

BETWEEN :            THE ATTORNEY GENERAL  
representing the Government  
of Vanuatu

-Plaintiff

AND :                 JAMES YAVIONG AND OTHERS

- Defendants

Coram :            Magistrate Bruce S. Kalotiti Kalotrip

Mr Oliver Saksak for the Plaintiff

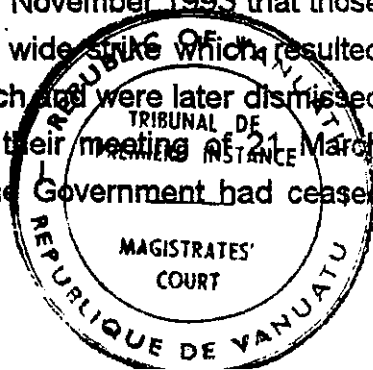
Mr Silas Hakwa for the Defendants

### J U D G M E N T

The Plaintiff is the Government of the Republic of Vanuatu. The Defendants are the Civil Servants involving themselves with industrial action.

The last twelve Civil Case files are now being dealt with except one file being that of Hilson Toaliu by leave of the Court to be dealt with separately.

All the cases are similar in nature, they speak of the same issues. The defendants namely James Yaviong, Seule Simbolo, Philip Tasale, Plas Karli, Leinearu Thatwin, Thomas Sperry, John Laan, Alfred Kalontas, Amon Gwero, Jack Taseru and Liency Ala. The defendants were considered public Servants of the Government of Vanuatu whose employment are determined under provisions of the Public Service Act. It was not until November 1993 that those defendants decided to join hands with the nation wide strike which resulted from their suspension on 10th January 1994 at which date they were later dismissed from work by the Public Service Commission of their meeting of 21 March 1994 at which date their respective services to the Government had ceased accordingly.



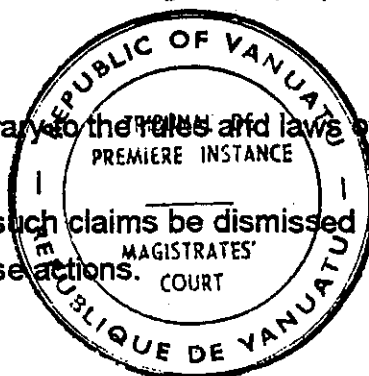
The facts of the case being that the Plaintiff claims to be owner of the various premises currently under the defendants occupancy all of which are located in different areas of Port Vila. The Plaintiff claims the following :-

1. Repossession of the said various premises
2. Areas of rent since dismissal
3. Mesne profits until surrender of their various premises and
4. Costs of the proceedings

Following attendance of the Writ of Summons to the respective defendants, the counsel for defence filed appearance on each case together with defences and counter-claims in which they each deny that the premises were let to them on a monthly tenancy and each deny that such tenancy was determined either on 30th May 1994 or 6 June 1994. By way of Counter-Claim, each of the defendants says :-

1. each admits the fact that the Plaintiff is the owner of the premises
2. each admits that the dwelling were let to them
3. In their capacity of being Public Servants, they are still entitled to Government premises therefore their tenancies are still valid and continuing.
4. They are still entitled to occupy those Government houses
5. They were not given any valid reasons as to such purported eviction from their premises.
6. The Plaintiff failed to recognise their rights in purporting to evict them and
7. The Plaintiff has acted contrary to the rules and laws of natural justice.

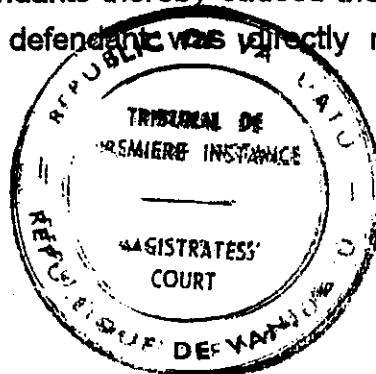
They then submit their claim that such claims be dismissed and the Plaintiff to pay them the costs involved in these actions.



These cases went by way of a Trial - Since there was no clear line of distinction between each of the eleven cases their issues are indeed the same all over. Each one if called upon to give evidence on oath will be giving the same answers throughout the trial period in which the defence counsel made an application if two out of eleven of the defendants could be called upon for examination on oath since he had made it clear that there would not be of any differences in their stories if each gave his evidence to which it was approved in the light of such application. James Yaviong gave his evidence first followed by Seule Simbolo on behalf of each and everyone of their colleagues. They in fact admitted in evidence that the plaintiff is the owner of the various premises which were let to them on the basis of their employment which constitute part and parcel of their terms and conditions of service as public servants.

The Plaintiff on the other hand gave in evidence that they are the landlord of the premises presently occupied by these eleven defendants. Four witnesses were called to give evidence for the Plaintiff. Mr William Mael - the Chairman of the Public Service Commission, André Lesines Acting - Director of the Public Service Department, Henry Crowby - Housing Officer and John Makal, Assistance Housing Officer of the Government. The last two witnesses gave evidence that they have served on each defendant notices to quit.

Mr William Mael gave evidence to show that the Public Service Commission, authority vested with power to appoint all the defendants had exercised the same power to terminate the service of the same defendants at their meeting held on 14th March 1994. He went on to say that it was on such grounds that the Public Service Commission had revoked all suspension letters of 10th January 1994 and dismissed the defendants informing them with letters dated 21st March 1994. Mr André Lesines gave evidence with respect to the implementation of decision taken by the Commission at its meeting of 14th March 1994. He implemented such decision by virtue of power delegated to him in his capacity as an administrative arms of the government to write letters of dismissals to the eleven defendants thereby caused them to be sent to the appropriate departments each defendant was directly responsible or was employed under.

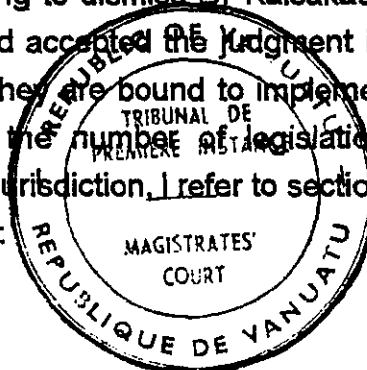


From the main grounds of defence, all the eleven defendants were not properly terminated in accordance with the true spirit of the constitution of Vanuatu, the Public Service Act - CAP 129 and the Staff Manual - They each claim that while on suspension they should have been paid into disciplinary charges and be given a fair hearing by the Disciplinary Board under Section 10 of the Public Service Act.

The lawyer for the defendants Mr Hakwa in his submission pointed out that the issue is similar to Johna Ala, Civil case No. 66 of 1994 which means that the Plaintiff must satisfy the Court that each of the defendants has lost his entitlements with the government premises and privileges plus other benefits. He also pointed out that the evidence produced by the Plaintiff is exactly the same as that in Civil Case No. 66 of 1994 except that :

The Chairman of the Public Service Commission, Mr Mael was not at that time in the Court to give his evidence as to the purporting to dismiss the Public Servants. He gave in evidence that what the commission did was right since they are not subject to anybody's control. The Prime Minister's letter sent to the Public Service Commission dated 28th March 1994 urging them to re-instate the defendants in his capacity as the Minister responsible to the Public Service Department, he was not at all satisfied with the decision taken. The Council of Ministers being the executive authority of this Country was also not satisfied that the commission complied with the law.

The Chairman of the Commission also gave in evidence that one of the strikers, Dr; John Kalsakau's case No. 94 of 1994 whom the Supreme Court ruled that the Commission understanding of chapter 9.5 of the Staff Manual is wrong and misleading and they also failed to comply with the Public Service Act and the Constitution in purporting to dismiss Dr Kalsakau by reason of a letter dated 21 March 1994. He had accepted the judgment in Dr Kalsakau's case they will not appeal and that they are bound to implement the Supreme Court's decision. In considering the number of legislation including the Constitution within and outside this jurisdiction, I refer to section 2 of the Public Service Act (CAP 129) which reads :



*"The Commission shall have all powers necessary to perform the functions and carry out the duties described in this Act in addition to the functions and duties vested in it by the Constitution".*

Also from Chapter 9.5 of the Public Service Manual :

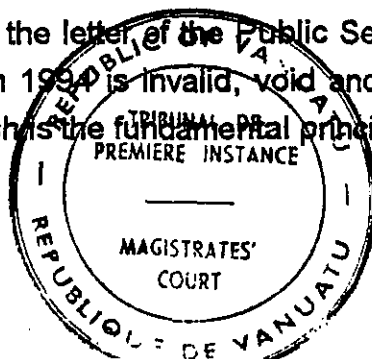
*"An officer absenting himself from his duties without leave for one week or more without giving within that time an explanation satisfactory to the Minister responsible for the Public Service renders himself liable to dismissal".*

Mr Hakwa pointed out by Article 8 of the Constitution, the Government has the fundamental duty to secure compliance with the provision of Article 5 of the Constitution, which includes Protection of the law by reason of article 5(1)(d) which is a fundamental right. In effect, Protection of the law should include the right to a fair hearing and natural justice.

Also throughout the decision making process period towards the implementation phase the Prime Minister, the department of Public Service and the housing Officers knew all along that the commission did not conduct any hearings provided under section 13 of the Public Service Act, followed by their rights of Appeal of the Act and they were prepared to carry out an administrative decision clearly taken in bad faith and contrary to the law.

Mr Hakwa also argued that the suspension letter of 10 January 1994 which Dr Kalsakau received is exactly the same and the content of which is exactly the same received by other Public Servants including the eleven defendants' and the purported termination letters of 21 March 1994 which Dr Kalsakau received is also the same which all other Public Servants including the eleven defendants received.

The Supreme Court ruled that the letter of the Public Service Commission to Dr Kalsakau dated 21st March 1994 is invalid, void and of no effect without giving him the fair hearing which is the fundamental principle of the law.



Again this same principle applies to the rest of the Civil Servants who have received their letters dated the 24th March 1994 that they are still under suspension and they are still considered Public Servants. He went on to say that if the Government by this present case takes decisions to evict the defendants from their allocated houses has no basis at all then this action against all the defendants must be dismissed.

When referring to the learned Senior Magistrate Mr Salatiel Lenalia's judgment in Johna Ala's case civil case No. 66/94 of 1994 this court wants to make it clear that :

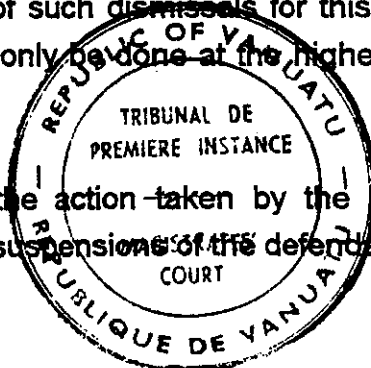
It is not under this jurisdiction to determine whether or not the purported termination of service by letter of 21/03/94 is valid. The duty of this court in fact is to look at the issue as to whether the defendants are terminated and the court is not at all concerned as to the legality or validity of such purported termination or as to whether such purported termination is lawful.

The lawyer for the Plaintiff filed a written reply. He says that the issue is whether or not these defendants' have been terminated from their services with the Government. If the Court finds that the defendants have been terminated do they have the right to continue occupying government houses at no renting.

Should the Court find that the defendant lost their entitlements by remaining in government houses are they liable to settle the appropriate rentals for the period they have occupied the Government premises and lastly, the government as owner of the houses is entitled to re possession.

He says that all the defendants contest the legality of their dismissals or termination of Service. He further argued that the court has no power under its jurisdiction to decide on the legality of such dismissals for this is a matter of Judicial review and such review can only be done at the higher court or the Supreme Court.

Mr Saksak has again argued that the action taken by the Public Service Commission in dealing to revoke the suspensions of the defendants and



terminate their employment service was a valid action. To give effect to this contention, he quotes a passage from the case Gibson v Doeg known as "OMNIA PRAESUMUNTUR RITE ESSE ACTA". This is a legal maxim which "..... gives authority to everything which appears to have been established for a considerable course of time and to presume that what was done was done of right and not in wrong". This same maxim applies in the case of Point Ayn collieries Ltd v Lloyd George and in Falmouth Boat Construction Ltd v Howell.

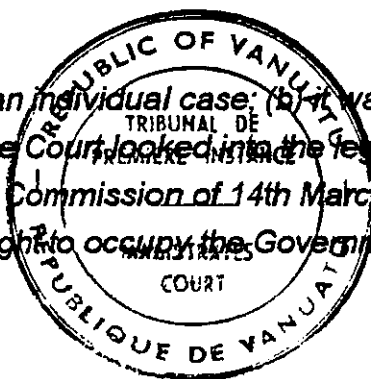
The issue of the strike action which lead to suspensions and dismissals of defendants has been in place for more than a year now. The last decision of dismissals was dated 14 March 1994. Mr Saksak says the defendants have not shown in evidence that they have challenged their purported dismissals by way of judicial review.

He also pointed out that the letter of 28 March 1994 by the Prime Minister did not agree to the decision of the Public Service Commission made on the 14th March 1994 and inspite of such dissatisfaction and disagreement, the Commission still maintains their earlier decision. In support of his argument the lawyer for the plaintiff made reference to Article 60 (4) of the constitution that the Public Service Commission is an independent body for it has power to appoint and to terminate any person and that such provision must be read in conjunction with the provision of section 21 of the Interpretation Act (CAP 132) which reads :

*"Where an Act of Parliament confers a power on any authority to make any appointment that authority shall also have power to remove, suspend, re-appoint or re-instate any person appointed in the exercise of the power"*

Mr Saksak made reference to Dr Kalsakau's case in reply to Mr Hakwa says and I quote :

*"(a) John Kalsakau's case is an individual case; (b) it was the case for judicial review whereby the Court looked into the legality of the decision of the Public Service Commission of 14th March 1994. It was not the case concerning the right to occupy the Government Housing".*

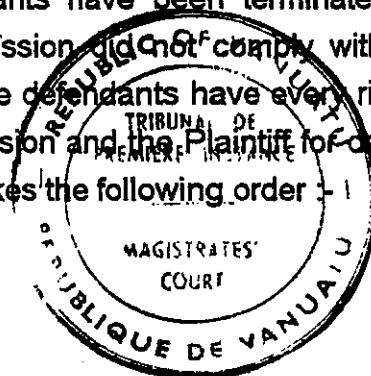


This action however is an action for repossession of property therefore has to be clearly distinguished between this and the Kalsakau case.

The application before this Court is to look into the eviction order by the Government that the defendants have been dismissed from their services therefore they should vacate the houses allocated to them during their employment terms. This court in consideration of evidence given by both parties has consented with the Plaintiff's lawyer that the main issue is to determine in these cases whether or not the defendants have been terminated from their services. To substantiate the claim, evidence has already been proven with respect to John Ala's case, Civil Case No. 66 of 1994 and also by witnesses of the defendants when called upon admitted that government is the owner of the houses allocated to them. This court is also satisfied that John Kalsakau's case was not a case with respect to his right of occupancy in the government premises, it was in fact the case to test the legality of his purported dismissal by the decision of the Public Service Commission dated the 14th March 1994. John Kalsakau's case has nothing to do with eviction order by Government. This is a separate issue so say.

And also whether or not the defendants were not lawfully dismissed and whether or not the Public Service Commission failed to comply with the procedures of its own rules and laws in purporting to dismiss the defendants is a matter for the judicial review and not for this court. In effect, this court is bound to comply with the earlier cases of Attorney General v John Ala & Others, Civil Case 66/78/99 of 1994.

With this Court greatest respect for the defence and their submissions, it is appropriate that a separate course of action on the question of determination of the legality of defendants dismissal should be taken before the Supreme Court. This is a matter of Judicial review to undertake it. And this court is only to satisfy as to whether or not there was a prima facie case against the defendants, that is to say whether or not defendants have been terminated from their service. If the Public Service Commission did not comply with the Public Service Act or the Staff Manual then the defendants have every rights to file a suit against the Public Service Commission and the Plaintiff for damages. The Court finds for the Plaintiff and now makes the following order - 1

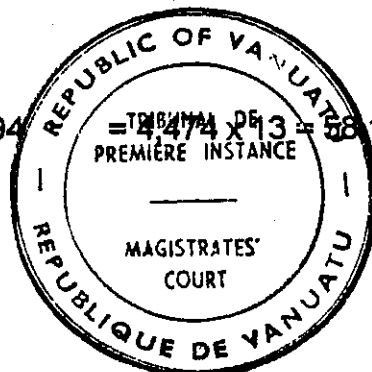




- (1) The eleven Defendants are ordered to be evicted from the Government premises within 30 days from today's date 16th March 1995.
- (2) Defendants to settle all areas in rent until the government premises are delivered up on 14th April 1995.

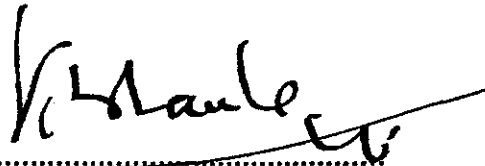
(3) Each defendants must pay the following rental areas :

1. Philip Tasale  
Rent for 1.12.93 to 31.12.94 = 7,213 x 13 = 93,774
2. Plas Karli  
Rent for 1.12.93 to 31.12.94 = 3,933 x 13 = 51,138
3. Leinearu Thatwin  
Rent for 1.12.94 to 1.01.94 = 4,587 x 12 = 55,046
4. Seule Simbolo  
Rent for 1.12.93 to 31.12.94 = 2,489 x 13 = 32,360
5. Thomas Spery  
Rent for 1.12.93 to 31.12.94 = 3,237 x 13 = 42,086
6. John Laan  
Rent for 1.12.93 to 31.12.94 = 11,014 x 13 = 143,185
7. Alfred Kalontas  
Rent for 1.12.93 to 31.12.94 = 6,353 x 13 = 82,598
8. Amon Gwero  
Rent for 1.12.93 to 31.12.94 = 13,335 x 13 = 160,355
9. Jack Taseru  
Rent for 1.12.93 to 31.12.94 = 11,474 x 13 = 149,162



10. Liency Ala  
Rent for 1.12.93 to 31.12.94 =  $4,474 \times 13 = 58,162$
  11. James Yaviong  
Rent for 1.12.93 to 31.12.94 =  $7,116 \times 13 = 92,520$
- (4) Each defendant must pay for costs Vatu 5,000 each.
- (5) Parties have 14 days to appeal.

DATED at Port Vila this 16<sup>th</sup> day of March 1995

  
.....  
**BRUCE S. KALOTITI KALOTRIP**  
Magistrate

