IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

CIVIL CASE No. 140 and 144 OF 1996

BETWEEN :	Charles Vaudin d'Imécourt **Petitioner**
AND:	Jean Marié Lloyd Lenelcau Manatawai, President of the Republic of Vanuatu **First Respondent**
AND:	Attorney General **Second Respondent**
AND:	Hilda Lini, M.P. **Third Respondent**
AND:	Chairman of Public Service Commission **Fourth Respondent**
AND:	Chief Noel Mariasua **Fifth Respondent**
AND:	Minister of Foreign Affairs, The Honourable Willie Jimmy **Sixth Respondent**

Coram : Acting Chief Justice Vincent Lunabek
Mrs. Susan Barlow for the Petitioner
Mr. Roger de Robillard for the Respondents

Application for Further Interim Orders in relation to Order 6 of the Orders for Directions, dated 9th December, 1996

This is an informal application made by Mrs Susan Barlow Bothmann on behalf of the Petitioner on 3rd December, 1996, seeking, inter alia, that the earlier Orders (of 1st November 1996) made by this Court be on foot to maintain the status quo including the payment of the Petitioner's salary until the Hearing of this case.

In order to understand the situation relating to this application, it is necessary to set out factual backgrounds.

Preliminary matters : brief backgrounds

On 23rd October 1996, Mr. Justice Kalkot Mataskelekele made, inter alia, Ex Parte Orders, in Civil Case No. 140 of 1996 granting leave to the Petitioner/Applicant to apply for judicial review to quash the decision of the Minister for Immigration of 22nd October 1996 against the Petitioner.

It transpires from the record of the Registry that Civil Case No. 140 of 1996 was one of the matters listed before the Supreme Court composed of three (3) Justices of the Supreme Court sitting together. The 3 Justices were respectively, Mr. Justice Robertson, Mr. Justice Muhammad and Mr. Justice Dillon who came in Vanuatu in or about mid-October 1996 to sit in Vanuatu Court of Appeal.

On 1st November, 1996 the three Justices after making strong comments about how Civil Case No. 140 of 1996 was listed and dealt with by another Judge of the Supreme Court, considered Civil Case No. 144 of 1996 and ordered to the effect that Ex Parte Orders made on Civil Case 140 of 1996 on 23rd October 1996 were cancelled save for leave to apply for judicial review to quash the decision of the Minister for the Immigration of 22 October 1996 against the Petitioner. They further ordered that both Civil Cases No. 140 and 144 of 1996 are set down for hearing in this Court on Tuesday 26th November 1996.

On 3rd November, 1996 upon my arrival from an overseas tour (Canada), I was served with a copy of the Order of this Court of 1st November 1996 which, inter alia, prohibited the Petitioner to communicate with all members of local judiciary. (See Order 8 of the Orders of 1st November 1996).

On 26 November, 1996 preliminary enquiry hearing was conducted in regards to Civil Case No. 144 of 1996 (Constitutional Petition) - in accordance with Section 218 of the Criminal Procedure Code Act CAP 136.
At the preliminary enquiry hearing, Counsel for the Respondents applied for the Petition to be dismissed under Section 218(4) of the Criminal Procedure Code Act CAP 136, on the grounds that the Petition is without foundation or vexatious or frivolous.

On 27th November, 1996 this Court held that the Petition in Civil Case No.144 of 1996 discloses a good case to answer and therefore rejected the Respondents' application to dismiss the Petition under Section 218(4) of the Criminal Procedure Code Act which, in my view, means that leave was implicitly granted on that application and set the matter down for hearing together with Civil Case No. 140 of 1996.

Just after the preliminary hearing, Directions were sought directly in Court and on 9 December 1996, Orders for Directions were issued by this Court to both parties.

Order 6 of the Orders for Directions of 9 December, 1996 was an additional Order to the Orders for Directions referred to above.

Circumstances in which Order 6 of Orders for Directions of 9 December 1996 was made

Whilst the draft orders for Directions were finalised in my Chambers, the Chief Register came to see me on 8 December 1996 and advised me of the content of a letter sent to her office by the Petitioners ' Counsel on 3rd December, 1996 seeking, inter alia, the following :

"Perhaps if the Chief Justice would be willing to hear me briefly on a direction hearing as soon as possible I would pre-empt that I would seek to keep the earlier Orders on foot, so that the status quo can be maintained, including the payment of my client salary until the hearing of the Case ."

I, then, immediately instructed the Chief Registrar, not to fix a date for the Petitioners' Counsel to appear before me in Chambers but that I would rather need to see and hear both Counsels. I also noted that the letter of 3rd December, 1996 referred to above, was not copied to the Respondents' Counsel. I thus, directed the Chief Justice's Secretary on 8 December 1996 to phone to the Attorney General's Chambers in order to see if the Respondents' Counsel was in Port-Vila and available. I have then been advised that the line was engaged. Mr. De Robillard telephone number in Vanuatu was not inserted in the Vanuatu Telephone Directory. I have then been advised that the Respondents' Counsel may be using the facilities of Vanuatu Translation and Secretarial Services. I asked the Secretary to phone that office. She then made another phone call to the office of Vanuatu Translation and Secretarial Services, the telephone there indeed was engaged. Under these circumstances, and in the type of cases as the one before the Court, I consider that justice in the case requires that the issue of maintaining the status quo is an important practical issue to consider by the Court and that in order to do so, justice also requires that proper arguments and submissions were necessary from both Counsels. Because it was not possible to reach or to contact the respondents' Counsel at that time, (whether he was in Vila or in Australia) considering that the issue of status quo should be properly argued, I therefore issued Order 6 of Orders for Directions of 9 December 1996 in the following :

"As a matter of urgency I wish to hear both Counsels on the question as to how to maintain the status quo including the payment of the Applicant/Petitioner salary.... Due to the difficulty of the Respondents' Counsel who is out of the jurisdiction and, therefore, cannot appear before me in Chambers, I propose that both Counsels will submit their written submissions/answers on the said question by Facsimile transmission not later than 12 December 1996".

It is to be noted that when Order 6 of the Orders for Directions was made, considerations were also given to the procedural steps as to the issuing of Directions under the Rules of Court - (High Court (Civil Procedure)) Rules 1964). Order 32 Rule 4 of the H. C. Rule says :

> *"On the hearing of the Summons any party to whom the summons is addressed shall, so far as practicable, apply for any order or directions as to any interlocutory matter or thing in the action which he may desire".*

Order 32 Rule 5 which is of particular relevance in this case provides :

> *"Any application subsequently to the original summons and before judgement for any directions as to any interlocutory matter or thing by any party shall be made under the Summons by three clear days' notice to the other party stating the grounds of the application".*

In this particular case, the orders for Directions issued by this Court on 9 December 1996, were not made on the basis of a Summons for Directions. These directions were sought directly in open Court just after the Court held that the Constitutional Petition discloses a prima facie case. Considering further the said Constitutional Petition which is valid no matter how informally made under section 218(1) of the Criminal Procedure Code Act CAP 136, and taken also into account of the urgency of the matter and the practical difficulties faced by this Court, I considered that the procedural requirements of Order 32 Rule 5 of the H.C. Rules 1964 be waived or lifted and I then formulated the terms of Order 6 of the Orders for Directions in the manner as set out in the said Orders, expecting both lawyers to properly make their submissions in relation to same.

In addition, whilst Orders for Direction of 9 December 1996 and in particular Order 6 were drafted, some practical difficulties or considerations were also taken into account.

Practical Difficulties and/or Considerations

1. On 1st November, 1996, Civil Cases 140 and 144 of 1996 were adjourned to 26 November 1996 to be heard. The Two(2) Cases were expected to be completed at the end of November or beginning December 1996. But those expectations could not be met due to the fact that after the preliminary enquiry hearing in regards to Civil Case No. 144 of 1996 - Constitutional Petition - there is no available date until the beginning March 1997 and that there is only one judge in the Supreme Court of Port-Vila and taking also into account of the Christmas recession period, the matter was adjourned to 3rd March 1997.

2. The conduct of Counsels in this case warrant some specific considerations and in some instances during the course of hearing I had to use my judicial power (Orders) to keep control over them in Court and in particular Counsel for the Respondents. This is a disgraceful and intolerable attitude/conduct of Counsels before this Court.

3. The Respondents' Counsel is based in Australia and Vanuatu. It is sometime difficult to contact him especially in urgent applications. That is the position in this instant case and Court documents in relation to that case were served on him through the Attorney General's Chambers at Port-Vila. It is to be noted that Court cases and hearings cannot be fixed at the conveniences of Counsels but rather, must be made at the directions and availabilities of the Court.

4. The Petitioner was ordered to leave the jurisdiction and left the jurisdiction on Monday 4th November 1996 to Noumea, New Caledonia. Bearing in mind of Order 8 of the Orders of this Court dated 1st November 1996, which restrained the Applicant/Petitioner to communicate with ... any member of local judiciary... by phone, fax, or letter until resolution of this matter, some practical difficulties may occur. Examples : Petitioner could not swear his Affidavits before a judicial officer of this Court.

It is important to appreciate these practical difficulties/considerations in order to follow the situation in this case.

Petitioner's Submissions on the question of status quo-Order 6 of Orders for Directions made on 9 December 1996

On 12 December, 1996 Counsel for the Petitioner sent her written submissions to Court in relation to Order 6 of the Orders for Directions of 9 December, 1996.

It is contended that further interim Orders be made in order to maintain the current position vis-à-vis the Applicant until the matter can be fully argued.

The practical reasons for maintaining the status quo in relation to the Applicant are, that whilst the full hearing is pending, the Applicant can take no measures to mitigate the situation he finds himself in. For example in terms of his residency (a), employment (b), travel (c) and living expenses (d).

It is further submitted for the Applicant that Order 6 of the Orders of 1st November 1996 provides that the Applicant shall continue to have his salary and allowances paid as usual into the bank account in his name used for that purpose. Further it was submitted that the Order took the position up to 30th November because the Court at that time anticipated an expeditious resolution to the claims either by way of hearing or by settlement.
It is further said for the Petitioner that all efforts by the Applicant to open the discussions for settlement were rebuffed aggressively by Respondent's counsel. It was also said that the Applicant should not be prejudicated by the Respondents complete unwillingness to discuss the relevant issues and further that the Respondents would have been obliged to remunerate the Applicant in accordance with his contract and in the event of the Applicant not successful on the Applications before the Court, the Applicant will still have a claim for breach of contract and would be likely to recover more than the salary sought, by way of damages which is likely to be a legal liability in any event.

The Applicant requested this Court to stay proceedings pursuant to Order 61 of the High Court Rules 1964 which is in effect to maintain the Status Quo until trial. This Court was referred to the case of *R. -v- Secretary of State for Education and Science, ex p. Avon cc(1991) & QB 558, 561, 563 (per Glidewell & Taylor & LJJ)*(Decision of Ministers to make an order giving school grant maintained status).

The Applicant invites, thus, this Court to follow the Avon approach and to use the Courts general inherent jurisdiction to make further interim orders as requested.

Respondent's submissions on the question of status quo-Order 6 of Orders for Directions made on 9 December 1996

On 15th December 1996, Counsel for the Respondents sent his written submissions through Facsimile Transmission via Australia (13 Wentworth). It is to be noted that Counsel for the Respondents submitted two (2) types of documents. The first document was a 31 pages document "Respondents' submissions pursuant to Order 6 of "Orders for Directions" made 9 December 1996".

The second document was also a 31 pages document "Additional submissions regarding general conduct of the proceedings". I must say that the second submissions have nothing to do with the question of maintaining the status quo which is the subject of Order 6 of Orders for Directions of 9 December 1996, in any event, I will deal with them in turn.

In his submissions pursuant to Order 6 of Orders for Directions made 9 December 1996, Counsel for the Respondents made an application for the Acting Chief Justice to dismiss himself to hear the issue of status quo on the grounds of bias. Bias application were rejected.

I will deal with the allegations of bias as a special and separate issue at the end of this matter.

As far as the question of status quo raised in Order 6 of the Orders for Directions of 9 December 1996 is concerned, it was submitted for the Respondents that the Court should not make any Order to maintain the status quo including the payment of the Petitioner's salary/emoluments unless the Petitioner has made proper application and has been granted leave to file an application defining precisely his claim for final relief in relation to his salary/emoluments and the legal basis of such claim.

Counsel for the Respondents also disputed and denied further submissions made by the Petitioner's Counsel and in particular that Orders of 1st November 1996 made it clear that the payments of the Petitioner's salary be made up to 30 November, 1996 and would not be continued. He argued that the purpose of the Orders was to ensure that the Petitioner would use every endeavour to have all his matters determined as soon as possible.

Other points of submissions of the Respondents warrant no directions at this stage of the proceedings because they are irrelevant to the present issue.

Court considerations as to Order 6 of Orders for Directions made on 9 December, 1996

Having read and considered both written submissions, I decide to look whether there is legal basis upon which status quo can be maintained in the type of cases as the one before the Court.

On 27 November, 1996 this Courts held that the Constitutional Petition in Civil Case No.144 of 1996 discloses a cause of action, i.e. there is a case for the Respondent to answer and the matter was listed for hearing on 3rd March 1997.

Having further taken into account the practical considerations encountered in dealing with this case, I am satisfied that justice in this case requires that the status quo should be maintained until the final determination of this matter. This case constitutes one of the special cases since the Cyanamid decision which was referred to this Court on several occasions.

Legal basis to maintain the status in this case.

The status quo can be maintained through stay proceedings pursuant to Order 61 of the High Court Rules 1964, before the Hearing. The Supreme Court is empowered under Order 61 of the High Court Rules 1964 to grant a stay of proceedings where the Applicant is seeking final relief in the form of an order of prohibition or certiorari.

Order 61 Rule 2(1) says that :

> *"No application for an order of mandamus, prohibition or certiorari shall be made unless leave... has been granted...".*

In this particular case there was a good prima facie case made out in the Constitutional Petition and, thus, constitutes, in my view, a good ground for granting leave to hear the application for certiorari. Leave is , therefore, implicitly granted in that respect.

Order 61 Rule 2(4) reads :

> *"The grant of leave under this Rule to apply for an order of prohibition or an order of certiorari, shall, if the Court so directs, operates as a stay of the proceedings in question until the determination of the application, or until the Court otherwise orders".*

In his book, Judicial Review : Law and Procedure, Sweet and Maxwell 2nd edition the Learned Author Richard Gordon QC noted that :

> *"The basis upon which a stay will be granted is essentially, the same as for interlocutory injunctions. The Court will take into account the effect on third parties and may, applying balance of convenience considerations, refuse a stay notwithstanding granting leave to move".(at p.141)*

He further says :

> *"A stay of proceedings... is, in all but name, a class of prohibitory injunction. It operates in exactly the same way as an interim prohibitory injunctive relief, although it may have more limited effect. It is governed by the same criteria ".* (p.154).

The essential principles are as set out in American Cyanamid Co. v Ethic on Ltd (1975) A.L. 396.
Generally, as in Cyanamid Case, the Applicant/Petitioner must establish that :

(a) damages are inadequate remedy ; and

(b) the balance of convenience favours the making of an interim Order.

In Civil Case No. 144 of 1996 which is a Constitutional Petition, I am satisfied that damages are inadequate remedy and that considering the overall situation in this case, the balance favours the making of an interim order.

Further to Order 61 Rules 2(4) of the High Court (Civil Procedure) Rules 1964, referred to above, Section 29 (1) of the Courts Act CAP 122 reads :

Section 29(1) of the Courts Act CAP 122 reads :

> *Subject to the Constitution, any written law and the limits of its jurisdiction a Court shall have such inherent powers as shall be necessary for it to carry out its function".*

The Court, in this case, is the Supreme Court which is a Court of competent jurisdiction with unlimited jurisdiction to hear and determine any civil or criminal proceedings, and such other jurisdiction and powers as may be conferred to it by the Constitution or by law. (See Article 49 (1) of the Constitution).

And in addition, Article 53(2) of the Constitution provides that :

> *"The Supreme Court has the jurisdiction to determine the matter and to make such orders as it considers appropriate to enforce the provisions of the Constitution".*

By reading Section 29(1) of the Courts Act CAP 122 together with Articles 49(1) and 53 of the Constitution, the power so granted to the Court, in particular the Supreme Court is a wide one and allows the court to make any orders necessary for it to carry out its functions and/or it considers appropriate including in proper cases as in this instant case, interim orders. Since the applicant/Petitioner would suffer obvious and immediate damage if denied interim relief.

I am supported in this view by the case of R.V. Secretary of State for Education and Science, ex p AVON C.C. (1991) 1 Q.B. 558, 561, 563 (per Glidewell and Taylor L.J.J.). (Decision of minister to make an order giving school grant maintained status).

I, therefore, accept to adopt the Avon approach as a persuasive authority and on that basis make the following orders:

1- That the Applicant is to be paid not later that five clear days from the date of these orders or on 15th March 1997 whichever is the later into his normal bank account in the normal way the sum of 768, 677 vatu being the remuneration and allowances which he is entitled to receive on 15th December 1996.

2- That similarly a like sum is to be paid into his bank account on the 30th December 1996 again on the 15th and the last working day of January

and February 1997 in accordance with the procedures which have been in place until now.

3- Costs of this application be costs in the cause.

I will now deal with the Respondent's counsel allegations of bias against the Acting Chief Justice who has to decide on the issue of status quo pending before him as a judge.

Application for Acting Chief Justice to dismiss himself on the ground of bias.

At this stage of the proceedings in relation to this case, the application for the Acting Chief Justice to dismiss himself to hear the case on the grounds of bias, is an extraordinary one. As I have mentioned earlier, I wish to hear both Counsels on the question as to how to maintain the status quo including the payment of the Applicant/Petitioner salary....(see Order 6 of orders for Directions made on 9 December, 1996).

As a judicial officer to decide on that issue, I expect from both lawyers submissions relating to the issue of how to maintain the status quo. Whether the issue is correctly or wrongly framed, it is, in my view, open to Counsels to raise the point of how the issue should be framed and make suggestions as to the reframing of the issue and of course with corresponding submissions and supporting authorities for the best assistance of the Court to decide on the said issue. It is important to keep in mind that a lawyer has mainly two (2) duties before the Court :

1. To represent and defend his client; and

2. To assist the Court for the best judicial determination of the issue put before the Court.

I must point out that the issue of maintaining the status quo arises out from a Constitutional Petition, and this is interestingly a new situation within this jurisdiction. This Court dealt with the issue of maintaining status quo in claims of breach of contract (see for example Civil Case No. 98 of 1996 - Josias Moli -v- Petre Malsungai and Vanuatu National Provident Fund) but as I mentioned above, the issue of maintaining the status quo including the payment of the Petitioner's salary on the basis of the Constitutional Petition is a new one and, thus, the very first one of its kind within this jurisdiction. That is the reason why directions were given for proper submissions and supporting authorities from both Counsels in order to decide properly and effectively on that issue and for the sake of the development of our local judicial precedent in Vanuatu..

I will now deal with the grounds upon which allegations of bias were made :

Ground (a)

Counsel for the Respondents submitted that the Acting Chief Justice has already decided that Vaudin is entitled to payment of salary and emoluments... after having

heard submissions exclusively from Vaudin's Counsel and without having given the Respondents a right to be heard.

As I have explained earlier, directions were given to both lawyers to make their submissions on the issue on how to maintain the status quo before the Court could make any decisions. No decision was yet made by the Court. The only decision on the issue is the one made by this Court today on 3rd March, 1997. The Court had never heard submissions exclusively from the Petitioner's Counsel and without having given the Respondents a right to be heard on the issue of maintaining the status quo. Ground (a) is, thus, baseless. Counsel for the Respondents provides no evidence relating to his serious allegations contained in ground (a). They were mere speculations and as such, be dismissed accordingly.

Ground (b)

Counsel for the Respondents said also that the Petitioner's Counsel improperly made, at least, a written submission to the Court on 3rd December 1996, without providing a copy of the correspondence to Counsel for the Respondents. The Respondents are not aware what other contacts may have occurred given the Courts failure to reply to Counsels letter of 10 December 1996.

Before any reply could be made in relation to ground (b), it is necessary to clarify the meaning of the "Court" and its functions.
Under the Interpretation Act CAP 132, "Court" means a Court of competent jurisdiction in Vanuatu whether provided for under the Constitution or any Law. In this case, the Supreme Court is the Court of competent jurisdiction.

Under Section 29 of the Court Regulation (amendment) Act No.15 of 1989 :

> *"(1)... every proceedings in the Supreme Court shall be heard and disposed of before a Judge of the Supreme Court sitting alone.*
>
> *(2) In the exercise of its jurisdiction under Article 6, 16(4), 39(3), 53 and 54 of the Constitution, the Supreme Court shall be constituted by one Judge of the Supreme Court sitting alone."*

In the Case before the Court, the Acting Chief Justice is the presiding judicial officer/the Judge who hears and will dispose of the disputed issue before the Court.
It is also important to note that in the Court System of this country, there are two (2) types of functions like presumably in other jurisdictions :

(1) Judicial Administration ;

(2) Judicial Function.

The judicial administration of the Court is comprised of all responsibility allocated to Court support staff such as clerks and Registry staff.

The Judicial function of the Court relates to the "judging" functions of the judiciary reserved exclusively to judicial officers (Judges & Magistrates). Although the activities of the Court supporting staff (Clerks and Registry staff) impact significantly on the effectiveness of judicial functions, they are almost exclusively different and separate from the judicial functions.

Coming back to ground (b) the allegation that Petitioner's Counsel improperly made a written submission to the Court on 3rd December 1996 without providing a copy of the correspondence to Respondents' Counsel is improper and misleading in regards to the Acting Chief Justice who exercises the judicial function to hear and dispose of the issue. No written submissions were made to the Acting Chief Justice on 3 December, 1996. A written application to maintain the status quo was made in a letter to the Chief Registrar of the Supreme Court and put before the Acting Chief Justice on 8 December 1996 as I have explained earlier.

The "Court" under ground (b) should have been intended to refer to the Judicial Administration of the Court. It is clear that this allegation is misconceived. Further the Respondents' Counsel contended that the Respondents are not aware what other contact may have occurred. This allegation is quite clearly improper. It is a mere speculation and thus baseless bearing always in mind of Order 8 of Orders of 1st November 1996 which restrained the petitioner to communicate with all the members of the local judiciary. This allegation is so serious in that it insinuates that the Acting Chief Justice breached the terms of Order 8 of Orders of 1st November 1996. Mr de Robillard has to prove this allegation otherwise he will be charged for contempt of Court in interfering with the independence of an individual judge in the exercise of his constitutional duty to decide on an issue pending before his Court.

Ground (c)

Counsel for the Respondents alleged further that the Court did not provide for the Respondents with a copy of the letter and to this date has not done so...

It is improper for the Respondents Counsel to put such allegations against the Judicial Officer who hears and will dispose of the issue. The ground (c) also be dismissed accordingly.

Ground (d)

It is submitted for the Respondents that the Acting Chief Justice made the determination in favour of the Petitioner without any formal application before the Court and without the issue of the Petitioner's salary/emoluments being before the Court.

The Court had never made any determination in favour of the Petitioner before it receives proper submissions from both Counsels. I do not need to elaborate here anymore. The application was made before the Court as I have explained in details earlier. It suffices to say that the issue of maintaining the status quo was before the Acting Chief Justice on 8 December 1996 and he was aware about that on that date and therefore directions were given to both Counsels as set out in Order 6 of Orders for Directions made on 9 December 1996 and the decision on the issue is made today 3rd March, 1997.

Grounds (e), (f), (g), (h) cannot be sustained - considering due steps the Court have taken in order to contact the Respondents' Counsel , the practical considerations referred to already at the beginning of this application, it has to be remembered that the Court cannot function under the directions and at the conveniences of Counsels.

Ground (i)

On 27 November 1996, this Court held that the Constitutional Petition discloses a prima facie case. The application made on 3 December, 1996 seeking to maintain the status quo, is made subsequent to the decision of this Court on 27 November 1996. Nothing bias in that regard. On the contrary, Counsel for the Respondents seems not to accept the decision of this Court that the Constitutional Petition discloses a prima facie case and he still re-opens that issue which has already been convassed before this Court. Ground (i) also cannot be sustained and thus be dismissed accordingly.

In addition to these allegations of bias, Counsel for the Respondents in his "Additional Submissions regarding general conduct of the proceedings" at p.14 submitted to the effect that the Petitioner gave his "true place of abode" as the address of the Supreme Court Port-Vila. At Page 15 (parag. 63) he went on to argue that if the Petitioner is providing the Supreme Court postal address as his "true place of abode" the Respondents are entitled to ask whether the Court is receiving mail on behalf of the Petitioner and how that mail is being forwarded to Vaudin... and what measure have been adopted by the Court to prevent the Petitioner from using the Court's private facilities. He then requested a statement from the Acting Chief Justice regarding this matter and reserve the right for the Respondents to make an application as to bias once the statement has been received.

As far as the Acting Chief Justice is concerned he has no statement to make in relation to these point which should have been requested through the judicial administration of the Courts (Registry) and therefore nothing to do with the Acting Chief Justice who exercises the judicial function of this Court in deciding on the issue before the Court.

Effects and/or consequences of these improper and unfounded allegations of bias against the Acting Chief Justice in his capacity as a judge who is on the point to decide on the issue of status quo pending before him.

As it has been mentioned earlier, both counsels provided their respective written submissions in or about mid-December 1996 on the issue of maintaining the status quo. The decision relating to that issue should have already been handed down by the Court before the end of December 1996. The reason of a such lengthy delay in delivering the decision on the issue is because of the respondents' counsel allegations of bias which are so serious, improper and baseless. They fundamentally, without doubt, constitute an improper attempt to pressurise the Acting Chief Justice's mind in his capacity as a judge of the Supreme Court of the Republic. These allegations of bias constitute treats on the individual independence of a judge.

It is important to remember that considerations of judicial independence usually focus, for good reason, on the institutional relationship between the Courts and the executive

branch of Government. But individual judges deciding cases must also be free from interference.

It is fundamentally important to understand that the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them; no outsider - be it government, pressure group, individual or even another judge - should interfere in fact, or attempt to interfere, with the way a judge conducts his or her case and makes his or her decision.

In this case, the respondent are member of the executive branch of the government of the Republic. Mr de Robillard who knows that fact should have restrained himself. in making such serious, improper and baseless bias allegations against the Acting Chief Justice at this very moment of the proceedings on behalf of the Respondents.

In my view, allegations of bias can be made against a judge, there is no difficulty about that. But these allegations must be made with strong grounds and at the right time or appropriate moment of the proceedings. In this jurisdiction, if a counsel wishes to apply for a judge/magistrate to dismiss himself or herself to hear or decide on a case, on the ground of bias, she/he should submit that application at the very beginning of the case. The counsel is not permitted to do so in the middle of the proceedings or the counsel is not allowed to make such application after that preliminary hearing was conducted, that a prima facie case was made out, and directions were sought and the Court is on the point to decide on these issues. If at the middle of the proceedings, the counsel wishes to raise the bias allegation against a judicial officer, she or he should and must wait until the end of the matter and she or he will exercise his or her client's right of appeal and challenge the decision before the Court of Appeal on the grounds of bias and I so rule.

It is common ground to understand that in this jurisdiction, it is of primary importance to build up a powerful and independent judiciary in order to enforce and maintain the rule of Law in our checky and troublesome Republic. In other words, a strong and independent judiciary is the cornerstone upon which Ni-Vanuatu constitutional aspirations, values and principles be achieved and, thus, be protected. The duty of upholding the Constitution and the law is entrusted upon the judiciary through Judges as delegated by the people to them through the Constitution. Judges discharge the functions of their office, conscientiously, impartially and to the best of their knowledge, judgement and ability and do right to all manner of people after the laws and usages of the Republic of Vanuatu without fear or favour, affection or ill-will.

It is fundamentally important to understand that in order to have a strong and independent judiciary in Vanuatu , it is equally important to have also a strong and independent Vanuatu legal profession through a formalised and disciplined Vanuatu Law Society. This is not the current position in Vanuatu.

Bearing in mind of the above judicial oath which is the "every day biblical principle" of any judge, bearing also in mind of the fact that in this jurisdiction there are only few judges (only two Supreme Court Judges) it is important to understand that bias allegations against a judge should have been forwarded with strong grounds taking due account to particular circumstances of the functions and operations of the Courts

including local circumstances of the Republic as a whole, and taking also into consideration of the fact that the independence of individual judge, in the context of this young judiciary should not be interfered with and/or pressurised in any way when the judge in question is already starting to hear the case and/or is on the point to hold the substantive hearing of a case.

Further, it is to be noted that Vanuatu is a small country with a small population and, thus, a small community in which people tend to know each other, have strong family relationships, have custom and traditional values.
A judge is this Republic becomes a public figure known through out the small republic by the people, the leaders of the government and local leaders of the community. A judge, in this small Republic, has, therefore, a heavy duty upon his/her shoulders due to the small size of the Republic compare to the duties of Judges in a big sized country- for example, in Australia, England etc... In any event, all judges share the same concern which is :

that of seeing that people who are concerned in the proceedings before them, obtain justice according to law, irrespective of extraneous motive.

Therefore, in this jurisdiction, any application for a judge to dismiss himself/herself to hear a case should and must be made at the very beginning of the case. Lawyers are not allowed to do so at any time of the proceedings safe at the end of the matter by way of appeal. If lawyers are permitted to do so at any time of the proceedings when the bias issue arises for the first time in Court, they will disturb and interfere with the independence of the individual judge in the discharge of his/her Constitutional duty. Indeed, if lawyers are permitted to do so, at any time, taken into account of the above considerations, it would represent double costs involved for the Republic and also lengthy trial. In practical terms, it means that the local judge at any stage of the proceedings will disqualify himself, and because there is no other judge available and ready to hear the case, a foreign judge has to be hired at the expense of the state, including expenses of the legal costs and in the event of there being an appeal, it would mean other expenses for the appellate Judges including extra expenses for the legal costs

It suffices to say that the effect of allowing lawyers to submit applications on the ground of bias at any time during the proceedings for a local judge to disqualify himself/herself, is a very expensive exercise, not only in terms of money, but also in terms of delay, in terms of confidence of the Ni-Vanuatu and local population in their Courts, since the Courts are for the people but not for lawyers unless lawyers are parties in the proceedings before the Courts.

As a matter of comparison, in other jurisdiction, the law is that the application for a judge to dismiss himself or herself can be made at any time during the court proceedings immediately after the situation of bias arises as an issue for the first time before the court. These jurisdictions have the privilege of having resources available to follow that approach of the law relating to the question of disqualification of judges on the grounds of bias. For example, in these jurisdictions, there are lots of judges available, so that when an issue of bias arises, application for the presiding judge in the matter to dismiss himself can be made at any time. If the judge in question disqualifies himself/herself, other judges are readily available to take over the hearing of the case. No extra costs and delays occurred. It follows then that that approach of the law in

relation to disqualification of judges on the grounds of bias which can be made at any time of the proceedings once the bias issue arises, militates in favour of a short and cheaply trial in these jurisdictions and is appropriate only for these jurisdictions.

In Vanuatu, the law is quite the contrary as explained earlier, since, if we adopt the same approach, it will produce the contrary effect in this jurisdiction in that : instead of having a short and cheaply trial, we will have a long and costly trial.

It is to be repeated here again that this is not the law in this jurisdiction.

In this instant application, I have directions to make in relation to civil case No. 144 of 1996, in particular order 6 of orders for directions made on 9th December 1996. In this case, preliminary hearing was already conducted. The Court found that the Constitutional petition discloses a prima facie case. Then directions were sought in open court. Further directions were made on the basis of order 6 of orders for directions. At that very moment of the proceedings, the allegation of bias against the Acting Chief Justice were submitted. This is not the appropriate moment to make such allegations. Counsel for the Respondents should wait until the final determination of the matter and raise the bias issue as one of the grounds of Appeal.

The effect of such a conduct from Mr. de Robillard is that his allegations disturb and pressurise my judicial independence in deciding on the issue before me. The seriousness of such allegations which were improper and without foundation, constitute threats and/or attacks upon my integrity or impartiality as a judge of the Supreme Court of the Republic of Vanuatu. It suffices to say that if Mr de Robillard wishes the Acting Chief Justice to disqualify himself to hear this case, he should have applied for that in the very beginning of this case so that arrangements be made for an oversea judge to be brought at the expenses of Vanuatu State instead of waiting until the middle of the case and attempting to do so by way of improper and baseless allegations against the integrity and impartiality of a Judge who has a matter sub-judice before him.. I have, therefore, no doubt in my mind that those allegations amount to a contempt in face of the Court and I, thus, charge Mr de Robillard for contempt accordingly.

The issue of contempt to the court is a special and separate issue from civil case 144 of 1996. The hearing relating to that issue is adjourned to 12 March 1997 at 9.00 am o'clock pending Mr de Robillard to find himself an overseas lawyer for his defence on the charge of contempt. The hearing of Civil Cases No. 140 & 144 of 1996 were adjourned pending a date to be fixed by this Court.

Further Court Ruling as to Respondents' Additional Submissions Regarding General Conduct of Proceedings.

In another 31 pages document, Counsel for the Respondents made additional submissions in relation to the following points:

1- The Name of the Applicant/Petitioner (see § 1 to 9)

Mr Roger de Robillard contended that the Petitioner's family name is not d'Imécourt. No evidence has been given as to the family entitlement to the name "d'Imécourt". That name is not mentioned anywhere in the birth certificate. He then submitted that the only name which is presently established properly by legal documentation is "Vaudin" but not "d'Imécourt". The reason of putting the name as an issue, according to the Respondent's counsel, is that in the event of Vaudin's applications being dismissed and the Respondents being entitled to an order for costs, and possibly to substantial damages may become difficult if not impossible to execute the orders against the Petitioner.

It is contended for the petitioner that the issue of the name is irrelevant to the case and it is insulting to the Petitioner to insinuate that there is any issue concerning his proper name. The Respondents' counsel perpetually focuses on this issue as one example of the vilification the Applicant has been subject to by the Respondents in this matter.

It is to be noted that at this stage of the proceedings, it is too premature to raise the name of the Petitioner as an issue. The Petitioner/Applicant was recruited and appointed in 1992 as the Chief Justice of the Supreme Court of the Republic of Vanuatu under the name : Charles Vaudin d'Imécourt. The Petitioner is, therefore, entitled to use the name he has always used in Vanuatu. It is to be noted that the name of the Petitioner will become an issue to be determined by this Court only in the event that the Petitioner/Applicant's application being dismissed and the Petitioner being ordered to pay costs and if the petitioner fails to do as ordered and argued that his name is not "d'Imécourt" but "Vaudin" an application should be made at the appropriate time to that effect. Further, the Respondents' counsel advances the argument that in the event the Petitioner will be ordered to pay substantial damages to the Respondents, there is a potential risk that the Respondents will not recover damages against the Petitioner who will hide under its true name contained in his birth certificate and thus, refuse to pay.

Here again the issue of name "d'Imécourt" is premature since no contract claim is yet lodged by the Petitioner so that a counter claim from the Respondents be filed. Since there is no counter claim and thus, the possibility for the respondents to recover substantive damages against the petitioner is not yet filed to the Court the issue of the Petitioner's name "d'Imécourt" is a mere speculative issue. It is an improper conduct on the part of the Respondents' counsel to raise speculative issue before the Court. The Court cannot, therefore, use its judicial power to enforce mere speculation issues. In these proceedings the Petitioner is entitled to use the name "d'Imécourt" he has always used in Vanuatu until further order of this Court and I so rule.

2- Unresolved Issues: Written reasons (§ 10 to 14)

The Respondents' Counsel contended that the Acting Chief Justice should provide detailed judgement and reasons for the judgement following the hearing of 26 and 27 November 1996 on the basis that

there is precedent to that point within the jurisdiction for detailed judgement and reasons to be given at the end of an application for dismissal of a Constitution petition pursuant to Section 218 (4) of the Criminal Procedure Code Act CAP, 136. Civil Case No. 29 of 1996. Vohor & Ors -v- Kalpokas & Ors was mentioned in that regard.

It is not true to say that at the end of an application of dismissal of a Petition, a detailed judgement and reasons is handed down. At least there is no precedent to that effect. If the Constitutional Petition is dismissed, judgement and reasons are necessary. But if at the preliminary enquiry hearing, the Court is satisfied that there is a prima facie case, there is no need to write a judgement and give reasons at this stage. Detailed judgement and reasons for judgement be incorporated into the full judgement after the trial of issues. Common sense recommends to follow that approach.

3- Alleged application for contempt (§ 15 to 20)

I do not need to consider there issues anymore before my Court. The judges who would have done so, consider not to be necessary and they have not done so. Therefore, these issues become now "dead" issues before my Court.

4- Evidence (§31 to 34)

Due to practical difficulties referred to earlier, Order 40 R. 14 should apply in the circumstances of this case.

Order 40 R. 14 says:

> *"The Court may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by description of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a Memorandum to be made on the document that it has been so received".*

5- Other points were just an opportunity for the Respondents' Counsel to reopen issues already determined by the Court. Therefore there is no need for the Court to reconsider issues already considered by the Court.

DATED AT PORT VILA this 3rd DAY OF MARCH 1997

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LUNABEK VINCENT
Acting Chief Justice