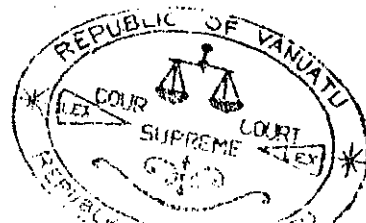


**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

**CIVIL CASE No.85 OF 1997**

	<p><b>BETWEEN:</b> THE OMBUDSMAN (Marie Noelle Ferrieux Patterson)</p>
<p>State Law Office</p>	<p>Plaintiff</p>
<p>Received 15 DEC 2003 by hand</p>	<p><b>AND:</b> WILLIE JIMMY, MAXIME CARLOT KORMAN, PAUL TELUKLUK, SERGE VOHOR, AMOS BANGABITI, CHARLEY NAKO, all of Port-Vila, Members of Parliament</p>
	<p>First Defendants</p>
	<p><b>AND:</b> AMOS ANDENG, SAMSON BUE, WILLIE EDGELL, IARRIS NAUNUN, ALFRED MASSING, KEASIPAI SONG, AND BARAK TAME SOPE, all of Port-Vila, all Members of Parliament</p>
	<p><b>AND:</b> The Estate of JACQUES CARLOT (deceased), MARIA CROWBY, of Port-Vila, unemployed</p> <p>LUC DINI, of Port-Vila, Priest, CHARLES GODDEN, of Port-Vila, unemployed, HARRY KARAEU of Port-Vila, unemployed, ANATOLE LINGTAMAT, of Lakatoro, Malekula, unemployed, RENE LUC, of Luganville, Santo, unemployed, ADRIEN MALERE, of Port-Vila, Political Appointee, JOEL PAKOALAO, of Port-Vila, Driver, JIMMY SIMON, of Port-Vila, unemployed, KAWAI THOMPSON, of Imaki Catholic Mission, Tanna, unemployed and ANDREW VUROBARAVU, of Luganville, Santo, unemployed (All formerly Members of Parliament)</p>
	<p>Second Defendants</p>



**CIVIL CASE No.104 OF 1997**

<b>BETWEEN:</b>	<b>THE OMBUDSMAN (Marie Noelle Ferrieux Patterson)</b> <u>Plaintiff</u>
<b>AND:</b>	<b>WILLIE JIMMY, of Port-Vila, Member of Parliament</b> <u>First Defendant</u>
<b>AND:</b>	<b>MAXIME CARLOT KORMAN, of Port-Vila, Member of Parliament</b> <u>Second Defendant</u>
<b>AND:</b>	<b>BARAK TAME SOPE, of Port-Vila, Member of Parliament</b> <u>Third Defendant</u>

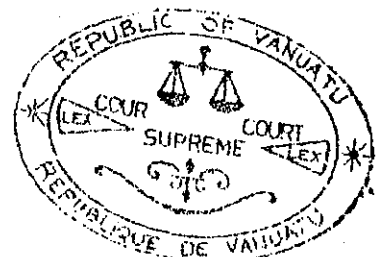
**REASONS OF THE DECISION**

On 2 October 2001, among other matters, the Court makes Orders to the effect that-

- "1. That the Plaintiff's Summons dated 13 August, 2001 and filed on 16 August 2001 be amended by:-
- (a) Deleting paragraph numbered 1 of the Orders sought and replacing it with the following:-
    - (i) That the Plaintiff be entitled to sue in the name of the Attorney-General of Vanuatu and the Plaintiff now be:

The Attorney General (Ex-relatione: The Ombudsman)..."

The reasons are set out below.



The Plaintiff's Summons of 13 August 2001 was filed on 16 August 2001. This is not the first time this application was put before this Court. It was filed with two (2) Affidavits in support. On previous occasions, the Court adjourned the Plaintiff's Summons to allow counsel for the Attorney General to get instructions from the Government as requested by Counsel of the Attorney General.

On the day of hearing this application, Ms Viran Molisa, counsel appearing on behalf of the Attorney General, informed the Court that the Attorney General has no instructions.

It transpires from the material affidavit before the Court that the Attorney General's position is that he does not wish to be a Plaintiff or a Defendant.

The rationale for the Plaintiff's Summons is for the Plaintiff to act in the name of the Attorney General by means of a relator action and use the powers and jurisdiction of the Attorney General, to pursue an effective enforcement against all Defendants in particular those who are no longer leaders, in the event that the Plaintiff on behalf of the State Republic is successful on the merit of the case.

Article 63 of the Constitution deals with the findings and reports of the Ombudsman. The first limb of Article 63(4) provides that:

*"The Prime Minister or the person in charge of the relevant public service shall decide upon the findings of the Ombudsman within a reasonable time and the decision, with reasons, shall be given to the complainant forthwith..."*

The second limb of Article 63(4) says that:

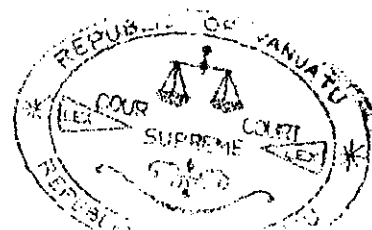
*"Any period limiting the time in which legal proceedings may be commenced shall not begin to run until the complainant has received the decision."* (Emphasis added).

However, the Constitution does not say what would happen if the Prime Minister or the person in charge of the relevant public service does nothing or fails or refuses to decide on the findings of the Ombudsman and in particular in respect to breaches of the Leadership Code.

Parliament did intervene and legislate to fill in the gap by enacting the Ombudsman Act No.14 of 1995 and in particular Sections 23 and 30(2)(b)(ii).

Section 30(2) of the Ombudsman Act 1995 provides:

*"The Ombudsman may however apply to the Court for an order that the Court make an Order giving effect to a recommendation of the Ombudsman..."* under the conditions as specified in Section 30 of the Act.



[See Constitutional Case No.85 of 1997 and Constitutional Case No.104 of 1997, judgment of the Supreme Court of 4 May 2001 at pp. 20 to 23 (unreported)].

Section 10 of the State Law Office Act of 1998, sets out the role, functions and powers of the Attorney General.

Section 10(1) provides that the Attorney General shall be the principal legal officer of the State and principal legal adviser to Government.

Section 10(2) of the State Law Office Act 1998 says that the Attorney General shall be vested with all such duties, functions and powers as may be provided by the Constitution, statute and at common law.

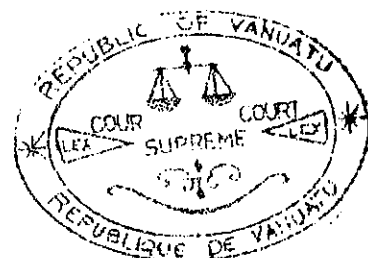
Under the State Law Office Act, "Government" means the Government of the Republic of Vanuatu and includes, for the purposes of this Act, those elected members of Parliament, comprising the Government. However, "state" is not defined but it is different from the Executive Government.

The Ombudsman is an essential independent institution of the State Republic as established by the Constitution. The Government is not a party to these proceedings.

This is not the case warranting for the Attorney General to get instructions from the Executive Government. The Attorney General should assess his position independently of the Executive Government as the principal legal officer of the State.

The position of the Attorney General is not cleared/clarified and no affidavit material was placed before the Court to counter the material affidavit put forward by the Plaintiff. Despite powerful submissions by all counsels for the Defendants and Counsel for the Attorney General, the Court can only rely on material evidence placed before it. The ambivalence of the position of the Attorney General indicates/points to his difficulties to deal with this situation.

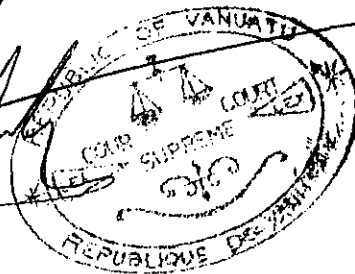
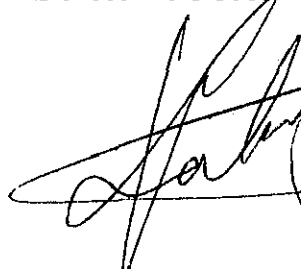
The action before the Court is a recovery action of public funds issued by the Plaintiff on behalf of the State Republic pursuant to Section 30(2) of the Ombudsman Act 1995 against certain leaders of the country on the basis of enquiries and findings made pursuant to Section 23 of the Ombudsman Act of 1995. Some of the Defendants are Members of Parliament and Members of the current Executive branch of the Government of the Republic. Others are no longer leaders today.



Further, Section 30(5) (6) of the Ombudsman Act of 1995, give the power to the Supreme Court to deal with the situation although some of the Defendants are no longer leaders, that is, they are no longer under the jurisdiction of the Ombudsman under Section 30(2)(b)(ii). The Plaintiff issued the main action on behalf of the State Republic of Vanuatu against the Defendants. Section 10(1) of the State Law Office mandatorily ("shall is used") provided that "the Attorney General shall be the principal legal officer of the State and...", bearing in mind of the difficulties of the Attorney General, and to ensure the progress and hearing of the substantive action, justice requires that the Court grants the relief sought by the Plaintiff's Summons. This means that the Plaintiff be entitled to sue in the name of the Attorney General and the Plaintiff, then, be: The Attorney General (Ex-relatione: The Ombudsman) on special circumstances only.

**DATED at PORT-VILA, this 10<sup>th</sup> DAY of OCTOBER, 2001**

**BY THE COURT**



**LUNABEK Vincent  
Chief Justice**