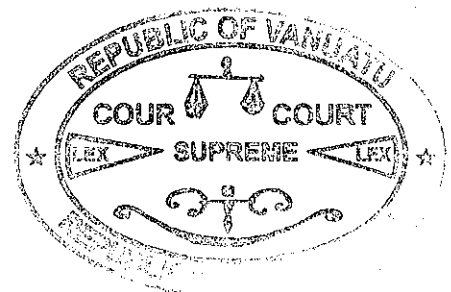
In **Cooper v Wilson** [1937] 2 KB 309; [1937] 2 ALL ER 726, a case involving a legislation in England which authorised the local police authority, called the *watch committee*, to dismiss members of the local police force. A chief constable decided to dismiss a sergeant of the local police force. The Court of Appeal made a declaration that this decision was ultra vires and void because the *watch committee* did not make the decision; instead, the chief constable made the decision, and he was not designated as the official with the authority to dismiss a sergeant.



28. Another case in point is that of **Barnard v National Dock Labour Board** [1953] 2 QB 18 where the Court of Appeal held that, the delegation by the London Dock Labour Board, a statutory body, of its disciplinary functions to a port manager, was unlawful. The manager's purported suspension of workers was therefore a nullity. Denning L.J. said -

" we are not asked to interfere with the decision of a statutory tribunal; we are asked to interfere with the position of a usurper These courts have always had a jurisdiction to deal with such a case.the courts of equity have always had power to declare the orders of a usurper to be invalid and to set them aside. So at the present day we can do likewise."

29. It seems clear from the above case authorities, that if a person who, or body which, takes action is not designated as the person or body authorised to take that action, the Courts will hold that the action is unauthorised, ultra vires and unlawful.
30. In this present case, it is my considered view that the Claimant had not complied with the requisite procedures for registration before the vessels departed from BP Wharf in Port Vila on 3 April 2011. To my mind, I fail to see how a ministerial directive could have clothed the Claimant's action with legality in the face of flagrant breach of legal requirements embodied in the provisions of the Acts as outlined above. Furthermore, I deem the so called "joint and collaborative decision" reached by the Minister and those present at the meeting to be mere "*orders of a usurper*" (see **Barnard case ibid**, at 42) without lawful authority and therefore invalid. I also find the Claimant's submissions on this issue unsound and untenable.
31. Accordingly, Question 1 should be answered "No." The Minister did not have the power to authorize the shipping vessel to operate within Vanuatu's domestic maritime waters.




32. In relation to question 2, I find from the totality of the evidence adduced that the arrest of the Claimant and the detention of the vessel on 13 April 2011 was lawfully made pursuant to the complaint lodged by the PLO. The Claimant has failed to make out any of the allegations of unlawful arrest and false imprisonment which he has pleaded. His claim is therefore dismissed.

33. In the circumstances, **Orders** are made accordingly as follows:

1. The Claim in Civil Case No.108 of 2012 is hereby dismissed.
2. The Defendant is entitled to costs against the Claimant on the standard basis. Such costs shall be taxed failing agreement.

DATED at Port Vila, this 30th day of June, 2014.

BY THE COURT


M.M. SEY
Judge

