

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Civil Appeal Jurisdiction)*

Civil Appeal Case No. 17 of 2012

**BETWEEN:** SANMA LOCAL GOVERNMENT COUNCIL  
Appellant

**AND:** GEORGE WELLS as Minister of Internal Affairs  
First Respondent

**AND:** THE ATTORNEY GENERAL  
Second Respondent

Civil Appeal Case No. 16 of 2012

**BETWEEN:** PENAMA LOCAL GOVERNMENT COUNCIL  
Appellant

**AND:** GEORGE WELLS as Minister of Internal Affairs  
First Respondent

**AND:** THE ATTORNEY GENERAL  
Second Respondent

Civil Appeal Case No. 15 of 2012

**BETWEEN:** MALAMPA LOCAL GOVERNMENT COUNCIL  
Appellant

**AND:** GEORGE WELLS as Minister of Internal Affairs  
First Respondent

**AND:** THE ATTORNEY GENERAL  
Second Respondent

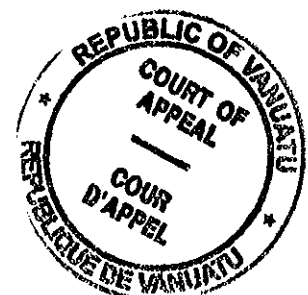
**Coram:** *Hon. Chief Justice Vincent Lunabek  
Hon. Justice John von Doussa  
Hon. Justice Ronald Young  
Hon. Justice Daniel Fatiaki*

**Counsel:** *Mr. Robert E. Sugden for the Appellants in CAC17/12 and CAC16/12  
Mr. Felix Laumae for the Appellant in CAC15/12  
Mrs. Viran M. Trief for the Respondents*

**Date of Hearing:** *2<sup>nd</sup> May 2012*

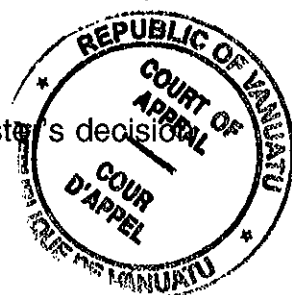
**Date of Decision:** *4<sup>th</sup> May 2012*

**JUDGMENT**



## Introduction

1. On 9 March 2012 the Minister of Internal Affairs suspended three Local Government Councils, Penama, Sanma and Malampa (together LGCs from exercising their powers.
2. He appointed commissioners to exercise those powers in their place. He appointed other persons to inquire into certain affairs of these LGCs. The three LGCs sought a declaration in the Supreme Court that the Minister's orders suspending the LGCs was of no effect and an order quashing the Minister's orders of suspension. The challenge to the Minister's order was heard urgently in the Supreme Court. The Judge dismissed the appellant's claims.
3. The Judge identified three grounds of challenge to the Minister's decision:
  - (a) That the decision was unlawful because it was for an improper purpose;
  - (b) That there was a breach of natural justice because the Minister neither told the LGCs of his concern before suspension nor gave them a chance to respond to his concerns prior to suspension; and
  - (c) No reasons were given for the Ministerial decision.
4. The Judge said the central challenge to the Ministerial order arose from the claim that the Minister's decision to suspend was motivated by the Minister's concern about the operation of the Northern Islands Stevedoring Company Limited (Niscol). Each of the LGC's were shareholders in Niscol together with the Torba Local Government Council and the Government. The Commissioners who on appointment became shareholders of Niscol then dismissed Niscol's CEO and replaced its Directors. The appellants argued the Ministerial concern about Niscol did not give the Minister a legitimate basis to suspend the LGCs. The Judge concluded that it did.
5. This appeal alleges:
  - (a) The Minister's purpose in suspending the LGC's was not for a purpose within the relevant statute, the Decentralization Act, and therefore for an improper purpose;
  - (b) The Minister failed to accord natural justice to the LGCs before suspending them; and
  - (c) The Minister's decision to suspend the LGCs was irrational (not raised in the Supreme Court).
6. The Supreme Court's rejection of the challenges to the Minister's decision was, the appellants say, therefore wrong.

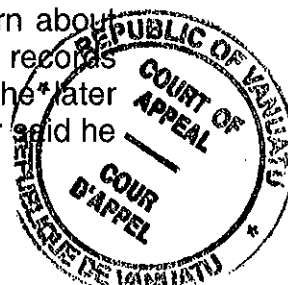


## Background Facts

7. The LGCs in Vanuatu provide limited services to local communities throughout Vanuatu. They were created by the Decentralization Act [CAP. 130]. Members of the LGCs are both elected and appointed. The Secretary to LGC, who is also the CEO, is appointed by the Public Service Commission. The Secretary is known as the Secretary General. A LGC cannot dismiss the Secretary General who is answerable to the Public Service Commission. Section 18J of the Act sets out the LGCs powers and duties.
8. On 9 March 2012 with immediate effect the Minister of Local Government pursuant to s.18L of the Act signed orders with respect to each of the three LGCs providing for an inquiry and suspending the exercise by each Council of all of its powers until 30 June 2012. He appointed investigators to inquire into specific matters in relation to each Council. The Minister appointed three public servants to act as commissioners having the powers of the Councils. There was considerable background to the order for the inquiry and the LGC suspensions. We consider the relevant background with respect to each LGC.

### *Penama Council*

9. As to the Penama Council the Minister of Internal Affairs had directed an inquiry with respect to particular issues relating to the Council in April 2011. The resulting report to the Minister made a number of recommendations relating to the functioning of the Council especially relating to its finances. The report made recommendations for remedial action. The report said there had been no dividends paid by Niscol to the LGCs. The report noted serious concerns about the informal payments made by Niscol to the Penama Council. In relation to Niscol the report said "*evidence of malpractices and corruptions is wide spread*".
10. Arising from this inquiry and report on 19 September 2011 the Minister gave nine directives to the Council including a directive to explain why VT500,000 received from Niscol had been paid to the Penama Council. The Minister directed the Council provide monthly reports to the Ministry so that he could monitor progress against the directives given. The Council replied to the Minister's directives on 17 November 2011.
11. No monthly reports were sent to the Minister. On 29 February 2012 (the letter was wrongly dated 29 March 2012) the Minister wrote to the Attorney General advising that after receiving reports about the LGCs including Penama and taking into account Penama's response to his directives he was not satisfied with Penama's response. He expressed concern about Penama's financial statements of accounts and lack of relevant records regarding company activities that Penama was engaged in. The later reference is likely to have been a reference to Niscol. The Minister said he



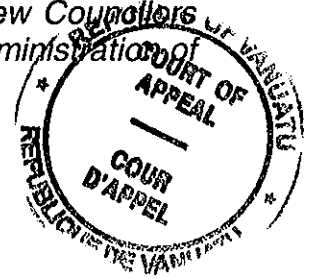
proposed to conduct an inquiry into the LGCs and recommended the temporary suspension of the LGCs' powers at the same time as the inquiry was undertaken. Shortly afterwards on 9 March the order for inquiry and suspension was made.

### *Malampa Council*

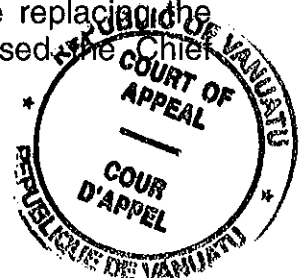
12. There was a similar situation with respect to the Malampa Council. On 1 April 2011 the Minister authorized an inquiry pursuant to Section 18L of the Decentralization Act of the Malampa Council. A number of recommendations were made in the report of the inquiry to the Minister. The recommendations related to keeping comprehensive financial information, the tendering of contracts, authorization of payments and the provision financial information. The report noted the Malampa Council had not received any dividend from Niscol and the only payments received were in the form of goodwill payments from Niscol to Malampa Council. Overall however the inquiry report said that the Council had been well managed.
13. The Minister then wrote to the Council on 23 August 2011 giving seven directives. They included a directive to advise the Minister of the destination of money received by the Council from Niscol. The Minister said the directives were given for a period of three months to the 23<sup>rd</sup> of November 2011 and he expected monthly updating reports from the Council. The Council did not respond until 28 November 2011. None of the three, monthly, reports were therefore provided to the Minister.
14. The Minister's letter to the Attorney General of 29 February 2012 also related to the Malampa Council (see 11 of this judgment). The Minister set out his concerns with respect to the LGCs. He advised that a person would be appointed to inquire into the LGCs and recommended the suspension of the powers of the LGCs immediately.

### *Sanma Council*

15. The Sanma Council was also the subject of an inquiry in April 2011 in similar terms to the other Councils. However there are some factual differences relating to this Council. As a result of the April 2011 inquiry a number of recommendations were made in the report to the Minister. The recommendations related primarily to the financial situation of the Council and with respect to the Councils' need to comply with its financial reporting obligation if it expected to receive its grant. The Minister however did not issue any directives to the Sanma Council. Cherol Ala the Director of Local Authorities in the Vanuatu Government in her affidavit filed in the Supreme Court explained that no directive was issued because the Sanma Council was about to have new elections and it was hoped that "*new Councillors will be elected at the election who will contribute to better administration of the Council*".



16. In early December 2011 the Government wrote to the Council advising it had unlawfully tried to dismiss the Sanma Council Secretary General. It reminded the Council that it did not have the power to do so. The exchange of correspondence between the Minister, the Public Service Commission and the President of the Sanma Council made it clear that there was a serious conflict between the Secretary General and the Council.
17. In late December 2011 the Sanma Council's President advised that he would be touring his constituency and he would use a Council vehicle. The Secretary General wrote to the Minister advising that there was no Council approval for the tour nor approval for the use of a Council vehicle. Ms. Ala then wrote to the President of the Sanma Council advising that she was considering suspending the Council's grant. She provided the Council however with the chance to respond to the complaints and criticisms. There was further correspondences between the Council and the Public Service Commission and the Minister regarding the Secretary General's position during December and January 2012.
18. In early February 2012 the Council's 2011 financial report was provided to the Finance and Audit Department. Ms. Ala said in her affidavit that the financial report illustrated a number of concerns about the number of bank accounts held by the Council, over spending and failure to collect outstanding debts. Shortly afterwards another dispute arose between Mr. Bule, the first Political Advisor at the Ministry and the Sanma Council regarding the provision of polling stations for parliamentary elections in the local area.
19. Finally Ms. Ala said that in early March 2012 she met with the Minister of Internal Affairs. They discussed matters regarding the Sanma Council. The concerns about the Council included *"the President having authorized the Treasurer to make payments without the Secretary General's approval, removal of Council assets without the Secretary General's authorization, recruitment of staff without Council decision and conflict of interest, mal-administration and misappropriation of public funds"*.
20. As with the other two Councils on 29 February 2012 the Minister wrote to the Attorney General advising he wasn't satisfied with the response of the Council and advising he proposed to appoint a person to undertake inquiry and advised he concluded the suspension of the Council was the most appropriate course. As we have noted on 9 March the Minister made an order pursuant to Section 18L of the Act suspending this Council's powers and appointing a public servant to inquire into specific issues with respect to the Council and others to exercise the powers of the Council in the meantime.
21. On the 16 March 2012 the three Commissioners appointed to exercise the powers of the LGCs (shareholders of Niscol) gave notice replacing the directors of Niscol with new directors who then dismissed the Chief Executive of Niscol.



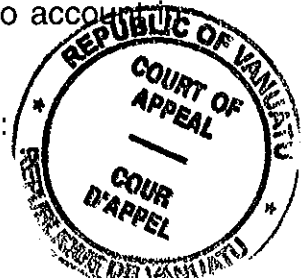
## Supreme Court Decision

22. The Judge in the Supreme Court noted that the essence of the LGC's case was that the Minister suspended their powers so that he could take control of Niscol. The LGC said this was an ulterior and improper motive for suspension not for the purpose authorized under the Decentralization Act. The Judge said there was evidence of long standing concern within Central Government regarding the governance and management of Niscol. The Judge concluded that given the coincidence in timing between the suspension of powers and the action with respect to Niscol (the replacement of its directors) the Minister must have had in mind the appointment of new directors when he suspended the Councils' powers. The Judge also noted the suspension could not have come out of the blue as far as the LGCs were concerned given the investigations and reports of 2011.
23. The Judge said that the decision to suspend was a carefully considered decision by the Minister. The Judge observed that the concern about Niscol required the Minister to act decisively and without warning given the possible threat to Niscol assets. The Judge rejected the claim that the Minister's consideration of the Niscol situation was a matter which should not have been taken into account by the Minister in reaching his decision to suspend. The Judge considered Niscol was an integral part of the financial make up of each LGC and therefore it was legitimate for the Minister to take into account the position of Niscol when suspending the LGCs.

## Improper Purpose

24. We consider firstly the ground of appeal relating to the claim the Minister used his authority to suspend the LGC's for an improper purpose that is a purpose not provided for in the Decentralization Act. The LGC's also complained that the Judge was wrong not to conclude that the only or predominant Ministerial purpose in suspending the LGC's powers was to give Central Government control of Niscol. The Judge in his decision accepted that a significant purpose of the ministerial order was to exercise control over Niscol. There is therefore nothing in this latter complaint.
25. The Republic did not challenge the Judge's conclusion that the Niscol situation had played a part in the Minister's decision to suspend the LGCs. The LGCs say the Niscol situation was outside those matters s.18L authorized the Minister to take into account when considering whether to suspend the LGCs. The Minister's decision was therefore based on an irrelevant consideration and should be quashed. We firstly consider the relevant legislative provisions, the facts relating to Niscol and whether the Minister was legitimately able to take the Niscol situation into account considering the suspension of the LGCs.

26. Section 18J (1) of the Decentralization Act provides as follows:



## **18J. General powers and duties of Councils**

*(1) Every Local Government Council shall be generally responsible for the good government of its Local Government Region and shall do all such things as it lawfully may and as it considers expedient to promote and plan for the health, welfare, economic and social development of the people in the Local Government Council Region.*

s.18J therefore gives legislative responsibility to Local Authorities for (amongst other matters) economic development.

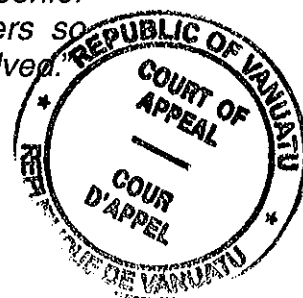
27. This section provides legislative background to Section 18L of the Act. This gives the Minister investigative, suspensory and dismissal powers over LGC's. Section 18L (1) of the Act authorizes an inquiry where the Minister "*suspects*", that a LGC has "*failed to observe and perform any of the duties and powers*", or where he considers the LGC lacked authority for its actions. Further subsection (1) (c) gives the Minister a wide discretion. He may order an inquiry where he is "*otherwise of the opinion*" an investigation should be made. In this case, the Minister exercised his power to order an inquiry pursuant to subsection (1) (c).
28. A Minister considering whether to suspend a Council pursuant to s.18L can legitimately take into account a failure by the Council to perform its duty to promote economic development in its area.
29. The orders for suspension were made pursuant to Section 18L (3) pursuant to the expediency provision. Section 18L (3) provides:

*"(3) If a Local Government 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 –*

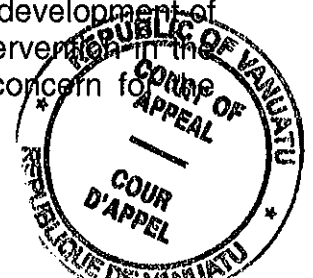
*(a) suspend the exercise by the Council of any of the powers conferred upon it by this or any other Act for such period as he may think fit; or*

*(b) dissolve the Council and, in his discretion, appoint or direct the election of new councilors;*

*and during such period, or, as the case may be, pending the appointment or election of new councilors, confer upon a public servant the exercise of any powers so suspended or of the powers of the Council so dissolved.*



30. In his affidavit Mr. Luke Shem the Finance Manager of the Ministry of Internal Affairs gave background to the development of Niscol. He said that efforts have been made by Central Government since at least 2004 to encourage LGCs to find further sources of income so that they would no longer be reliant on Central Government grants. Mr. Shem said that for the Northern Provinces including the appellants Niscol should have been a source of revenue. However Mr. Shem, who works on the LGC's financial accounts each year, said that Niscol has paid no dividends to any shareholder. The only payments received from Niscol had been donations or contributions to each of the four LGCs shareholders. These payments seemed to have been triggered when Central Government complained about a lack of dividend payments by Niscol.
31. Mr. Shem said that the last set of accounts available from Niscol is from the 2006 financial year when Niscol made a loss of over VT73 million. There had been no audited accounts produced since that date. Mr. Shem confirmed the issue of a dividend had been a long term issue between the Secretaries of the LGCs and the LGC's elected members. The financial accounts of the LGCs shareholders of Niscol had been inappropriately including each year a dividend from Niscol. Given no dividend in fact was being paid this entry improperly inflated the LGC's budget and revenue.
32. Mr. Shem noted that the Central Government had tried for many years to resolve the problem of Niscol's management with the LGCs but without success.
33. This evidence illustrates the connection between Niscol and the LGCs finances. The four LGCs shareholders held 90% of Niscol's shares with the Government a 10% shareholder. Niscol was established to provide dividends to the LGCs from its operating profits. Niscol was also no doubt providing essential services for citizens in the Northern Provincial area. The evidence of Mr. Shem also established there had been some years of discussion between the Central Government and the LGCs regarding Niscol functioning and Central Government's dissatisfaction.
34. Section 18J provides the LGCs are responsible for good governance and for the economic development of the people in their regions. The LGCs through their shareholding in Niscol have control of 90% of the company. Niscol was intended to assist in the economic development of each of the LGCs areas. There was therefore a close connection between the LGCs statutory obligations relating to the economic development in its area (s.18J) and its actions with respect to Niscol.
35. In terms of s.18L the Minister was authorized to suspend LGC powers where he was of the opinion that an investigation should be made into the affairs of the LGCs. We consider the Minister was entitled to exercise his powers in this case because the LGC's actions with respect to Niscol cast doubt on whether the LGCs were promoting the economic development of the people of their regions (s.18J (1)). The Minister's intervention in the LGCs by his suspension of their powers based on his concern for the





operation of Niscol was therefore within the statutory purpose for which suspension could be addressed.

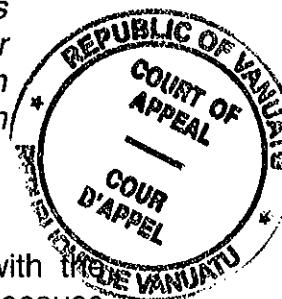
36. In reaching this decision we do not wish to be thought to suggest we consider that the Niscol issue was the only reason the Minister suspended the LGCs powers and ordered an inquiry. We have already detailed the events of 2011 and 2012 and the Minister's lack of satisfaction with the LGC's responses. The fact the Minister had concerns about the LGCs beyond the Niscol issue is illustrated by the extensive terms of the inquiry directed by the Minister under Section 18L (3) on 9 March 2012. These concerns were also reasons for the Minister's decision to suspend. It was not suggested suspension based on these concerns was for an ulterior or improper motive.
37. As an alternative submission counsel for the appellants submitted that any concern of Central Government regarding the operation of NISCOL was properly addressed through the Ministry of Finance. The Minister had the power pursuant to section 174 of the Companies Act [CAP. 191] to intervene when a company was not operated and managed according to the rules of the Act.
38. Section 174 provides as follows:

***"174. Power of Minister to present winding-up petition or petition under section 217 in consequence of investigation, etc.***

*(1) If, in the case of any body corporate liable to be wound up under this Act, it appears to the Minister from any report made under section 173 or from any information or document obtained under sections 183 to 188 (inclusive) that it is expedient in the public interest that the body should be wound up, the Minister may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.*

*(2) If, in the case of any such body corporate as aforesaid, it appears to the Minister from any report made or information or document obtained as aforesaid that its business is being conducted in a manner oppressive to any part of its members, the Minister may (in addition to, or instead of, presenting a petition under subsection (1)) present a petition for an order under section 216."*

39. s.174 has no application to the current facts. It is concerned with the winding up of a Company where it is just and equitable to do so because

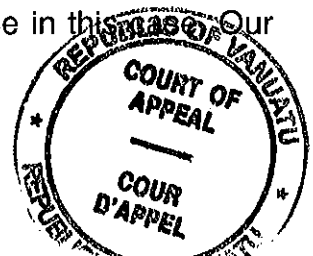


of concerns about its functioning. There is no suggestion that Central Government or indeed the Provinces wanted NISCOL wound up.

40. In any event the existence of the Ministerial power under section 174 would not prohibit a Minister moving against a company (here indirectly) such as NISCOL when the circumstances justify the exercise of his powers under s.18(L) of the Decentralization Act.
41. For the reasons given we are satisfied the Ministerial suspension of the LGCs was not for any improper purpose. We reject this ground of appeal.

### Natural Justice

42. The appellants' case is that before the Minister proceeded under s.18L (3) to suspend the LGCs he was obliged to give the LGC's notice of his concerns and provide them with an opportunity to respond to those concerns. The LGCs had a material interest in the exercise of the Ministerial power to suspend and were therefore entitled to expect that the principles of natural justice (procedural fairness) would be applied to the Minister's decision making. They submitted that such procedural fairness should not be excluded by the Decentralization Act. Counsel submitted that there was a reasonable opportunity for the Minister to give notice of his concerns in early March 2012 to the LGCs and for them to respond. His failure to do so meant he acted without procedural fairness and his decision to suspend should be set aside.
43. There are broadly two procedures available to the Minister under section 18 (L). The Minister, if he suspects failure by the LGC, may order an inquiry. If the inquiry reveals a problem of the type identified in subsection 1 (a) or (b) then the Minister may require the LGC to remedy the failure. If the LGC then fails to remedy the identified shortcomings then the Minister may suspend or dissolve the Council.
44. The alternative process is in subsection (3). If the Minister has cause to suspect that an inquiry is required or is otherwise of such an opinion then the Minister may also suspend or dissolve the LGC.
45. In this case the Minister ordered an inquiry because the Minister was otherwise of the opinion that an investigation should be made into the affairs of the LGCs. He then decided to suspend the LGCs. This approach is as we have observed specifically provided for in section 18L. Pursuant to section 18L (3) the Minister must consider it "*expedient to do so*" before he can suspend a LGC immediately after ordering an inquiry.
46. Ordinarily procedural fairness requires that a party potentially affected by a proposed decision be given notice of the concerns and have the opportunity to respond. We are satisfied however that the facts and the statutory regime create an exception to this general rule in this case. Our reasons are:

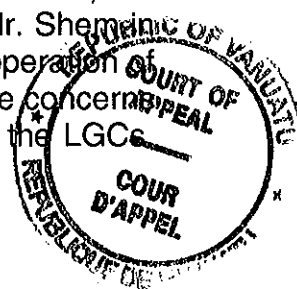


- (a) This was a preliminary decision only, to conduct an inquiry and to suspend in the short term;
- (b) There is a legislative process in s.18L (1) and (2) for procedural fairness if as a result of the inquiry further suspension or dissolution of a Council is being considered;
- (c) To require procedural fairness where the Minister considers it expedient to suspend pending inquiry would substantially derogate from the Ministerial power. It would frustrate the exercise of the power to suspend which has an important public interest component;
- (d) The suspension is a short term measure to facilitate inquiry only;
- (e) The use of the phrase "*expedient to do so*" illustrates Parliament gave the Minister a wide discretion and suggests a low level of review at this stage of the process.

47. The use of the term "*expedient to do so*" indicates that the Minister only needs to reach a conclusion that in the particular circumstances, in his assessment, the best way to proceed is to suspend the exercise of the Council's powers in the meantime.

48. In summary therefore to require the Minister to give the LGCs notice of why he was of the opinion that an inquiry was required and why he considered it expedient to suspend LGC powers in exercising the 18 (L) (3) authority would substantially reduce the effectiveness of the exercise of the s.18L power. Parliament has authorized the Minister to take immediate action to suspend where he considers it expedient to do so. To require the exercise of procedural fairness at this stage of the process could render the exercise of that statutory power meaningless. We are satisfied therefore there was no procedural fairness requirement in the process preceding the Minister's decision to initiate the inquiry and suspend the LGC's powers for a short period.

49. In any event we do not consider there was procedural unfairness in this case. We are satisfied that the LGCs had ample notice of Central Government's concerns including its concern about the Niscol. The LGCs also had the opportunity to respond to those concerns. We accept that the LGCs did not know that the Minister was considering immediate suspension. But informed with that knowledge the LGCs may have been able to say little more than express objection to the suspension. We have already detailed the 2011 inquiries and the Ministerial directives. We have also detailed the further events which gave rise to Ministerial concern. The LGCs responded to the Ministerial concern. The LGCs were, we consider, clear about what the Minister required of them. As Mr. Sherman's affidavit said, the Central Government's concern about the operation of Niscol had been the subject of discussion for some years. Some concerns about NISCOL were raised in the 2011 Ministerial directives to the LGCs.

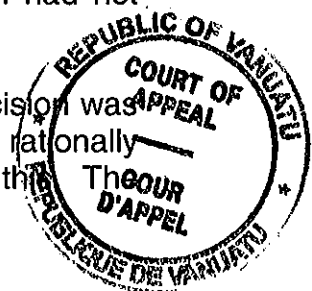


The LGCs were aware of Central Government's concern about the lack of dividends and its losses. The LGCs therefore had ample opportunity to respond to these concerns.

50. We are therefore satisfied that before the Minister made his suspension decision the LGCs knew of the substance of his concern which gave rise to the decision and had a chance to express their view about those concerns.
51. This ground of appeal fails.

### **Irrationality**

52. The final ground of appeal alleges the Minister could not on the facts known have rationally ordered suspension of the LGC powers. Counsel for the appellants submitted there was no reason to suspend their powers given each LGC had good reports from the 2011 inquiry. The inadequacies that were revealed in the inquiry reports arose from the actions of the Secretary General and not the LGCs. The Secretaries General were controlled by Central Government. Further even if it was necessary to suspend some of the LGCs' powers it was not necessary to suspend all such powers.
53. Section 18L (3) (a) gives specific power to the Minister to suspend the exercise of any of the powers conferred by the Decentralization Act on the LGCs. The Council in the Sanma Province had only just been elected and so the appellants submit it should have been given an opportunity to show it could exercise its powers according to the Act.
54. Counsel for the appellants accepted that the Minister had concerns about the operation of the LGCs but said it was unreasonable in the circumstances to suspend. Other alternatives were reasonably available.
55. We are satisfied there was ample evidence upon which the Minister acting rationally could have thought it expedient to order immediate suspension. To successfully challenge the decision to suspend the appellants had to satisfy the Court that such a decision was not reasonably available in the circumstances. This is a high hurdle. The Minister was only required by s.18L to have a suspicion or hold an opinion that inquiry was required and that it was expedient to suspend. Concern about the operation of Niscol had been expressed to the LGCs. LGC's had taken no steps to address what was a serious financial problem at Niscol. The Malampa and Penama Councils had been given directives arising from the 2011 inquiries. The directives had not been fully complied with. The Sanma Council had a series of issues with Central Government which had not been resolved (from late 2011 and early 2012).
56. This Court's function is not to assess whether the Minister's decision was the correct one. The appellant's must show it was not a decision rationally available to the Minister given the facts. They have failed to do this.

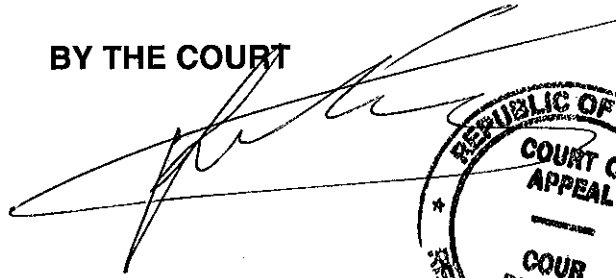


evidence detailed in this judgment illustrates the decision to suspend was one reasonably open to the Minister.

57. The appellant's submission that the Minister could have suspended only some of the LGC's powers is we think unrealistic. The appellants did not identify what powers might not have been suspended and what powers might have been. The suspension is for a short time and the suspension of some but not other powers in the short term would have made governance of the LGCs extremely difficult.
58. For the reasons given therefore we are satisfied that the Judge's decision in the Supreme Court was correct. The appeals will be dismissed. The first and second respondents are entitled to costs on a standard basis. One set of costs only is payable although there were three appeals. Each Council is jointly and severally liable for the costs awarded.

**DATED at Port Vila, at 4<sup>th</sup> of May, 2012.**

**BY THE COURT**



Chief Justice Vincent Lunabek

