

**IN THE SENIOR MAGISTRATE'S COURT  
OF THE REPUBLIC OF VANUATU**

**Civil Case No. 126 of 1995**

**(Civil jurisdiction)**

**BETWEEN: Chief TELKON WATAS as  
South Pentecost Tourism  
Development Council  
Association.**

**Applicant**

**AND: LUKE FARGO**

**First Respondent**

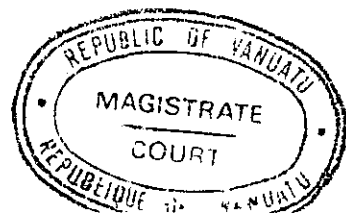
**AND: TOUR VANUATU LTD.**

**Second Respondent**

**JUDGEMENT**

Mrs Heather Leo for the Applicant  
Mr Garry Blake for the Second Respondent.

This is an action for an interim injunction.  
The Applicant Chief TELKON WATAS as South Pentecost  
Tourism Development Council Association applies before this  
Court seeking for an interim restraining order against LUKE  
FARGO, the first Respondent and Tour Vanuatu Limited, the  
second Respondent in the following terms:



- 1- That the first and Second Respondents, their servants or agents are jointly and severally restrained from constructing or attempting to construct and/or involved in any activities of land diving on Pentecost as of.
- 2- That costs be reserved.

This application come first before this Court on 7th July 1995. At that time, Mr Garry Blake informed the Court that no order be made because he had very little time on 7th July 1995 and he has just received instructions on that day of hearing. The Court then, thought it appropriate to issue the following order:

- 1- That the case be adjourned sine die.
- 2- That both parties have liberty to apply subject to three (3) days notice to the other party.
- 3- That the costs be reserved.

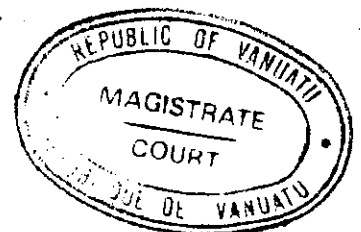
On 24th April 1996, the case was called in before the Court just for mention and on 9th May the Court hears both lawyers in respect of this application.

The issue to be determined by this Court is whether or not there is a legal cause of action.

In July 1995, Council for the Applicant submitted that the basis of the application is to give parties time to discuss how Nagol Jumps should be operated. On the 9th May 1996, she reiterated by saying this:

***“Basis blong action ia hemi blong stopem Nagol for short time because Tour Vanuatu hemi refuse blong luk or toktok wetem olketa but hemi luk mo toktok wetem different people...”***

I am afraid, this is not a cause of action. There is no cause of action to substantiate the claim. It is important to remember that an injunction is an equitable remedy, it is not a cause of action in itself, so that the Court has no power to grant an injunction simply on an application for an injunction. There must be a legally recognised cause of action, (usually a “Tort” but it could also be a contractual action). In domestic cases the “cause of action” will usually be assault and battery.



For practical purposes, the following example is an illustration to explain what are respectively a cause of action and an injunction. A cause of action can be termed as the facts that entitle a person to sue in a Court of Law. The cause of action may be a wrongful act, such as trespass; or the harm resulting from a wrongful act, as in tort of negligence, or a wrongful act on the basis of a contract (ie breach of contract). An injunction (like damages) as it is said earlier is a Remedy.

To be entitled to a legal remedy such as an injunction, you have to show to the satisfaction of the Court that you have a legal cause of action to substantiate your claim.

Now suppose that Peter a sick person went to see a doctor and said:

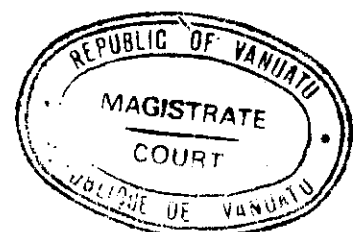
*" Doctor, I feel sick; Give me some chloroquine tablets."*

It has to be remembered that the doctor is not going to give Peter chloroquine just because he asked for chloroquine. In our example, chloroquine is a remedy likewise in law, injunction is also a remedy. It is not just because Peter feels sick that he will automatically be given chloroquine tablets. In our case, it is not just because Tour Vanuatu held negotiations with other people that the Applicant has a right to stop it to do so and force Tour Vanuatu then to negotiate with him (the Applicant).

As stated above, this is exactly what Mrs Heather Leo did on behalf of the Applicant. She applied before this Court for an interim injunction which is a remedy without showing to the satisfaction of the Court that the applicant have a cause of action in law entitling him to substantive relief.

In our example, Peter must go through medical diagnosis such as blood test in order for the doctor to be satisfied that Peter has got Malaria. Thus, here, malaria is the cause or basis which entitle Peter to be treated or given chloroquine tablets. It should be noted that Peter will be given chloroquine only if the result of the tests show that he is got malaria. This implies that if the result of the blood test is negative, then Peter will not be entitled to chloroquine tablets.

There are situations where people take chloroquine tablets in advance to prevent malaria diseases. This is justified simply by the fact that there is a cause or basis: in a country like Vanuatu



there are lots of mosquitoes which generate malaria. In law, this situation will be equivalent to the situation of a quiet time injunction which is of no application in our present case.

In the case before this Court, the Counsel for the applicant applies for an interim injunction to stop Nagol for short time because Tour Vanuatu refuses to have talks or negotiations with the applicant but have negotiations with other people instead.

Is this a legal cause of action? I am afraid to say that this is not. In the case before this Court, for the interim injunction to be granted, counsel for the Applicant has to show to the satisfaction of the Court that there is a legal cause of action on the basis of which the Applicant can sue in order to get the substantive relief (remedy). In practical terms, counsel for the Applicant must show that the substantive claim is based on a contractual action (ie, that there is an agreement between the Applicant and the Respondents) and that the Respondents breach the said agreement. Or counsel for the Applicant must show that a wrongful act such as trespass or nuisance or harm resulting from a wrongful act as in the tort of negligence is established against the Respondents.

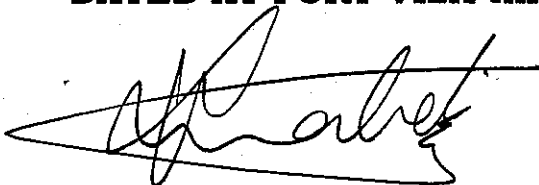
If there is any legal cause of action at all to substantiate the Applicant's claim, it is the prime responsibility/duty of the lawyer who represents the parties concerned to establish before a Court of Law.

It has to be noted that a Court has no power to grant an injunction just because an application for an injunction is sought before it otherwise it will amount to an abuse of Judicial process.

In our case, since, there is no legal cause of action **at all** to substantiate the claim, the application for an interim injunction, must, thus, be strike out and I so rule.

The costs be paid by the Plaintiff and be taxed failing agreement.

**DATED AT PORT VILA this 10th day of May 1996.**



**LUNABEK VINCENT**  
**Senior Magistrate.**

