

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

**Judicial Review Case 3486 of 2016**

**BETWEEN: Hilltop Limited**

**Claimant**

**AND: Minister of Lands**

**Defendant**

**AND: Societe De Services Petroliers S. A**

**First Interested Party**

**AND: Origin Energy Company Limited**

**Second Interested Party**

**Coram:** *Justice Oliver A. Saksak*

**Counsel:** *Mr Robert Sugden for the Claimant*  
*Mr Sakiusa Kalsakau for the Defendant*  
*Mr Mark Hurley for First Interested Party*  
*Mr Garry Blake for Second Interested Party*

**Date of Hearing:** *9<sup>th</sup> September 2019*

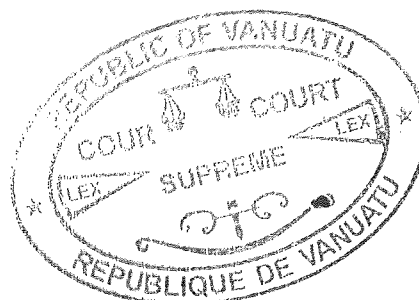
**Date of Judgment:** *16<sup>th</sup> September 2019*

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## **JUDGMENT**

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1. The Minister of Lands made a declaration on 7 September 2016 under section 6 of the Land Acquisition Act Cap 125 declaring parts of the land within the registered lease 11/OA14/009 in favour of the claimant to be taken under the Act to be kept by the State for pipe line services.
2. The claimant seeks a judicial review of that declaration on grounds that the decision made was unreasonable and was made ultra vires of section 6 of the Act, and that the exercise of such power was in breach of the claimant's fundamental rights under Article 5(1)(j) and (k) of the Constitution.



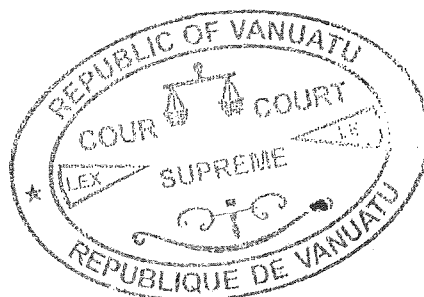
3. The claimant seeks an order quashing the declaration dated 7 September 2016 and a mandatory order requiring the defendant not to take any further steps under the Act in relation to the land in lease 11/OA14/009.
4. The defendant and the Interested Parties deny the claimant is entitled to any reliefs claimed. They say the Minister had lawfully exercised his powers under section 6 of the Act, for public purpose. The defendant and the Interested Parties say there is no breach of Article 5(1)(j) and that Article 5(1)(k) is not pleaded and should not be considered by the Court.

### Discussion

5. The facts are not in dispute. It is common ground that the claimant is the registered proprietor of registered lease 11/OA14/009 and that the defendant has given notice under section 6 of the Act of its intention to acquire part of the land in the claimant's lease. It is also common ground that the defendant has admitted there are cables and pipelines belonging to the Interested Parties (including Unelco and TVL) running through part of the land within the claimant's lease which carry and transport electricity, fuel, gas, water and communication lines. These are readily seen from the letters, email train and minutes of meetings annexed to the sworn statement of Cynthia Garaemwala.
6. It is also common ground these pipelines have been in place since 2007 but only discovered in 2014 by the claimant who threatened the Interested Parties with legal action. However no such legal action was taken until Civil Case 1714 was filed on 7 August 2017 which is currently stayed and pending the outcome of this judicial review application.

### Submissions

7. Mr Sugden raised a preliminary point in his submissions about the claimant bringing a constitutional application in disguise. In my view this is best left to be considered last.
8. The central and primary issue is whether or not the intended acquisition is within the meaning of public purpose as defined by the Act.



9. Mr Sugden submitted that as the pipelines belong to the First and Second Interested Parties who are private companies who are not licensees, the acquisition does not fall within the ambit of section 6 of the Act. Counsel argued that section 6 provides for acquisition needed for future use or purpose, not to protect past acts or actions.

10. Section 6(1) of the Act states:

“Where the Minister decides under Section 4 that a particular land or easement should be acquired under this Act, he shall make a written declaration that such land or easement is needed for a public purpose and will be acquired under this Act, and direct the acquiring officer to cause such declaration in the Bislama, English and French languages to be published in the Gazette.” (My underlining for emphasis).

11. The declaration was made in all three languages on 7 September 2016. The English version is taken in its full text as follows –

“DECLARATION THAT A LAND OR AN EASEMENT IS REQUIRED FOR PUBLIC PURPOSE UNDER THE LAND ACQUISITION ACT NO. 5 OF 1992

MINISTERIAL DECLARATION UNDER SECTION 6 OF THE LAND ACQUISITION ACT NO. 5 OF 1992

I, Honorable Ralph Regenvanu, Minister of Lands and Natural Resources, has decided under Section 4 of the Land Acquisition Act No. 5 of 1992 that parts of land described by registered survey plans 11/OA14/009 and 11/OA13/007 at Port Vila on the Island of Efate and identified by the attached map is to become state land or needed for public purpose. The Government intends to acquire the land for the purpose of keeping it for pipeline services and the Government is hereby taking the land under this Act.

The acquiring officer is hereby directed to cause this declaration in Bislama, English and French languages to be published in the Gazette.

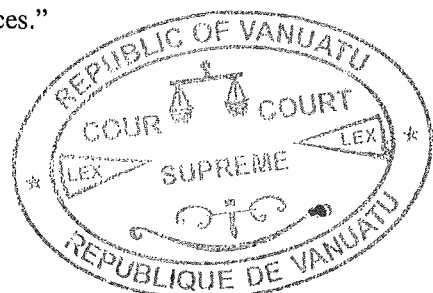
(Signed)

Ralph Regenvanu

Date: 07/09/2016

Honorable Minister of Lands and Natural Resources.”

(Underlining for emphasis).



12. There is no challenge the declaration was made and published in all three official languages.

13. I have placed emphasis by underlining the relevant words of the Declaration which are:-

**“....to become state land or needed for public purpose. The Government intends to acquire the land for the purpose of keeping it for pipeline services.....”**

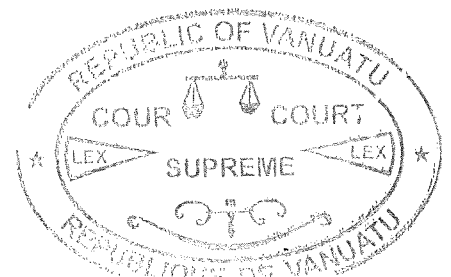
14. Reading these words in conjunction with the underlined words of section 6 of the Act, it is clear to me that the declaration is intended to acquire lands or easements for past, present and future purposes which are for the benefit of the public, contrary to the view expressed by Mr Sugden that section 6 is only meant to acquire lands or easements for future public purposes. The argument and submission by Mr Sugden is therefore rejected.

15. The argument that the declaration is meant to protect the interests of the interested parties who are private companies is untenable and is rejected. The pipelines passing under the land declared for acquisition are properties of the Interested Parties but the products or commodities passing through those pipes are for use by the general public including the claimant. Every household in Port Vila and Efate uses gas that passes through those pipelines. Every vehicle and motorist in Port Vila and Efate uses the fuel that pass through those pipes to the fuel stations. Therefore it is clear the pipelines are needed for the benefit and good order of the public at large and not simply for the two Interested Parties.

16. **“Public Purposes”** is defined in section 1 of the Act to mean **“the utilization of land necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the utilization of any property in such a manner as to promote the public benefit.”**

17. Taking that definition to mind, the question to ask is how would public safety, public order and public health be ensured if no such declaration for intended acquisition was made or be prevented or be opposed to being made?

18. The purpose of the acquisition of land is well and clearly stated in the declaration as **“for the purpose of keeping it for pipeline services....”** The American case of Texas Pipe Line Co v. Snelbaker (1954) 103 A. 2d 634 supports this view that the Court must look at the object, the purpose and the result. In this case a substantial measure of the public benefit from the acquisition



of the claimant's land, from the gaz and fuel carried in those pipelines which are currently on and in the land and for future installations to be made. It is clear therefore that the intended acquisition of the claimant's land in a small portion of it falls within the public purpose as defined in section 1 of the Act.

19. The terms “**public benefit**” used in the definition of “**public purpose**” are in my view the same as the terms “public interest” used in Article 5(1) of the Constitution and can be used interchangeably. Chief Justice D’Imecourt in Timakata v. AG [1992] VLR 9 made the clear distinction between matters of interest of the public and what benefits the public and be in their interests, and ended by saying –

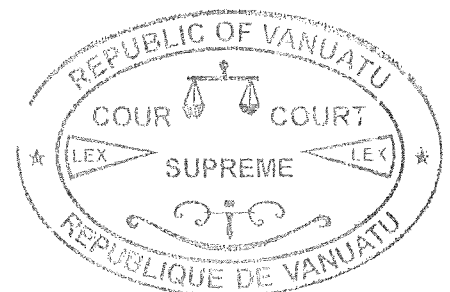
“The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of Government and Government Instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals.” (My emphasis)

20. The Constitution in Article 5(1) recognizes fundamental rights of all persons which include –
- “(j) right to protection for the privacy of the home and other property and from unjust deprivation of property;
  - (k) equal treatment under the law of administrative action, except that no law shall be inconsistent with this subparagraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under privileged groups or inhabitants of less developed areas.”

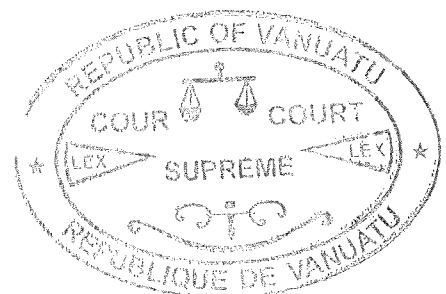
21. But there is a qualification that states –

“.....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.” (My emphasis).

22. Interests of defence, safety, public order and health are included in the definition of “**public order:**” in section 1 of the Act and is consistent with the qualification of rights and freedoms in Article 5(1) of the Constitution.



23. The State has power to acquire land in the public interest or for the benefit of the public under Article 80 of the Constitution. Parliament has enacted the Land Acquisition Act in 1992. This Act of Parliament has not been held to be unconstitutional.
24. The declaration of 7 September 2016 was made under Sections 4 and 6 of the Land Acquisition Act No. 5 of 1992 for the express purpose of “**public purpose and for keeping the land for pipeline services.**” This is clearly for the good order and benefit of the public at large in Port Vila, Efate and the rest of Vanuatu for that matter.
25. As such there can be no breach of the claimant’s rights under Article 5(1)(j) as alleged. Further there can be no breach of the claimant’s rights under Article 5(1)(k) as alleged although this was not pleaded in the claim as should have been. Section 9 of the Interpretation Act does not excuse the claimant from specifically pleading the breach.
26. It is interesting to note that the Ministerial declaration of 7 September 2016 also includes lease 11/OA13/007 which belongs to Claymore Ltd. There is no known complaints or objection from this company.
27. Along the same strip of land that has been declared for acquisition for the purposes of keeping pipeline services the claimant has recognized Unelco’s statutory rights to keep water mains and electricity cables. Further they have recognized TVL’s statutory rights to keep cables and pipelines for public communication. All these are accepted and recognized as for public purpose and benefit. By the same token are the pipelines of Origin and of SSP despite they are not sanctioned by any statutes, I accept Mr Hurley’s submission it would be incongruous and contrary to commonsense if SSP’s and Origin’s pipes were not treated in like manner.
28. I do not find any unreasonableness and/or excessiveness in the Minister’s exercise of power under section 6 of the Land Acquisition Act. And I do not find any breaches of any constitutional rights as alleged by the claimant.
29. I accept the submissions made by Mr Kalsakau for the defendant as supported by the submissions from Mr Hurley and Mr Blake for the First and Second Interested Parties. I reject the claimant’s submissions.



The Result

30. The claim of the claimant is unsuccessful and is accordingly dismissed.

31. This action has put the defendant and the Interested Parties to costs. They are entitled to their costs of and incidental to the action on the standard basis as agreed or be taxed by the Master. I order the claimant to pay those costs.

**DATED at Port Vila this 16<sup>th</sup> day of September, 2019.**

**BY THE COURT**

.....  
**OLIVER A. SAKSAK** \*

**Judge**

