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

CIVIL CASE No.6 OF 1999

IN THE MATTER OF: **A Mortgage dated the 28th day of September, 1993.**

AND IN THE MATTER OF: **The Land Leases Act 1983 [CAP. 163]**

BETWEEN: **TONY VITA**

Appellant

AND: **GIANCARLO CASTELLI** and **MITA FINANCIAL SERVICES LIMITED**

Respondents

Coram: **Acting Chief Justice Vincent Lunabek**
Justice Bruce Robertson
Justice John von Doussa
Justice Daniel Fatiaki

Heard by the Court: **C. R. de Robillard**

JUDGMENT

This matter was listed for hearing at this session of the Court. When the matter was called on the first day of the session, the Court was informed that notwithstanding the advice we had sought to give Mr. Vita earlier in the year he was anticipating that Mr. de Robillard would appear on his behalf. To meet that request we adjourned the matter until today.

For countless sessions of the Court of Appeal we have been faced with continuous arguments about the status of Mr. de Robillard as a legal practitioner within this Republic.

The provisions with regard to the right to practice are clearly set out in the Law Practitioners Act [CAP. 119] and Regulations. The starting point for any inquiry is the roll of barristers and solicitors which is required to be kept by the Registrar.

It is apparent from a reading of that roll that Mr. de Robillard was on the 4th of May 1992 entered upon the roll. It is clear on the face of the record that the entry was a "**T. P. C.**" that is he had a temporary practitioner certificate. In other words he was an expatriate counsel employed by a local solicitor for a specific case.

Mr. de Robillard has suggested that the letters "**T. P. C.**" were entered at some later date. We have no basis of knowing whether that is correct or not. But as Mr. de Robillard accepted in the course of discussion with us today it is clear that in 1992 that was the basis on which he came here. His entry on the roll could not have been in any other status at that time.

If there could have been any uncertainty about that issue it is in fact put to rest by the correspondence which is available involving Mr. de Robillard and the Law Council commencing in 1995.

When we raised with Mr. de Robillard this morning the question of the basis on which he sought audience he told us of some Law Council decisions which were taken in 1995. These were matters which had not previously come to the attention of at least some of the Judges. There are a number of files in the Court which include copies of orders over the name of the Attorney General in October 1996, but Mr. de Robillard told us of a decision of the Law Council in 1995 and a letter written pursuant to it.

We accordingly adjourned so that the Law Council files could be made available for our perusal.

The Attorney General properly required that before the documents could be made available to the Court there should be an order of the Court. There has been a little delay in fulfilling this requirement but it has been met and we now have copies of the relevant information.

It is clear that at the meeting of the Law Council held on the 09th of June 1995 a decision was taken. The Council approved the application of Roger de Robillard for admission but subject to him fulfilling the residency requirements of the rules.

The next reference which we can find to the position of Mr. de Robillard is at a meeting of the Council held on 25th April 1996 where it received and discussed a paper from the Attorney General which was as follows:-

"*REPUBLIC OF VANUATU*
LAW COUNCIL

Tabled By: *Attorney General*
Subject: *Removal of Roger de Robillard from the Roll*
Background
Roger de Robillard has been holding himself out to be a legal practitioner in Vanuatu since 1995. He may have been admitted as a barrister and solicitor but I am not aware that he has seem. However as previous secretary to the Law Council I know that Roger de Robillard –

a) Does not hold a Certificate or Registered Legal Practitioner.
b) Does not appear on the Roll of Legal Practitioner maintained by the Secretary (see extract).

Furthermore it is evident that de Robillard never and has not fulfilled the requirement of residency in Vanuatu as it is required by the Legal Practitioners Regulation (Qualifications) Order No. 29 of 1988, as amended, (see minutes of meeting of 9th June 1995). When de Robillard acted for Hon. Serge Vohor, and the Linis to challenge the elections of the Prime Minister and the Ministers on 23rd February, 1993 and his involvments in the events prior to 23rd February, it is clear that he was not a resident in Vanuatu.

My Office has been referred Hotel costs and expenses incurred by de Robillard, copies of which I attach hereto. By this, clearly de Robillard was a tourist and not a resident.

Recommendation
I therefore recommend that the Law Council reconsiders de Robillard's admission and to cause his name to be struck off the Register of Barristers and Solicitors.

Oliver A. Saksak
Attorney General"

The Council minutes of that meeting record the following resolutions:

"*(a) The Attorney General, Mr. Oliver Saksak tabled a paper before the Council stating to the effect that in October 1995 quite contrary to what was believed, Mr. Robillard was not permitted to practice as a barrister or solicitor in Vanuatu.*

(b) Although Mr. Robillard was granted permission in 1995 by the Law Council to be admitted , it was on the condition that he fulfill the residency requirement of the rules.

(c) He did obtain a residence permit in October, 1995 but had failed to take necessary steps to get himself enrolled, pay the necessary fee and obtain a practicing certificate in accordance with the Legal Practitioner's Act [CAP. 119] [A criminal act which carries a maximum penalty of two years imprisonment]. Due to his omissions the Council will not consider any future application for admission by Mr. de Robillard.

(d) The Council agreed that the Attorney General write to Mr. Robillard informing him to same."

It is clear that following that Law Council meeting, a letter was addressed to the legal advisor in the Attorney General's office on the 26th of April 1996 in the following terms:-

*"**REPUBLIC OF VANUATU***

LAW COUNCIL

Our Ref: AG 2/7/JIK/ig
CC: LCSF
All correspondence to:
The Secretary
Law Council
C/- Attorney General's
Chambers
Private Mail Bag 048
PORT VILA

26th April 1996

Patrick Ellum
Legal Advisor
Attorney General's Chambers
Private Mail Bag 048
PORT VILA

Dear Mr. Ellum

Re: Roger de Robillard

I am writing to confirm that, contrary to what was believed, Mr. de Robillard is not permitted to practice as a barrister or solicitor in Vanuatu.

Mr. Robillard was previously granted temporary admission to appear in a specific Court action subject to the usual condition that he be instructed by a local law firm.

During 1995 he applied for full admission and on 9th June the Law Council (of which you were then a member) agreed in principle to his admission subject to him fulfilling the residency requirement of the rules.

Although he obtained a residence permit in October 1995, he never took the necessary steps to get himself enrolled, pay the necessary fee and obtain a practising certificate in accordance with the Legal Practitioner's Act [CAP. 119].

It is therefore a criminal offence which carries a maximum penalty of two years imprisonment for Mr. Robillard to hold himself out as being a registered legal practitioner.

Yours sincerely,

Jack I. Kilu
Secretary of Law Council."

It is equally clear that this letter was copied to Ms. J. S. Nicol who, Mr. de Robillard has consistently told us, is his authorised agent in the jurisdiction and provides his address for service.

We should interpolate here our concern about Mr. de Robillard's apprehension as to what it means to be resident as a permanent legal practitioner in this jurisdiction. We accept that the question of residence can mean a variety of things in different circumstances. It is clear that the registration and right of appearance regime for lawyers in this country recognizes two separate and distinct groupings.

First, those who live and work here on a permanent basis, and occasionally go away out of the jurisdiction for business or on vacation. Secondly, people who are practitioners elsewhere but occasionally come into Vanuatu to appear as advocates instructed by local solicitors in particular cases.

It appears to us that some of the difficulties which have emerged may, in part at least, result from the fact that Mr. de Robillard appears to have spent a relatively small part of his professional time actually here in Vanuatu in the period which is under question. A permanent right to practice which is predicated on residence must in any event, involve some degree of continuing residence. A person cannot obtain and retain the right without maintaining residence within the jurisdiction in any reasonable way.

By letter of 2nd of May 1996, Ms. Nicol acknowledged receipt of the Law Council's letter and she raised issues in defence of the position of Mr. de Robillard.

The information which we have would suggest that the Law Council looked at this matter again on 26th of September 1996. We have not been provided with minutes of that meeting. However the inevitable inference from the letter of the 3rd of October 1996 signed by the Secretary of the Law Council is that the decision which had been taken by the Law Council in April 1996 as to the status of Mr. de Robillard, when considered again by the Council, was not altered.

The Law Council has clear statutory power. Any person who is aggrieved by the exercise of those powers has the right to judicial review. There has been before the Court in this very month an example of that occurring. There is no suggestion that any steps of that sort have ever been taken by Mr. de Robillard to challenge the Law Council's decision.

October 1996 was not a good month in the judicial and governmental system in this country. There were steps taken to remove from office the then Chief Justice, At first there was an endeavor to remove his right to be within the jurisdiction. Both steps were taken.

It is clear that the Government wished Mr. de Robillard to appear on its behalf in that litigation which emerged from those two steps. There are available to us two documents, one dated 22nd October 1996 and the other 24th October 1996. Both are signed by the Attorney General. One is clearly an authorization under the Law Officer's Act and there is no question of the Attorney General's ability to make such an order and the second, which is described as a **Certificate of Registered Legal Practitioner** is headed as being under Section 15 of the Legal Practitioners Act and Section 4 of the Law Officer's Act.

We have not been able to trace a jurisdiction which enables the Attorney General (notwithstanding his general powers of superintendence to appoint people as permanent lawyers without following the clear framework and requirements of the Legal Practitioners Act and the Regulations which are made under it.

We are unable to see how that document could in and of itself give Mr. de Robillard any right of audience in the Court. When it is read in association with the document of the 22nd October it makes sense. But in as much as it relates to the Law Officers situation it is to be noted that by

a document headed **Termination of Appointment** dated 14th March, 1997 Mr. de Robillard's appointment in that regard was revoked.

We have heard all that Mr. de Robillard has said about his perception that there is a determination on the part of people both within the legal profession and within the community to get rid of him and generally to make life difficult for him. We are not unmindful of the concerns which he expresses as perceiving. But this Court's task at the end of this long period in which all these uncertainties have existed is, simply, to follow the legislative provisions which exist to enable persons to practice in this jurisdiction and to look at the material and documentation which is available.

In summary the position is this. From 1992 Mr. de Robillard came to this Republic from time to time as a temporary counsel. He made application and the Law Council was prepared to grant him permanent rights which was subject to a condition. Before the condition was fulfilled the Council revoked its decision. Whether the Council acted properly, or lawfully, or fairly in that regard is not a matter which is before us.

We have time and again invited Mr. de Robillard to take proceedings to have his status clarified. He has from time to time told us he would do so but no formal steps have even been taken.

He today referred to two petitions before the Supreme Court but a quick look at those files indicates that one relates to a client's case which has been determined, and the other relates to his position when in gao

l in 1997. Neither are the appropriate process by which Mr. de Robillard could in a clear and unambiguous way have had his position simply determined.

He has suggested that the Court has an inherent ability to enable any person to appear as counsel whenever that is fair or just or reasonable. We are unable to accept that submission. This Republic, like any sovereign state, is able to create a legal framework which applies to anybody who wants to practice within its boundaries. Mr. de Robillard is required to follow those processes and procedures like anyone else wanting to practice here.

We are of course, as we have made clear for some considerable time, most anxious about how the Court will now deal with the problem of Mr. Vita and anyone else who has persevered in the belief that Mr. de Robillard could appear for them. But, on the basis of the evidence and information currently available, there is nothing which enables us to be satisfied that Mr. de Robillard has a right of audience before the Court at this stage.

He has told us that there are criminal proceedings pending against him, in this jurisdiction alleging that he has practised contrary to the provisions of the Law Practitioners Legislation. That is not something which we have direct or personal knowledge of. It is not a factor which weighs with us in determining this issue today. Whatever proceedings may have been

us in determining this issue today. Whatever proceedings may have been issued against him, nothing has been established on them. Therefore they cannot be taken into account in this assessment by the Court.

We are forced to conclude that Mr. de Robillard is unable to demonstrate that he has the ability to enjoy a right of audience in our Courts. Accordingly we refuse to hear him in respect of this matter and it would appear in respect of any matter where he is endeavoring to initiate or accept a new brief.

The Court has over a substantial period of time taken the view that matters in which Mr. de Robillard received instructions when he had temporary rights to appear can be completed.

We should also note that it appears to us quite inappropriate for a Court to grant him status as a "McKenzie friend". That would be simply to pervert the clear thrust of the legislative framework which is applicable in this area and we decline to do so in this instance.

Dated at Port Vila, this 08th day of October 1999.

BY THE COURT

.....
Vincent Lunabek ACJ. J.

.....
Bruce Robertson J.

.....
John W. von Doussa J.

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J. Daniel Fatiaki J.