

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

CIVIL CASE No.86 OF 1997

**Between: WARAWARA BANI
JERETHY RASEN
ANDREW WELWEL
BLAISE BATICK
PIERRE FRED
SHADRACK SHEM
DANIEL DICK
DAMPEPER LABAN**

- Plaintiffs

**And: HON. MINISTER OF TRADE,
INDUSTRY AND
COMMERCE**

- First Defendant

And: ATTORNEY GENERAL

- Second Defendant

Coram: Mr Justice Oliver A. Saksak

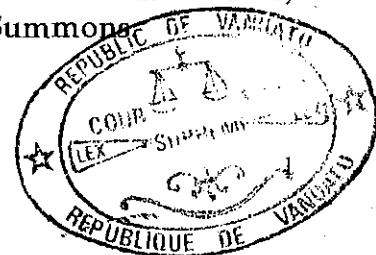
Mr Jonathan Baxter-Wright for the Plaintiffs

Mr Ishmael A. Kalsakau for the First and Second Defendants

JUDGEMENT

The Plaintiffs sought orders by way of a Summons Inter Partes filed and dated the 2nd day of July, 1997 in the following terms :-

1. That the time for hearing of the Summons be abridged.
2. That the First Defendant be restrained from taking any step to terminate each of the Plaintiffs appointment as a member of the Vanuatu Commodities Marketing Board dated 22 November 1996, pending the hearing of the Plaintiffs' Originating Summons.



3. That the costs of the application be cost in the cause.

4. Such further or other relief as the Court deems fit.

This was a Chambers matter but I heard it in open Court because of the public interest of the case. The time required was abridged. On 3rd July, 1997 having heard both Counsels for the Plaintiffs and for the First and Second Defendants, I made the following orders :-

1. The Summons Inter Partes filed by the Plaintiffs on 2nd July, 1997 is dismissed.
2. The Costs to be awarded to the Defendants to be taxed if not agreed.
3. The Parties to file further affidavits within 7 days from the date of the Order.
4. The Parties through Counsel to file responses within 14 days after affidavits have been filed and served.

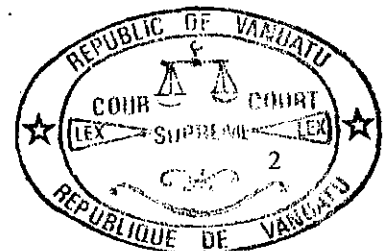
I have been asked by Counsel for the Plaintiffs to provide reasons for the above orders. Before doing so I set out the brief facts as I understand them to be from the evidence before me. The Plaintiffs are all members of the Vanuatu commodities Marketing Board ("VCMB"). All of them were appointed by instruments of appointments dated 22nd November 1996 by the then Minister of Trade, Industry and Commerce. Each instrument of appointment was published in Government Gazette No.31 of 1996 of 2nd December 1996. All appointments were for a fixed term of 2 years.

On 1st July, 1997 each of the 8 Plaintiffs received a letter enclosing notices of removal as Members of the VCMB which were signed by the current Minister of Trade, Industry and Commerce. Further on the same date the Honourable Minister appointed the following 8 persons as new members of the VCMB :-

Kila Mundy
Stanley Garae
Jonathan Mafe
Lucien Litung
Jerry Isaiah
Jules Virambat
Sethy Rabsarae
John Wesley

All instruments of appointment were dated the 25th day of June 1997.

The Plaintiffs relied on the affidavit of WARAWARA BANI in support of their application for interlocutory injunction. They did file an Originating Summons on 2 July 1997 under Order 58 of the High Court (Civil Procedure) Rules 1964.



In deciding the issue of whether or not the Plaintiff were entitled to an interlocutory injunction I had to be satisfied that there was an element of emergency such that it would cause irreparable damage or mischief to the Plaintiff.

Emergency is an element that the applicant for injunctory relief has to satisfy the Court with. The other essential elements are set out in the case of Deamer -v- Unelco management [1992] 2 VLR 554, at p.557.

From the evidence before me I found that there was nothing to show that the Plaintiffs were suffering irreparable damage nor is it shown that they are likely to suffer such damage or mischief as a result or consequence of the Minister's actions.

In my finding there was nothing urgent to warrant the application by the Plaintiff for interlocutory injunction. The reason being that the action complained of had been completed. In my view an injunction would only issue to stop a future event from happening. Here, on the evidence before me I was satisfied that the act complained of was complete and therefore no injunction was necessary. Taking a look at the Notices of Removal this is how it is worded :-

"REPUBLIC OF VANUATU
VANUATU COMMODITIES MARKETING BOARD (CAP.33)
NOTICE OF REMOVAL

WHEREAS THE VANUATU COMMODITIES MARKETING BOARD has been transferred from the Minister of Finance to be under the structure of the Minister of Commerce, Trade and Industry,

NOW THEREFORE I, the Rt Honourable Barak Tame Sope, acting IN ACCORDANCE with the powers vested in me by reason of Section 5(5) of the Vanuatu Commodities Marketing Board (CAP.133) hereby remove.

WARAWARA BANI

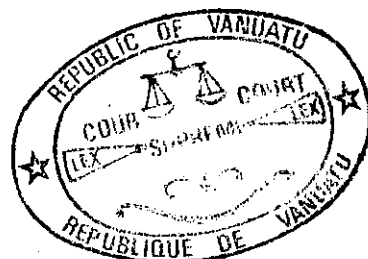
from office as a Member and Chairman of the said and same Board with effect from the date hereof.

DATED this 25th day of June 1997.

(Signed)

The Rt. Hon. tame SOPE
Minister of Commerce, Trade and
and Industry"

With that Notice was the following letter :-



"25th day of June, 1997

WARAWARA BANI
REMOVAL AS MEMBER
of Vanuatu Commodities Marketing Board

It is with regret that I inform of your removal as a Member of the Vanuatu Commodities Marketing Board as of this date. (underling, mine)

With the changes that have taken place, this government has adopted new policies that are in line with the Comprehensive Reform Program and which will place a lot of emphasis on reviewing and progressing the rate of the VCMB as an effective body in serving the government. These important changes in policy direction imply that we will need more capable members to effect their implementation process and therefore, I have appointed a new board which the Government believes will best carry out their duties affirmatively. (underline, mine)

I would also take this opportunity to kindly thank you for the services to the Board and the Government in the past and wish you well.

Yours sincerely,

Signed

*Deputy Prime Minister and Minister of
Trade, Commerce and Industry"*

I have placed emphasis on certain parts of both the Notice of Removal and the Letter. For instance in the Notice of Removal which are all the same I have underlined the phrase "... with effect from the date hereof". The date referred to was 25th June, 1997. In the letter I have underlined the phrase "... as of this date." This plainly refers to an action which has been accomplished. It would have been very different if the Minister had said "...I will be appointing a new board..." But clearly that is not what the Minister had expressed. He had done the act and in my judgment that action became valid on the date of the act: that is on 25th June 1997.

Examining the provisions of the VCMB Act [CAP.133] section 5(2) reads :-

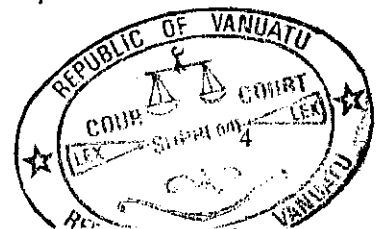
"The Minister shall appoint the Chairman and Deputy Chairman from amongst the members."

Section 5(3) reads :-

"The term of office of appointed members shall be 2 years and such member shall be eligible for re-appointment"

Section 5(5) reads :-

"The Minister may remove a member from Office by Notice published in the Gazette"



Section 5(8) reads :-

"All appointments and nominations made under this Section shall be published in the Gazette."

By reading Section 5(5), the Minister has discretion to remove a member from office and that notice to be published in the Gazettes. The practice as I know it to be is that the Minister would instruct the Attorney General by letter to publish any instrument made under his hands. There was no evidence before me of such a letter instructing the Attorney General or the Gazette Officer to publish these instrument or Removal Notices. That being so in my judgment, there was no urgency to warrant the grant of interlocutory injunction.

When the Minister exercised his discretion and put that down in black and white and expressly stated the date on which that document takes effect, it is my judgment that that completes the act of the Minister. Publication in the Gazette is only a formal procedural step. Here I find that it was enough for the Minister to have exercised his discretion on paper and decide the date on which his action took effect. For those reasons the summons of the plaintiffs was dismissed with costs.

DATED at Port Vila this 7th day of July, 1997.

BY THE COURT



.....
OLIVER A. SAKSAK
Judge

