

IN THE EFATE ISLAND COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No 43 of 2005

BETWEEN: Chief Andrew Pakoa Kalpoelep
Applicant

And: Eratap Chiefs, Community & Area Council
First Respondent

And: Department of Geology, Mines and Water
Resources
Second Respondent

And: Vate Industrie
Third Respondent

And: M.C.I
Fourth Respondent

And: Security Company
Fifth Respondent

And: Mr Perronet
Sixth Respondent

And: Ifira General Services
Seventh Respondent

Coram: Justice Jimmy Meamea Dollar
Justice Kalkot Kalotiti Mormor
Justice Lucy Sandy

Date of Hearing: 13th December 2005
Date of Judgment: 10th March 2006

Judgment

This is an urgent application dated 7th November 2005, filled by Chief Andrew Pakoa Kalpoelep seeking orders that:

- Respondents oli no allowem any man blong Extractem sand long Teouma bay.
- That first respondent oli no collectem payment blong sand.
- This Court icanselem quarry permit VA 25001 Blong Eratap community Council.
- First respondent oli ko bak long jail follem Judgment blong Civil Case No. 29 of 2005.
- Respondents oli pem cost.
- Any other orders we this Court deems fit.

Whereas, on the 7th day of November 2005, an urgent application has been filed before this Court under the Provisions of section 19 of the Island Courts Act No. 10 of 1983 on the basis that:

- Long namba 20th July 2005 Efate Island Court ipanisim first Respondent from oli contempt of Court Order.
- Afta we Efate Island Court ipanisim first respondent, olgeta Oli holem key blong entrance iko long Teouma sand.
- First respondent Efate Island Court ipanisim olgeta blong ko long jail, but ireleasem olgeta on bail mo oli contempt of Court Orders long 1st November 2005 before oli receivim letter blong liftemap suspension long quarry permit blong olgeta.
- Long Tuesday 1st November 2005, Mr Thomas Tau, Chairman blong Eratap Chiefs Community and Area Council istap toktok wetem driver blong digger blong Mr Robert

Monvoisin long main road stret long entrance iko long Teouma sand.

- Long Tuesday, 1st November 2005, digger blong Mr Robert Monvoisin iko long Teouma Bay mo extractem sand.
- Commissioner blong Department of Geology, Mines and Water Resources, Mr Tony Tevi hemi well aware long orders blong Efate Island Court, Civil Case No. 85 of 1994 mo hemi suspendem quarry permit VA 25001 blong Eratap Community Council long 18th July 2005. (*Annexed hereto and marked "TBC 2" is a true copy of suspension of quarry permit*)
- Long Thursday 3rd November 2005, Mr Tony Tevi, Commissioner blong Department of Geology, Mines and Water Resources hemi upliftem suspension blong quarry permit VA 25001 blong Eratap Community Council we hemi mekem long 18th July 2005 folem advise blong State Law Office. (*Annexed hereto and marked "TBC 3" is a true copy of letter uplifting suspension.*)
- First respondent mo second respondent tufala iwel aware Long Orders of Efate Island Court long Civil Case No. 29 of 2005.
- First respondent hemi defendant long Civil Case No. 29 of 2005.
- Mr Thomas Tau, Chairman blong Eratap Chiefs, Community And area Council hemi openem gate mo allowem digger mo camion iko extractem sand taem hemi save gud se ikat wan restraining orders istap inforce.
- Responsibility blong informem mo stopem respondents 3 mo 4 long orders mo judgment blong court istap long hand blong Eratap Chiefs, Community and Area Council from oli holem key blong entrance iko long Teouma bay. Judgment long Civil Case No.29 of 2005 iread olsem: *"It all falls in the hands of Eratap Chiefs, Community and Area Council. It is*

their responsibility to inform the Department of Geology and Mines of the Orders of this Court. This Court assumed the defendants gave total ignorance to the order when causing the quarry permit to be issued and hiding behind this permit to continue breaching the restraining orders.” (Annexed hereto and marked TBC 6 are true photos of extraction at Teouma Bay)

- Long Saturday 5th November 2005, Vate Industrie mo M.C.I. Tufala icontinue blong extractem sand long Teouma bay.
- Long Monday 7th November 2005, first respondent oli allowem Ifira General Services blong oli ko extractem sand long Teouma bay but agents blong mi oli stopem olgeta.
- First respondent mo second respondent tufala istap exertem Wan disrespect mo disobedient influence long orders blong this honorable Court.
- Mi askem this honorable Court blong kivem wan strong Panismen long Thomas Tau, Chairman blong Eratap Chiefs, Community and Area Council mo Mr Tony Tevi, Commissioner of Geology, Mines and Water Resources from tufala icontempt of this Court orders two times.

The applicant presented the facts before this Court that, the respondents were in breach to extract sand at Teouma bay on 20th July 2005, the first respondent was found guilty and accordingly was sentenced to prison. But yet, continue to develop sand at Teouma bay. The applicant also seeks to this Court to re-sentence the first respondent to prison as per Court Order dated 20th July 2005.

He claimed that Mr Tony Tevi, Commissioner of mine, on behalf of the second respondent abused his power in uplifting the quarry permit VA 25001 and has cause confusions to other respondents in breaching the Orders of this Court. He mention that Mr Tevi was fully aware of the Orders made by this Court on 20th July 2005, but did not comply to the contents of the Orders, but instead, uplifted the quarry permit VA 25001.

The applicant accused third and fourth respondents that, they were fully aware and served with the Court Orders of 20th July 2005 but took full ignorance off and continued to extract sand at Teouma bay.

He also accused fifth respondent, that they play an impressive role in providing security over the area mention. And he claims that he (*Applicant*) was declared custom owner of Eratap Village by Eratap Land Tribunal, but the First respondent did not allow him to extract sand.

He then accused the sixth respondent that, Mr Perronet was well aware and did serve with the Court Orders of 20th July 2005 and took full ignorance to the face of it and the same as Ifira General Services, seventh respondent that, the applicant said he had a direct conversation with him and informed him about the Court Orders of 20th July 2005. And he also emphasized that Court Orders of 22nd April 1998 should and must be treated seriously and prayed before this honorable Court that, the quarry permit VA 25001 must be suspended by this Court upon this application.

In reply, Mr Thomas Tau, the first respondent submit that, the basis of this urgent application has all falls in the Court Orders of 20th July 2005 that, has been appealed to the Magistrate's Court and awaited for its Judgment. He further insisted that, we are operating with a legal quarry permit No. VA 25001 that has been granted to us and we are not in breached of any Orders of 20th July 2005. And if the applicant wishes to further his application, he should challenge the said quarry permit to the Supreme Court.

Mr Tony Tevi, on behalf of Geology, Mines and Water Resources, confirmed that, on 18th July 2005, he made a letter to Eratap Chiefs, Community Council for the suspension of the quarry permit VA 25001. And I quote ***"Upon receiving Judgment on Civil Case No.18 of 2005 and with particular reference of order 3 of the Judgment, I am suspending the above said license due to conflict of conditions stipulated under the license issued and that of the Order issued by the Island Court"***. And he emphasized that, the period of this suspension of the said license will be considered upon further consideration of this matter.

He also confirmed that, he made a second letter dated 3rd November 2005 to the Chairman of Eratap Community Council, and I quote ***"That upon the advise of State Law office, I am uplifting the suspension of quarry permit VA 25001. You may commence extracting sand at the prescribe site Teouma Bay today 3rd November 2005 while comply with the conditions stipulated on the license."***

And, Mr Tevi stated the reasons why, he must uplift the suspension of quarry permit VA 25001 that has been suspended on 18th July 2005. He mention that, the sand on Mele bay has been banned for some reasons and due to the number of demands by the public and private companies in Vila to get sand, has caused his office in duress and this also extended to where the Ministry concerned is affected. He mentioned that, the Minister instructed him, to do something to assist the public demand. Therefore he mentioned that, he seek advise from the State Law Office and Mr. Tom Joe Botleng verbally advised that, due to national interest, you must uplift the quarry permit VA 25001.

The Court summoned, Mr Tom Joe Botleng, from the State Law Office and he confirmed Mr Tevi's statement and added that, due to Ministerial Order to open Teouma bay sand, we verbally advised the followings, that due to national interest, you are advised to uplift the quarry permit VA 25001, dispute of custom ownership over the area be determined by the Island Court. In relation to all payments of royalties, funds must be held into Government Trust Account until the Efate Island Court determined the rightful custom owner of the area.

And thereafter such royalties may be released to the custom owner. He tendered a document to Court in which, the director of Finance Mr Benjamin Shing confirmed in his letter to Mr Tony Tevi, on 3rd February 2006, and I quote ***"With reference to the above subject matter and the Orders from the Efate Island Court attached thereto, requesting any necessary document to prove that funds are held in a government trust account. I write to confirm that funds are indeed being held in the Mineral royalties trust account, TF0050. Should you require further information regarding this account please do not hesitate to ask."***

And he conclude that, the procedures in which, Eratap, Chiefs, Community and Area Council has, to obtained the quarry permit VA 25001, has being followed and are subject to the rules.

In reply to this statement, the applicant, Chief Andrew Pakoa Kalpoelep denies these statements as saying, perhaps it could be any funds of all minerals resources in Efate or from different Islands in country that are held in the same trust account. And also, records of payment of sand are not kept probably. I did not attend the meeting called by Commissioner of Mines and State Law Office to discus the quarry permit process due to the fact that, the area in which Teouma sand is situated is in dispute and pending hearing before the Efate Island Court.

Mr Tevi, on behalf of second respondent explained that, funds that are held in Government trust account has a code named number. Payment of sand at Teouma bay, has been paid directly to the account code number that has held in Government trust account.

Upon hearing submissions and arguments presented before this honorable Court, the Court found the following issues that:

- There is breached of Orders of this Court dated 20th July 2005.
- The Quarry Permit VA 25001 has been suspended on 18th July 2005 and was re-uplifted on 3rd November 2005.
- Funds in which are subject to these application are held in Government trust account.

Upon carefully considering the findings of facts presented before these Court, it is satisfied that Mr Tony Tevi, the second respondent, on behalf of Geology, Mines and Water Resources has breached the Orders of this Court, that on which, being well aware to his knowledge and understanding suspended the quarry Permit VA 25001 on 18th July 2005. And thereafter, upon the instructions from the Minister, and on the advised of the State Law office, made a letter to the Chairman of Eratap Community Council, to be informed about the uplifting of quarry permit VA 25001.

The Court is also satisfied that, Mr Thomas Tau, first respondent, on behalf of Eratap Chiefs, Community & Area Council is in breach in lieu that, he has all the property such as keys of the main entrance where the sand is located and other properties that are not removed and still operating during Orders of this Court dated 20th July 2005. This Court assumed that during the suspension period of quarry permit VA 25001, the second respondent used the fifth respondent to provide security over the site.

The Quarry Permit VA 25001, in the opinion of this Court, is an administrative matter and can't be challenged or cancelled before this Court. This Court has only limited power under section 13, as mention in the Island Courts ACT CAP 167. The appropriate Court in which this quarry Permit can be cancelled or challenged is the Supreme Court.

And also, the Court is satisfied that, the payment of sand at Teouma bay were held in Government Trust Account, as confirmed by the Director of Finance Mr Benjamin Shing. If the applicant wish to seek for further clarification and information concerning the Trust Account held by the Government, may apply to an appropriate Court.

Therefore, the Court makes the following Orders:

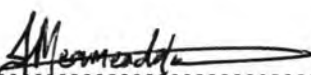
1. That Mr Thomas Tau, first respondent, on behalf of Eratap Chiefs, Community & Area Council had in breached Orders of 20th July 2005 and Ordered to pay a fine of VT24.000 or 6 months imprisonment. Payable by 30th April 2006 before 4.30pm.
2. That Mr Tony Tevi, second respondent, on behalf of Geology, Mines and Water Resources had in breached of Orders of 20th July 2005 and Ordered to pay a fine of VT52.000 or 52 weeks imprisonment. Payable by 30th April 2006 before, 4.30pm.
3. That, Third, fourth, fifth, sixth and seventh respondents pay cost of VT2.000 each to the applicant. Payment must be made on 30th March 2006, before 4.30pm.

4. Party has liberty to appeal within 30 days.

Dated at Port Vila, this 10th day of March 2006.


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Justice Lucy Sandy


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Justice Kalkot Kalotiti Mormor


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Justice Jimmy Meameadola



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