

(CIVIL JURISDICTION)

BETWEEN : MR. Josias Moli C/- Nambatri
Area, Port-Vila, Efate in the
Republic of Vanuatu
Plaintiff

AND: Mr. Petre Malsugai, Chairman,
Vanuatu National Provident
Fund Board, P.O.Box 420, Port-
Vila, Efate in the Republic of
Vanuatu
First Defendant

AND: Vanuatu National Provident
Fund, P.O.Box 420, Port-Vila,
Efate in the Republic of Vanuatu
Second Defendant

Mr. Saling Stephen for the Plaintiff
Mr. Silas Hakwa for the Defendants

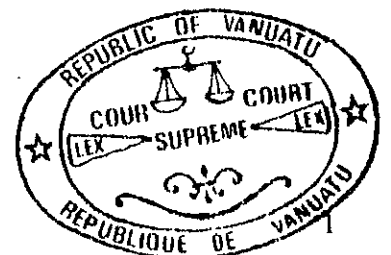
JUDGEMENT

By summons dated 14 March 1997, the First and Second Defendants herein, referred to as "Defendants" seek the following :

1. That the Ex parte Orders made on 14 June 1996 (as amended) be varied and/or be set aside.
2. That the Plaintiff pay the cost of this application.

The grounds of this application are contained in the sworn Affidavit of Mrs Ietonga Aiong, of Port-Vila, Efate, Vanuatu, who is the Acting General Manager of the Vanuatu National Provident Fund (Second Defendant), filed on 14 March, 1997. In her Affidavit, she deposited to the following effect :

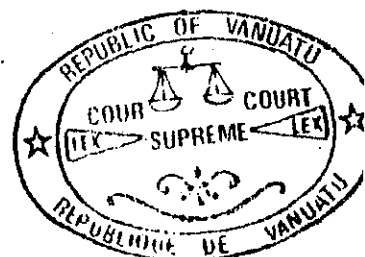
- That the second Defendant has complied in every respect with the terms of the Ex parte Orders made on 14 June 1996.



- That the second Defendant has instructed its Counsel to take every step and make every effort to negotiate a settlement of Mr. Moli's claims before the expiry of the Plaintiff's contract of employment ("the termination date"). She has made reasonable inquiry and she was satisfied that Counsel for the Second Defendant has taken every steps and attempt to secure settlement of Mr. Moli's claims, but she regrets to note that settlement has not been possible.
- That the termination date of the Plaintiff's employment contract is 18 March 1997.
- That she confirms that the second Defendant will not employ the Plaintiff beyond the termination date of the Plaintiff's contract.
- That she confirms that the Second Defendant has through its Counsel notified the Plaintiff that the Second Defendant is not prepared to pay the Plaintiff any remuneration or other benefits beyond the termination date of his contract.
- That she confirms that the Second Defendant has through its Counsel notified the Plaintiff that the Second Defendant will not permit the Plaintiff to continue to reside in the Second Defendant's property beyond the termination date of his contract.
- That she verify believes that irreparable damage loss and/or prejudice would be caused to the Defendant if the terms of the Ex-parte Orders are not varied and/or set aside in that she has reason to believe that the Plaintiff will not have sufficient financial means to repay to the Second Defendant all sums, wages, salaries, allowances and/or other benefits in the event that the Second Defendant succeeds in its counter-claim against the Plaintiff, particulars of which are set out in Civil Case No.102 of 1996.

By Ex parte Summons filed on 14 June 1996, the following Ex parte Orders were issued in the interim by the Court :

- (1) That the Defendants, their Servants and Agents be restrained from acting upon or taking any steps to implement and/or put into effect the purported decision made by the Defendants on or about 9 May to terminate the services of the Plaintiff.
- (2) That the Defendants, their servants and Agents be restrained from taking any steps whatsoever in respect of purported decision made by the Defendant to terminate the Plaintiff's service and employment in the Vanuatu National Provident Fund.
- (3) That the Defendants, their servants and Agents be restrained from removing the Plaintiff and his family from the National Provident Fund quarters or house situated at Nambatri Area, Port-Vila, Efate in the Republic of Vanuatu.
- (4) That the costs of and incidental to this application be reserved.
- (5) That there be liberty to apply reserved to both parties.



By Summons filed on 14 June 1996 seeking to set aside the Ex parte Orders issued on the same date of 14 June 1996, the Court proceeded with the hearing of the Summons on 17 June 1996. On 25 June, 1996 an Interlocutory Judgement was delivered by this Court confirming Ex parte Orders issued by this Court on 14 June 1996 including further Orders that the Plaintiff being suspended on full pay and the Defendants being allowed to appoint a temporary substitute.

SUBMISSIONS FOR THE DEFENDANTS

Mr. Hakwa submitted for the Defendants that they rely on the rules and the provision of "liberty to apply reserved to both parties" contained in the Ex parte Orders of 14 June 1996 and confirmed by the Interlocutory Judgement of 25 June 1996 to file the Summons which is now before this Court and that the grounds were set out in the Affidavit of Mrs Ietonga Aiong, Acting General Manager of the Vanuatu National Provident Fund (the Second Defendant).

It is submitted for the Defendants that the difficulty for them is that if one reads the Ex parte Orders of 14 June 1996 confirmed by the Interlocutory Judgement of 25 June 1996, what the Plaintiff, Mr. Moli, was seeking by way of Interlocutory relief are various injunctions to restrain or injunct the Defendants from acting upon the Second Defendant's decision taken on 9 May 1996 to terminate the Plaintiff until such time as the Plaintiff has had opportunity to come before the Court seeking the court's ruling as to whether or not the Plaintiff has or was properly terminated. It was put for the Defendants that the Orders sought were Orders to temporary relief to the Plaintiff.

It is also submitted for the Defendants that at the time the Court issued Ex parte Orders of 14 June and Interim Orders of 25 June 1996, the Plaintiff's contract with V.N.P.F. or Mr. Moli's employment with the V.N.P.F. (the Second Defendant) was or is still continued. That is why the Plaintiff came to this court to ask the Court to intervene on his behalf and ensure that he continues to be employed by the V.N.P.F.

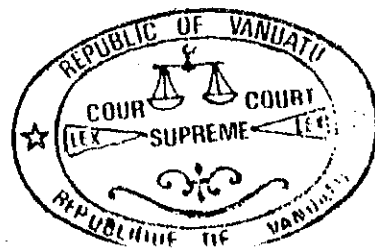
It is further put for the Defendants that the Acting General Manager of the V.N.P.F. deposited to the effect that the Second Defendant (V.N.P.F.) has complied with the terms of the Court Orders notwithstanding the position taken by the defendants by virtue of Ex parte Orders, Mr. Moli was treated as being employed and continued to be employed by V.N.P.F. He receives all benefits and he suffers no penalty.

It is also submitted for the Defendants that the situation today is different as of when the Orders were made by this Court as referred to earlier.

As from 18 March 1997, in accordance with the terms of the contract of employment between the Second Defendant as Employer and the Plaintiff as Employee, Clause 1.1 says that :-

"The V.N.P.F. appoints the employee as its General Manager for a period of three (3) years..."

(See a copy of the said Agreement attached with the Plaintiff's Amended Affidavit of 14 June 1996).



Mr. Hakwa stressed the point that Mr. Moli has entered a contract of employment for a maximum period of three (3) years with the V.N.P.F. and that the said contract/agreement terminates as from 18 March 1997.

Section 48 of the Employment Act CAP 160 which was referred to this Court, provides to the effect that a contract of employment shall terminate on the last day of employment.

On that basis the Defendants submit that :-

- (a) by virtue of the contract of employment signed by the Plaintiff, he agrees that his employment terminates on 18 March 1997.
- (b) by virtue of the contract of employment between the Plaintiff and the Defendants the governing law is the Employment Act CAP 160 (Vanuatu). See Section 48 of the Employment Act CAP 160.

It is again submitted for the Defendants that if it is accepted that under the Plaintiff's contract of employment with the Defendants, the contract ceases and under the Employment Act, the Plaintiff's contract terminated, what is then left for the Ex parte Orders to protect ? The Defendants say that with circumstances, it is no longer appropriate to maintain any of these Ex parte Orders because in so doing by continuing to maintain the Ex parte Orders, it would amount to two (2) things :-

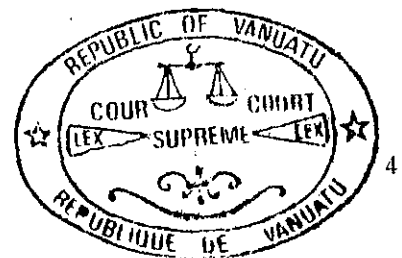
- (i) The Court would appear to impose upon the parties to continue a relationship which themselves in 1994 agreed that, that contract will last for 3 years until 18 March 1997.
- (ii) To maintain the Ex parte Orders, this, with respect, would appear to be contrary to Section 48 of the Employment Act CAP 160 which contains a mandatory provision to the effect that a contract of employment shall terminate on the last day of the contractual period of Employment.

It is conceded on behalf of the Defendants that between 14 June 1996 up until 18 March 1997, the Ex parte Orders were appropriate and that the Defendants comply with the terms of the Orders.

However, as from today the Plaintiff is no longer employed by V.N.P.F. Board. There is no longer a contract of employment between the Defendants and the Plaintiff.

As to the Interlocutory Judgement of 25 June 1996, the whole basis of interlocutory Orders related to the dismissal made by the VNPF Board on 8 May 1996. The situation today is different. That is why the Acting General Manager deposited that irreparable damages could occur if Ex parte Orders were not set aside.

The Court was referred to the Plaintiff's substantive claim and it is again stressed for the Defendants that the Plaintiff's employment ceases on 18 March 1997 and it is again said that the Defendants do not dispute or complain that at the relevant time, the Orders made were appropriate. But that now, these Orders were not appropriate anymore, the Plaintiff has suffered no damage and he continues to do so.



It is further put for the Defendants that if the Court agrees with the Defence submissions, it is no longer appropriate for the Defendants to pay Mr. Moli beyond the termination of his contract i.e., as from 19 March 1997 onwards. It is said, it is not appropriate for the Defendants to have employed Mr. Moli beyond the termination of his contract and that it is not fair for Mr. Moli to continue to receive fund from V.N.P.F where he is no longer employed by V.N.P.F. Board.

- It is further said that the Defendants are trying in every way to settle the Plaintiff's claim and that they are mindful that the Plaintiff should not be benefited from V.N.P.F. which is a trustee of the workers of Vanuatu. If Mr. Moli is to pursue his substantive claim, that is his prerogative. It is said the Defendants have complied in every respect to the law and to the terms of the Ex parte Orders. It is said that the defendants are prepared to pay such benefits to the Plaintiff who has served and completed his contract with the V.N.P.F.

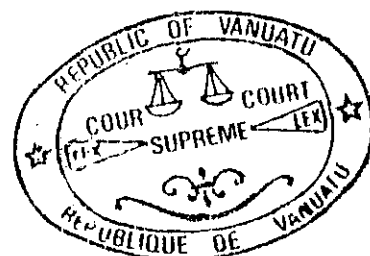
It is finally submitted that :-

- (1) Ex parte orders of 14 June 1996 which was confirmed and expanded by Interlocutory Orders on 25 June 1996 be set aside.
- (2) The Plaintiff, Mr. Moli and his family be ordered to vacate V.N.P.F. premises at Number 3 Area, Port-Vila, within 7 days.
- (3) Costs of today be reserved.

SUBMISSIONS FOR THE PLAINTIFF

Mr. Saling says on behalf of the Plaintiff that the substantive case is yet to be determined on 22 April 1997. He further says negotiations for a possible settlement with the Second Defendant are still in progress and go ahead well until, by surprise, he was served with the present summons which is the subject of this hearing before the Court. It is also said for the Plaintiff that the Plaintiff is surprised to the depositions contained in Mrs Ietonga Aiong in paragraph 5 of her Affidavit of 14 March, 1997. It is submitted that since settlement has yet to be made, it is a surprise to receive the summons so that the course taken by Mr. Hakwa for the defendants is nothing but the same taken by Defendants' former Counsel, Mr. John Malcolm in June 1996 when he did file a summons in this Court. This Court issued Ex parte Orders of 14 June 1996 and the Interlocutory Orders of 14 June 1996 do confirm the Ex parte Orders of 14 June 1996 until the final determination of the matter.

It is submitted that the Plaintiff will rely on Order 59 Rule 1(A) of the Supreme Court Practice 1993(English). Section 4 of that Rule says to the effect that where the hearing of a matter is divided in two parts and where Orders or Judgement were made on the first parts and that these Orders are still to be finalised, these Orders are appealable before the Court of Appeal. It is, therefore, said for the Plaintiff that, since Interlocutory Orders of 25 June 1996 confirmed EX parte Orders of 14 June 1996, these Orders were therefore Orders as those purported to be under Section 4 of the Order 59 of the Supreme Court Practice (English) 1993.



It is, thus, submitted for the Plaintiff that on the basis of Order 59 Rule 1 (A) in its Section 4, if the Second Defendant (V.N.P.F.) seeks to set aside the Interlocutory Judgement of 25 June 1996 confirming the Ex parte Orders of 14 June 1996, the appropriate course to follow is by way of appeal but not applying through the summons as it is the case now before this Court.

It is also put for the Plaintiff that due to the Claims filed by the Plaintiff in June 1996, that matter is yet to be determined. By virtue of Clause 1-1 of the contract of employment made between the Plaintiff and the Second Defendant on 18 March 1994, that relationship still exist between both parties notwithstanding whatsoever until final determination of this case and it is said that the Plaintiff is entitled to be formally heard on his substantive claim, therefore the Court Orders should not be set aside when the matter is yet to be determined. It is said also for the Plaintiff that the Interlocutory Orders confirming the Ex parte Orders still stand valid until the final determination of the matter.

It is also submitted for the Plaintiff that the Second Defendant has no basis to apply to set aside the Orders Ex parte made by this Court, the Plaintiff requests this Court to dismiss the Summons with cost.

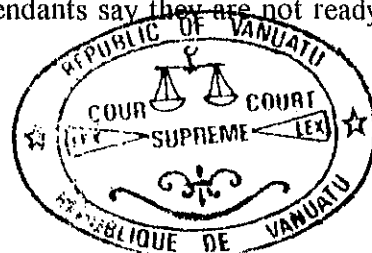
DEFENCE REPLY TO PLAINTIFF SUBMISSIONS

Mr. Hakwa reiterates that this summons is different from applications made by the Defendants' former Counsel, Mr. John Malcolm before the Court in June 1996. The Interim Orders were made to protect the Contractual employment of the Plaintiff with the V.N.P.F. The Defendants say the Plaintiff's employment was terminated on 18 March 1997.

It is further said that, in fact and in law, Mr. Moli has no remedy to seek to be protected. The V.N.P.F. Board took certain steps, that is why the Court issued the Orders. It is said that Mr. Moli is asking the court to extend his employment beyond 17 March 1997 and that is not a matter with this Court.

It is again stressed that there is no obligation whatsoever that would oblige the Defendants either to continue to employ the Plaintiff nor to pay him. Mr. Moli, it is submitted, must satisfy this Court that there are good legal reasons for V.N.P.F. Board to continue to employ him. In his pleadings, it is said, the Plaintiff pleaded on the contract but there is a difficulty. It is put for the Defendants that before the Plaintiff could plead on the contract, he should ask the Court whether the contract is still valid and thus enforceable. It is said that the Plaintiff has not done so.

It is said for the Defendants that they are concerned why the Plaintiff is to be paid. The negotiations for settlement are not a matter to be considered by this Court. The Defendants say whatever the Plaintiff says, he has no contract with the Second Defendant anymore. His contract with the VNPF terminates on 18 March 1997 so that the whole basis of Mr. Moli's claim has extinguished. If the Plaintiff seeks to give him another contract, the Defendants say, he is wrong. They, thus, apply that the Ex parte Orders of 14 June 1996 and as amended on 25 June 1996 be set aside and the Plaintiff and his family to vacate the VNPF premises. If Mr. Moli wishes to continue to pursue his substantive claim, he can do so but, the Defendants say they are not ready to fund him.



THE PLAINTIFF REPLY:

It is said the Plaintiff has no further reply.

COURT CONSIDERATIONS

Having considered the respective both submissions, the question for this Court to answer is this :-

Does the Court have jurisdiction to rehear the Interlocutory Orders of 25 June 1996 confirming Ex parte Orders of 14 June 1996, which were intended to be made by this Court and which were already perfected ?

In *Preston Banking Company v. William Allsugs & Sons* (1895) 1.CP.141) it was held that the Court has no jurisdiction to rehear or alter an order after it has been passed and entered, provided that it accurately expressed the intention of the Court.

In *Re Preston Banking Company Case*, Lindley L.J. had expressed his opinion to the effect that it is of the outmost importance, in order that there may be some finality in litigation, that when once the order has been completed it should not be liable to review by the Judge who made it, and make another in its place.

Lord Justice Fry put the law on the right foundation when he held, in *re Suffield and Watt* (20 Q. B. D. 693), that so long as the Order has not been perfected, the Judge has a power of reviewing the matter, but when once the Order has been completed the jurisdiction of the Judge over it has come to an end.

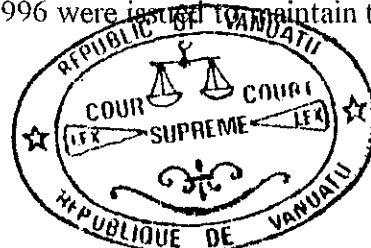
Is this the situation in the case before the Court ?

The Plaintiff says that the interlocutory Orders of 25 June 1996 confirming the Ex parte Orders of 14 June 1996 and by that fact, rendered the said Orders final. By operation of Section 4 Rule 1 of the Order 59 of the Supreme Court Practice (English) of 1993 upon which the Plaintiff relies, the said Orders are final Orders and the only way to review them is by way of appeal and that this Court has no jurisdiction to rehear the said Ex Parte Orders of 14 June 1996. The Plaintiff position, in my view, is supported by the above authorities.

It is to be noted that the Summons before the Court, has proceeded on the theory that the Interlocutory Orders of 14 June 1996 were appropriate and rightly issued and that circumstances had since occurred which had rendered a variation and/or a necessity for these Orders to be set aside.

In that regard, the Defendants say the contract of the Plaintiff with the Second Defendant terminates on 18 March 1997. The Defendants, in particular, the Second Defendant, VNPF Board through its Acting General Manager, deposited to the effect that the Second Defendant will not employ the Plaintiff beyond the termination date of the Plaintiff's contract.

It is important to remember that the Interlocutory Orders of 25 June 1996 which had confirmed in effect Ex parte Orders of 14 June 1996 were issued to maintain the status quo until the final determination of the matter.



These Orders are issued to work out the rights of the parties and thus are not final Orders but, in my view, they are Interlocutory Orders. (See Blakey V. Catham (1889), 43 Ch.D).

As such, an interim or interlocutory injunction may be discharged at any time on the application of the party enjoined. On that basis, I am of the opinion that this Court can intervene to do justice between the parties if there is no longer reason for the continuance of the interlocutory Orders confirming the Ex parte Orders of 14 June 1996.

In this case, I am satisfied that the law and substantial circumstances had been changed since the injunction was granted (Regent Oil Co -v- J T Leaveskey Ltd (1996) 1. W. L. R. 1210), in the sense that the contract of employment between the Second Defendant (VNPF Board) and the Plaintiff has terminated since 18 March 1997 and that it would be contrary to the provision of Section 48 of the Employment Act to continue to maintain the status quo. I am also satisfied that the Defendants comply with the terms of Ex Parte Orders (as amended) of 14 June 1996 until the hearing of this Summons in that the Plaintiff received all his benefits and entitlements until the termination date of his contract with the Defendant and that still the Plaintiff will always be able to proceed with his substantive claim against the Defendants.

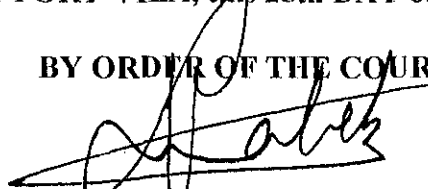
It is also my view that if this Court does not intervene now, the continuing effect of the Ex Parte Orders (as Amended) of 14 June 1996 may become oppressive taking into account of the position of the Second Defendant who is the trustee of the workers of the Republic.

On the basis of the above considerations, I decide to vary the terms of the Interlocutory Orders confirming the Ex parte Orders of 14 June 1996 and I therefore issue the following orders :-

1. That Order 1 of Ex Parte Orders (as Amended) of 14 June 1996 be set aside.
2. That Order 2 of Ex Parte Orders (as Amended) of 14 June 1996 be set aside.
3. That the Plaintiff and his family are ordered to vacate the National Provident Fund quarters or house situated at Nambatri Area, Port-Vila, Efate in the Republic of Vanuatu within 1 month as from today.
4. That the costs of this application be reserved.

DATED AT PORT-VILA, this 25th DAY of MARCH 1997

BY ORDER OF THE COURT


.....
VINCENT LUNABEK J.
Acting Chief Justice

