

(Civil Jurisdiction)

BETWEEN: KARAE VATU
JOEL PAUL
DAVID MELE
DAVID PAILOLOSO

First Claimants

AND: CHARLIE TAVUI
JOHNSON TAMATA
JOHNSON BOE
CHRISTIAN MALIU
FRANK LELE

Second Claimants

AND: LAUREN SOLOMON
TIMOTHY NOV

Third Claimants

AND: NATU MUELE

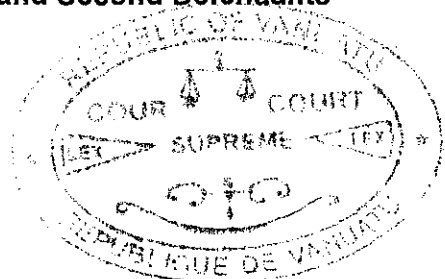
First Defendant

AND: JOEL PATH

Second Defendant

Coram: Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Counsel: Mr Ronald Warsal for First Claimants
Mr George Boar for Second Claimants
Mr Saling Stephens for Third Claimants
Mr Frederick Gilu and Mr Tom Joe for First and Second Defendants



Date of Hearing: Tuesday 21st November 2006
Date of Judgment: Wednesday 22nd November 2006

JUDGMENT

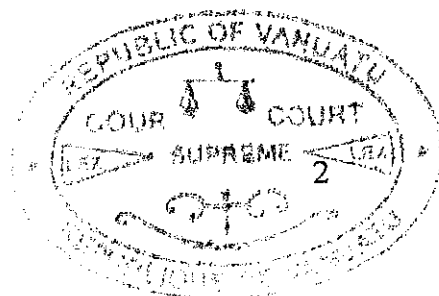
1. Background Facts

This case arose out of or as a result of Civil Case No. 16 of 2006. The First Claimants in that case were Karae Vatu, Joel Paul, Frank Lele and David Varucu. The Second Claimants were Johnson Boe, Charley Tavui, Christian Maliu, David Mele and John Tamata. The Third Claimants were not parties to that case. The First Defendant in that case was Joel Path, now the Second Defendant and the Second Defendant was Natu Muele, now the First Defendant.

The Claimants made interlocutory application seeking certain orders. The main orders for relevant consideration for the purposes of this case were that –

- “(a) The First and Second Defendants be required to convene and continue the first and administrative session of the Council on Monday 12th June 2006 at 0830 hours.

- (b) The First and Second Defendants be required to pay the Claimants’ outstanding sitting allowances from 2nd May 2006.”



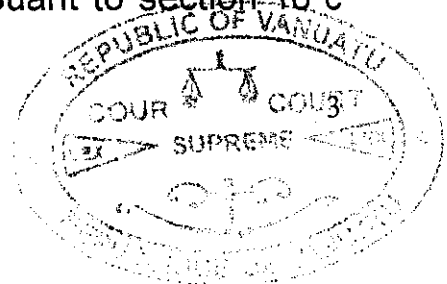
On 12th June 2006 the Council Meeting did not start until on or about 10.30 am. All the Council Members were present as shown by the Roll Call Record. The meeting was adjourned to 2 O'clock p.m and continued until 4.30 p.m when it was adjourned to 13th June 2006 for continuation.

On 13th June 2006 the Council sat and a roll call was taken. Only nine council members were present. The First and Second Claimants were not present. The meeting was adjourned to 14th June on which date the Council sat. A roll call was taken. Again the First and Second Claimants were not present and the meeting was adjourned to 15th June. However on 15th June when the meeting sat, the First and Second Claimants were again not present.

On 14th June 2006 the Second Defendant wrote a letter to the First and Second Claimants reminding them of their obligation to attend Council Meeting and of the possibility or risk of ceasing to hold office pursuant to section 18 c (d) of the Decentralisation and Local Government Regions Act No. 1 of 1994 (as amended) hereinafter referred to as "the Act."

However despite that letter that amounted to a notice, the First and Second Claimants still did not attend. Therefore on 16th June 2006 the first administrative session was closed.

It was not until July 2006 that the First Defendant wrote to the First and Second Claimants informing them that pursuant to section 18 c



(d) of the Act, having absented themselves from the meetings of 13th, 14th and 15th, that they had vacated their seats and as such they were no longer Councillors effective from 17th July, and that they were no longer entitled to salaries entitlements and privileges. The letter is standard and reads as follows:-

"As the President of the Sanma Council, I write to formally inform you that your seat has been vacated pursuant to Section 18 c(d) of the Decentralisation and Local Government Regions Act No. 4 (sic) of 1994 (as amended).

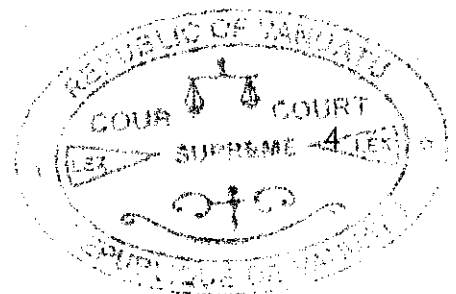
I enclose herewith the Notice of Vacation of Seat signed effective as of today's date.

As of today, you are no longer a Councillor of Sanma Province Council. Your salary, entitlements and privileges as a Council (sic) of the Province have now come to an end.

By this letter the Minister responsible for the Provincial Affairs and the Director of Provincial Affairs is informed accordingly.

Yours Sincerely,

Signed: Natu Muele
Chairman"



The letter was copied to the Minister, the Director and the Acting Attorney General. And the letter was sent to all of the Councillors named as First and Second Claimants.

The Notice of Vacation of Seats reads:

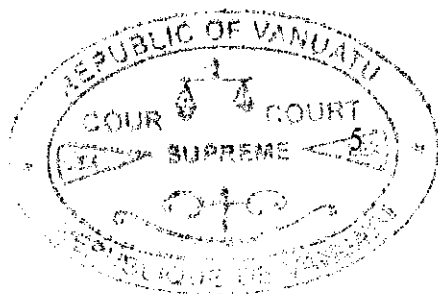
“WHEREAS you are a duly elected Councillor of the Sanma Provincial Council and have duty and obligation by law to attend Council Meetings whenever called and convened.

WHEREAS the Administrative Session of the Sanma Provincial Council was called and convened starting from 2nd May 2006.

WHEREAS on 16th May 2006, you have boycotted and absented yourself from the said Council Meeting without prior permission for more than three (3) consecutive sittings.

WHEREAS you have applied to Court and orders were made on 9th June 2006 for the Chairman and Secretary to the Council to convene the Council Meeting on 12th June 2006 to continue its Administrative Session for this year 2006.

WHEREAS you have again boycotted and absented yourself from the said meeting as ordered by the Court for more than three (3) consecutive sittings from 13th June 2006 to 16th June 2006.



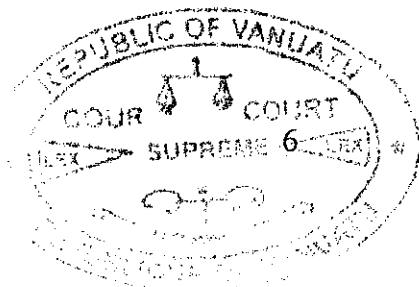
WHEREAS on 14th June 2006 the Secretary to Council Mr Joel Path have written to ask you to attend to Council Meeting and warned you of application of section 18 c(d) of the Decentralisation and Local Government Regions Act No. 4 (sic) of 1994 (as amended).

WHEREAS you have alleged that the Chairman and Secretary have breached terms of orders of the Court by not convening the Council Meeting at 8.30 am as ordered by the Court on 9th June 2006. You have filed the application on 16th June 2006.

WHEREAS the Court in its judgment delivered on 30th June 2006 finds that your action in boycotting and absenting from the Council Meetings as ordered by the Court is a breach of Court Orders as you have deliberately in face of the Court Orders absented yourself from sittings of the Council from 13 June 2006 to 16 June when by law the Administrative Session must close.

AND NOW IN EXERCISE OF THE POWERS CONFERRED ON ME AS THE CHAIRMAN of Sanma Provincial Council pursuant to Section 18 c(d) of the Decentralisation and Local Government Regions Act No. 4 (sic) of 1994 (as amended) which states:-

"If any member of a local Government Council fails to attend three (3) consecutive meeting of the council or of any Committee of which he is a member, unless he has obtained prior permission of the Council to absent himself through such period, he shall cease to hold office."



I NATU MUELE DECLARE THAT YOUR SEAT MR DAVID MELE IN THE SANMA PROVINCIAL COUNCIL IS HEREBY VACATED.

DATED AT LUGANVILLE this 17th day of July 2006.

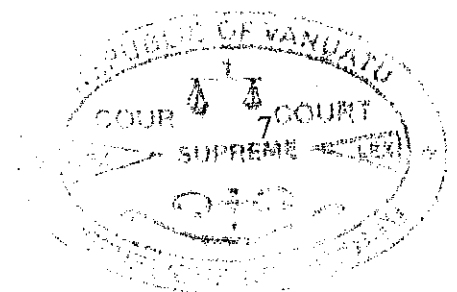
(Signed) NATU MUELE
Chairman
President Sanma Provincial Council"

This Notice was sent to individual Councillors named as First and Second Claimants.

2. Claims of Relief Sought

On 12th October 2006 after more than three months had gone by, the Claimants filed their claims seeking the following orders –

- "(1) An order declaring that the letters issued on May 26 and July 17, 2006 by the First Defendant for the First and Second Claimants to vacate their seats is null and void and of no effect.
- (2) An order requiring the Second Defendant to pay the Claimants' allowances from August 2006 to date.
- (3) Damages to be assessed, and



(4) Costs.”

3. Issues

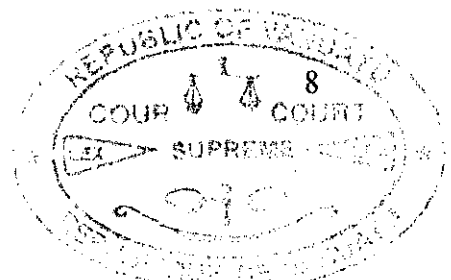
On the hearing of this matter Counsels for the Parties were able to agree the facts.

There were two (2) issues raised for the Court's determination. These were –

- (1) Whether the First Defendant as Chairman has the Power in law to declare seats of the First and Second Claimants vacant?
- (2) Whether on 13th, 14th, and 15th June 2006 the Council was quorated when only nine Councillors were present to constitute a valid meeting, and to render any decision taken therein as valid?

4. Submissions by Claimants

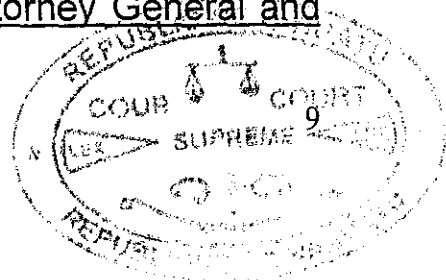
Counsels for the First, Second and Third Claimants all argued and made submissions supporting each other. Basically their arguments and submissions were that Section 18 c(d) of the Act did not give power to the First Defendant to vacate seats of the First and Second



Claimants. Secondly they submitted that only the Council can grant permission to a Councillor to absent himself from a meeting. Thirdly they argued and submitted that Section 18 c(d) of the Act must be read in light of Sections 12 and 14 of the Act which provide for quorum and voting and dissolution. Further Counsels submitted that there were not three consecutive meetings held as only two administrative sessions are allowed by law in any one year and the Council had only convened one meeting so far. The case of Harry Vanva & Others was submitted to support their argument that the First and Second Defendants acted in their personal capacities and not as a Council. Mr Stephens did not make a copy of this case available to the Court. It was further submitted that Section 18 c(d) of the Act was clear and unambiguous and that no other meaning could be given to it to invoke a power to declare seats vacant by the Chairman.

5. Submissions by Defendants

Mr Gilu argued and submitted that all the chairman was doing was issuing a notice of vacation of seats on 17th July 2006 confirming what had occurred on 13th, 14th and 15th June 2006. He further submitted that Section 18 c(d) was automatically brought into play on the occurrence of a Councillor absenting himself from three consecutive meetings when no prior permission was obtained. He further submitted that the Claimants had not shown any evidence that they had obtained that permission. Mr Gilu referred the Court to the Case of Maxime Carlot Korman & Others vs. Attorney General and



Onneyn Tahi Civil Case 116 of 1988 in support of his submissions and arguments. The case went on appeal as Appeal Case No. 4 of 1988. That is an important case in that questions of "Majority", "quorum", "meeting" and "sitting" were considered. 18 members of Parliament had lost their seats for being absent without permission as required by Section 2(d) of the Members of Parliament (Vacation of Seats) Act 1983. The Section reads:-

"2. A Member of Parliament shall vacate his seat therein:-

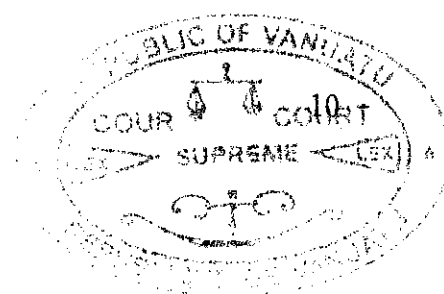
- (c) If he is absent from three consecutive sittings of Parliament without having obtained from the speaker, or in his absence, the Deputy Speaker the permission to be or remain absent."*

Ward, J found that each of the 18 appellants had been absent without consent for three consecutive sittings on 25, 26 and 27 July and were therefore automatically unseated.

The Court of Appeal upheld that finding when it said:

".....if there is no quorum at the first sitting....." that this indicates that there is a "sitting" although there may be no quorum. On each day when parliament assembles and the Speaker takes the chair, there is a sitting." (emphasis added)

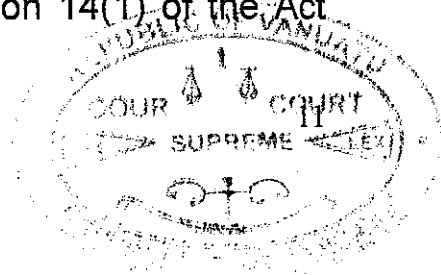
The Court of Appeal went further to say this:-



"A Parliamentary Session may be divided into meetings; meetings may be divided into sittings. But we cannot see how sittings can be "consecutive" (using the word in its natural sense) simply because they form part of consecutive meetings. If a member is absent from the last sittings of the next meeting, he has been absent for three consecutive sittings." (emphasis added)

Counsels for the Claimants argue that Maxime Carlot Korman's Case must be distinguished from the present. Whilst I agree that the facts there were different, the principles laid down concerning what a "sitting" or "consecutive sittings" and "meeting" are the same and they apply to this present case.

The roll call record is clear. On 13th June 2006 there was a sitting. There was no quorum and the meeting was adjourned to 14th on which date the same thing happened. Finally on 15th June there was a sitting but no quorum and the meeting was adjourned. Based on the Court of Appeal decision and principle laid down in Korman's Case the Claimants were absent without prior permission from the Council from three consecutive meetings. The argument that the Claimants could only be absent from three consecutive meetings as provided by law is absurd because that provision would practically be unworkable as there are no three meetings but only two administrative sessions required by law to be held per year. So meetings as used in Section 18 c(d) must therefore mean "sitting". That is the only sensible meaning that can be afforded to the word. Section 14(1) of the Act

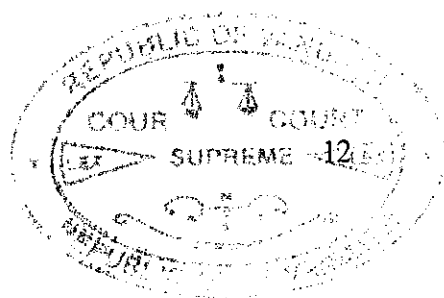


refers to "three consecutive sittings for lack of quorum..." (emphasis added).

The word "Council" there used if it does not mean or include the Chairman as argued by the Claimants, must mean and include the Secretary General who is the Chief Executive Officer of the Council by law. His evidence is that no prior permission was received by or from any of the Claimants.

The Court agrees with Mr Gilu that the First Defendant was merely issuing a Notice to the Claimants that due to their absences on 13, 14, and 15 June 2006 they had automatically vacated. The duty to vacate office under section 18 c(d) is mandatory in that it uses the word "shall".

The Chairman did not have to go to the extent of declaring those vacant seats. They operate independently and automatically and that vacation took effect from as early as 17th June 2006. The Claimants purported to hold themselves out as still being Councillors therefore as such, as a matter of good practice the Chairman although not specifically authorised by law to declare seats vacant, was reasonably expected to issue the Notices of Vacation of seats. There is nothing in the law giving him the power to do so but by the same token also the law does not specifically or expressly say that the Chairman cannot issue Notices of Vacation of Seats, let alone declare them as such.



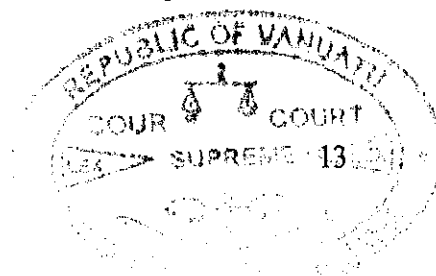
The Case of Harry Vanva is not relevant. All Notices and letters were issued under the common seal of the Sanma Local Government Council. If that argument was to have any weight, it is unfortunate that the Claimants did not include the Council as a Party to this case, as it would have been more appropriate.

6. Conclusions

Having said all that, the Court concludes as follows:-

On the First Issue, it is correct to say that Section 18 c(d) does not give specific powers to make a declaration as to vacation of seats of the Claimants, however in the absence of express provision as to who can do so in the circumstances, it does not render the purported declaration a nullity. Section 18 c(d) operates automatically without a need for a declaration and/or a notice. The Claimants by their absences on 13th, 14th, and 15th June 2006 without prior permission rendered their seats vacated as early as 16th June 2006. Section 18 c(d) is designed to ensure attendance to Council meetings by Councillors. Its purpose or object is to make the Council effective.

As to the Second issue the Court finds that the First and Second Claimants were absent from three consecutive meetings from 13th, 14th and 15th June 2006. Regardless that there was no quorum, a sitting and thus three meetings were held. The First and Second Claimants absented themselves from those meetings without



permission. By operation of Section 18 c(d) they have vacated their seats as from 16th June 2006.

The Third Claimants are not affected by these findings. Their claim relates to outstanding allowances but they have failed to prove those to the Court.

There is hereby given judgment in favour of the Defendants.

7. Orders

- (1) The Orders and reliefs sought by the Claimants all fail and are hereby refused.
- (2) The Claimants claims are hereby struck out in their entirety.
- (3) The Defendants are entitled to their costs of this proceeding.
- (4) The Claimants must pay the Defendants costs of the proceedings to be agreed, if not determined by the Court.

DATED at Luganville this 22nd day of November 2006.

BY THE COURT



OLIVER A. SAKSAK

Judge

