

(Civil Jurisdiction)



BETWEEN:SGT VICTOR RON

Claimant

AND:

ROBERT DINIRO OBED
COMMISSIONER OF
POLICE

Defendant

Coram: Mr Justice Oliver A. Saksak
Ms Cynthia Thomas – Clerk

Counsel: Mr Richard Kalses for the Claimant
Mr Tom Joe for the Defendant

Date of Hearing: 14th May, 2004.

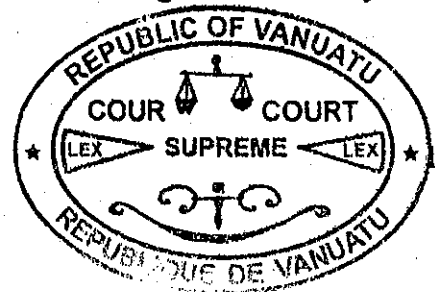
JUDGMENT

By Application dated 8th April 2004 the Claimant seeks orders that –

1. The Defendant be brought before the Court and be dealt with for contempt of Court Orders.
2. Costs of the Application.
3. Any other orders deems fit by the Court.

The Application is supported by the sworn statement of Victor Ron dated 9th April 2004 and further upon reliance of Rules 14.48 of the Civil Procedure Rules No.49 of 2002.

The Defendants on the other hand filed Application through the Attorney General on 8th April seeking orders that –

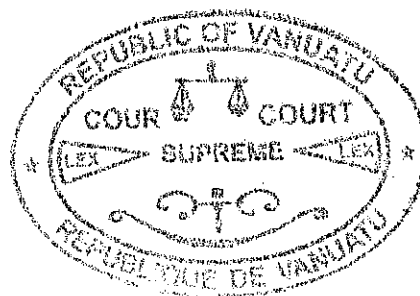


1. The Orders of this Court dated 15th March 2004 be set aside.
2. The application by the Claimant together with his claims dated 15th March 2004 be dismissed.
3. The application by the claimant dated 8th April 2004 be dismissed.
4. An order freezing the funds of the Scheme held at the Westpac Bank pending an investigation into the operation of the Vanuatu Joint Force Insurance and Social Benefit Scheme (the Scheme)
5. The Claimant pays the Defendant's costs in relation to this Application and the proceedings.

At the outset of the hearing it was agreed by Counsel that the Court should first hear and deal with the Defendant's Applications. The Claimant's Application would depend on the outcome of the Defendant's Application.

Mr Tom Joe in his brief opening addresses me on the orders sought and the grounds on which those orders are sought. He relies on the affidavit of the Commissioner of Police and wishes to produce oral evidence from him. Mr Kalses takes objections to paragraphs 4 and 5 of the affidavit. After hearing submissions, I agree that paragraphs 4 and 5 are important as they touch on the gist or core of this matter. I therefore overrule the objection and allow paragraphs 4 and 5 to remain part of the evidence.

Mr Robert Diniro Obed takes the witness box and is examined in chief by Mr Joe. He is then cross-examined by Mr Kalses. He is shown four sets of documents which he identifies as Exhibits D1 – Complaint Letter dated 12th February 2004 Exhibit D2 – Letter by Commissioner to Manager, Westpac dated 14th April 2004
Exhibit D3 - Letter by Acting Manager Rates and Taxes dated 5th April, 2004
Exhibit D4 - Sworn Statement of Robert Diniro Obed dated 28th April, 2004.



None of these documents are challenged and they are tendered into evidence. The evidence of the Defendant is not rebutted as the Claimant produces no evidence.

At the close of the Defendant's case Mr Kalses concedes that the Claimant's Application dated 8th April, 2004 seeking orders against the Defendant for contempt of court orders cannot stand in the light of the evidence produced by the Defendant.

Mr Kalses then urged the Court to consider the reliefs sought in the Claimant's claim of 15th March 2004 seeking –

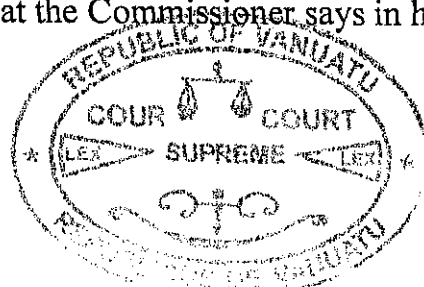
1. A declaration by the Court that the action of the Defendant is void and of no legal effect.
2. That the Defendant be ordered to revoke and remove his instructions to the Finance Department and the Bank.
3. Costs of the proceedings.

After considering the evidence by the Defendant, it is the view of the Court that he has committed no breach of the orders of the Court dated 15th March 2004. Therefore the Application of the claimant dated 8th April 2004 is baseless and is dismissed accordingly.

Coming to the Orders of 15th March 2004, these were exparte orders. The court gave liberty to parties to apply. The Defendant's Application is proper in that it is made pursuant to and in exercise of that liberty granted by the Court. Based on his evidence I am satisfied that had that evidence been available before the Court on 15th March, 2004 no such orders would have been issued. I am therefore satisfied that the orders are no longer necessary and accordingly I dismiss them.

On the Claimant's claims for declaration in his claim dated 15th March 2004, subsequent events have rendered the need for these declaration and the order sought non-existent. Having dismissed the Claimant's Application of 8th April, 2004, there is therefore nothing left of the claim of 15th March 2004. Accordingly I dismiss the claim in its entirety.

Regarding the freezing order, I hear what Mr Kalses says in relation to putting a vehicle into place in the interim to meet the needs of the members of the Scheme. On the other hand, I hear what the Commissioner says in his



evidence that the Scheme was meant for subordinate officers of the Force only. However 90 percent of membership of the Scheme is made of Senior Officers. There is evidence of complaints from members of the Force at Lakatoro Police Station. Those allegations appear serious and warrant an investigation. It is therefore necessary in the circumstances of the case that Funds of the Scheme be frozen pending completion of the investigations or until further order of this Court. Accordingly I order that all funds of the scheme held at the Westpac Bank in Santo and Vila be frozen pending completing of the investigations and pending further orders of this Court.


Finally the issue of costs. Mr Kalses objects to costs. It is the view of the Court that costs be awarded against the Claimant. Mr Joe submits costs at VT89.700 consisting of:

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|----|---|---|------------------------|
| 1. | Return Airfares for 3 persons at VT26.900 | = | Vt80.700 |
| 2. | Accommodation for 3 persons for 1 night at Bamboo Motel at VT4.000 per night for Police Commissioner and VT2.500 per night for Mr Joe and an Accompanying Police Officer – Vt5.000 – <u>Vt9.000</u> | | |
| | Total Costs = | | <u>VT89.700</u> |

I therefore order that the Claimant pays the Defendant's costs of VT89.700 within 30 days from the date of this order.

DATED at Luganville this 14th day of May 2004.

BY THE COURT


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OLIVER A. SAKSAK
Judge

