

IN THE EFATE ISLAND COURT
HELD AT PORT VILA

(Civil Jurisdiction)

Civil. Case. No. 03 of 2008

BETWEEN:

CHIEF WAYA TENENE
Applicant

AND:

CHIEF KALMETABIL KALMET
NMAK
Respondent

AND:

RIDGWAY BLAKE LAWYERS
Respondent's lawyer

AND:

CHIEF KALORUK LALIE
KALOMTAK NMAK
[Intended Substitution in Place of Chief
Kalmetabil Kalmet Nmak, (Applicant)]

Coram: Justice Ann Carlo
Justice Tomson Andrew
Justice Sam Marpakoa

Clerk: Jona Mesao

Date of Hearing: 2nd October 2009

DECISION

Court emi bin sitaon long 2nd October 2009, blong harem wan application we Applicant Chief Kaloruk Lalie Kalomtak ibin faelem long ofis blong Island Court long 29th April 2008. Application we Chief Kaloruk Lalie Kalomtak imekem ikam long Court ia emi blong Court ia iusum discretion power blong em blong tekemaot Order 1 or amendem Order 1 blong Efate Island Court Judgment blong 7th August, 2002 mo putum nem blong Applicant long ples blong Respondent.

In response long application blong Applicant, we ifaelem long 2nd October 2009, Respondent's spokesperson, Mr Timteo Kalmet ifaelem wan counter application long 2nd October 2009 blong Court ia istrikemaot application blong Applicant long basis se Applicant emi no party long Civil Case No. 1 blong 2002. Bifo Court emi proceed, blong harem application blong Respondent, Chief Kalmetabil Kalmet Nmak, Applicant imekem olgeta following applications;

- (a) *Justice Ann Carlo emi mas be disqualified from reason se emi bin part long Justice panel we oli mekem decision long civil case No. 1 blong 2002. mo emi no save sitaon bakagen blong harem application ia.*



- (b) *Mifala ino kat enough time blong lukluk long application blong Respondent from we mifala ijies recivim late this morning bifo Court emi convene.*
- (c) *Mifala iaskem blong Court isave usum nomo ol Justices blong south Efate blong oli preside long case ia from we olgeta oli save gud custom blong south Efate.*

Afta we Court iharem verbal applications ia we Applicant Chief Kaloruk Lalie imekem mo considerem ol informations we ikam bifo long hem, Court imekem olgeta decisions olsem.

Long application (a) mifala ilukluk se essence blong matter ia emi originally decided finis long Civil Case No. 1 blong 2002, long 7th August 2002. Application we istap bifo long Court ia tedei emi blong Court ia isatisfy upon evidence blong tekemaot fulwan Order 1 blong Island Court Order blong 7th August 2002 olsem we istap long application. Section 26 blong Island Courts Act CAP 167 emi provide se;

"If a justice or an assessor has any personal interest or bias in any proceedings he shall be disqualified from hearing the same"

Mifala iluk se particularly long application blong Applicant ia, ino kat any issue we concern Justice ia emi shud be disqualify or bias long em. Essence blong matter ia emi decided finis long 2002. Therefore, mifala ifaenem se objection blong Applicant Chief Kaloruk Lalie emi no well founded, so application (a) emi fail.

Long application (b) mifala iluk se application ia ino nidim tumas time or weeks blong Court ia isave allowem Applicant blong ilukluk long em, from reason se emi no wan claim; blong Applicant, Chief Kaloruk Lalie isave tekem plante taem olsem we emi seekim, blong response or mekem defense statement blong em olsem we Rule 2, blong Island Court Civil Procedure Rules italem. Application (b) emi fail.

Long application (c) mifala iluk emi injustice sapos Court ia emi usum nomo ol Justices blong South Efate blong oli sitaon mo harem application blong Applicant, Chief Kaloruk Lalie. Power blong jusum ol justice emi stap long Clerk blong Court olsem we Section 3 (4) blong Island Courts Act CAP 167 emi talem. Motu mifala iluk se sapos Court iusum nomo ol Justices blong South Efate, decision we mbae imade long taem ia mbae ibias. Therefore; also application (c) emi fail.

Court iproceed nao blong harem application blong Respondent we spokesperson Mr Timteo Kalmet ipresentem bifo long Court ia, mo Mr Kalmet italem se basis blong application blong em, blong honorable Court ia istrikemaot application blong Kaloruk Lalie emi from we, Applicant emi no wan party long Civil Case No. 1 blong 2002. Emi no kat locus standi blong mekem application ia ikam long Court ia. Mr Kalmet emi talem se sapos, Applicant iwish blong joen olsem wan party long application ia, emi mas apply ikam long Court blong askem permission; blong Court isave allowem em blong join olsem wan party insaed long case ia. Hemi klia se Kaloruk Lalie emi in breach long law taem emi apply from case ia, from we emi wan closed matter mo inogat emi jurisdiction




blong Court we isave muvum bakagen. Applicant emi bin givim evidence finis long 2002 mo 2004 respectively olsem wan witness blong Sual Kalmarie mo rulings blong 7th August 2002 mo 16th April 2004 ikavremap presence blong Kaloruk Lalie finis abaot involvement blong em long case ia.

Long response blong Applicant, Chief Kaloruk Lalie emi talem se mi no kat enough taem blong preparem ol response blong mi motu mi no redi blong preparem spokesperson blong mi. Reason emi from we mi jes receivim application blong Respondent this morning bifo Court emi convene. Applicant emi talem tu se emi stap prepare from wan maret motu attendem some Court sittings we emi involve long em, mekem se emi no kat enough taem blong preparem em, long application we Respondent emi faelem againsem em.

Afta we Court iharem ol toktok we tufala parties ipresentem bifo long Court ia, Court ia isatisfy se Applicant, Chief Kaloruk Lalie emi no wan party inside long Civil Case No. 1 blong 2002, blong emi save muvum Court ia iconinue blong harem application blong em. Therefore, Court ia emi strækem aot application ia under long Order 8 (2), subsection (2) blong Subsidiary Legislation blong Island Courts Act CAP 167. Ino kat Order blong cost.


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Justice Sam Marpakoa


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Justice Tomson Andrew


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Justice Ann Carlo

