

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

**CIVIL CASE No.115 OF 2009**

**BETWEEN:** Hon. Lord Mayor, PAUL AVOCK HUNGAI  
Deputy Lord Mayor ROBERT SEULE  
Councillor YOAN JOHNSON  
Councillor JAMES KALO  
Councillor WILLIE PAKOA  
Councillor ZACHARIE CHARLEY  
Councillor WENJIO TAMAU  
Councillor TONY WRIGHT  
Councillor DONALD PALAUD  
Councillor JOSELITO WOKON  
Councillor VAI MAKI  
Applicants

**AND:** MINISTER OF INTERNAL AFFAIRS  
First Respondent

**AND:** THE ATTORNEY GENERAL  
Second Respondent

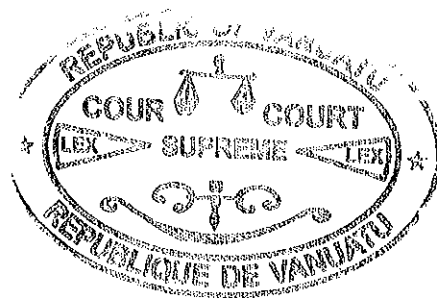
*Mr James Tari and Kapapa Robin Tom for the Claimants  
Mr Frederick Gilu for the First and Second Respondents*

**REASONS FOR STRUCK OUT**  
**JUDICIAL REVIEW CLAIM**

On 11 September 2009, the Minister responsible for the Municipalities, made a decision dissolving the Port-Vila Council. The Claimants filed a Judicial Review Claim under Rule 17.4 of the Civil Procedure Rules 2002 to challenge the said decision. They seek various orders and declarations.

The rationale of the challenge by the Claimants is that the Minister fail to comply with the provisions of the Section 61 of the Municipalities Act [CAP.126].

On 17 September 2009, the Claimants applied for various interlocutory Orders. They were refused by the Court.



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The First and Second Respondents filed their defence on 6 October 2009. They denied the allegations and stated the Claimants are not entitled to the reliefs sought and the claim for Judicial Review should be struck out.

On 7 October 2009, a conference was called under Rule 17.8 (Part 17) of the Civil Procedure Rules 2002.

The Claimants have to show to the satisfaction of the Court that they have an arguable case; and the Claimant is directly affected by the decision; and there has been no undue delay in making the claim; and there is no other remedy that resolves the matter fully and directly (R.17.8(3)).

If the Judge is not satisfied about the matters in sub-rule (3), the Judge must decline to hear the claim and struck it out (Rule 17.8(5)).

The following are the common facts which are not disputed.

On or about 3 December 2008, the Minister signed an Order amending the Port-Vila Municipal Council (Standing Order) No.7 of 1993 ("December 2008 Order").

The 3 December 2008 Order commenced on 3 December 2008 and does not have retrospective effect. On same date, the Minister also issued a directive to the Claimants directing them to stop making advances on their monthly allowances.

On 19 January 2009, the Councillors were advised of the back dated payments of their allowances (except the Lord Mayor).

Subsequently, the Councillors through some strange and curious advice from a private law firm, got their back payments of allowances backdated to July 2008 despite the Ministerial Order of 3 December 2008. On 2 April 2009 the Minister appointed Mr Luke Shem and Mr Pierre Willie as Inspectors by instrument of appointment pursuant to subsections 61(1)(a), (b) and (c) of the Municipalities Act [CAP.126].



On 31 May 2009, the Minister received from Mr Shem and Mr Willie their inspection report about the management and financial situation of Port-Vila Municipal Council.

On 3 June 2009, the Minister issued a directive pursuant to Section 61(2) requiring the Claimants to make repayments of funds that they received.

On 9 June 2009, the Minister was informed by the Town Clerk that despite the Minister's letter of 3 June 2009, no repayments were made and that further advances of funds were made by the Claimants despite the Minister's directive of 3 December 2008.

On 5 August 2009, the Minister wrote to the Town Clerk and copied to all Councillors asking them to make repayments of backdated payments by close of business of 14 August 2009.

On 9 September 2009, the Town Clerk wrote to the Minister and informed him of the outstanding advances to Councillors despite the Minister's directives to all Councillors on 3 December 2008.

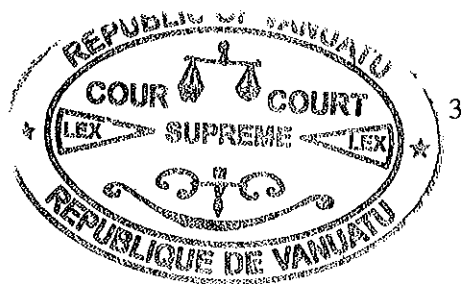
On 11 September 2009, the Minister dissolved the Port-Vila Municipal Council in accordance with Section 61(3)(b) of the Municipalities Act [CAP.126].

Section 61 of the Municipalities Act [CAP.126] is the relevant provision. It provides as follows:

**"INQUIRIES AND SUSPENSION**

**61.(1) If the Minister-**

- (a) *Has cause to suspect that a council has failed to observe and perform any of the duties and powers conferred or imposed upon it by the provisions of this Act or any other law; or*
- (b) *Has cause to suspect that a council has done or performed any act, matter, or thing without due authority; or*



- (c) *Is otherwise of the opinion that an investigation should be made into the affairs of the council;*

*He may in his discretion, appoint a person or person to inquire into such matter.*

(2) *If upon the inquiry under this section the Minister is satisfied that the Council has done or suffered any of the act, matter and thing contained in paragraphs (a) and (b) of subsection (1), he may by directive in writing require the Council to remedy the same within such time as he may appoint.*

(3) *If a council fails to comply with the terms of a directive of the Minister made under subsection (2) or if the Minister, having appointed a person or persons to make an inquiry under subsection (1) considers it expedient so to do, the Minister may in addition to any other powers upon him by the provisions of this Act-*

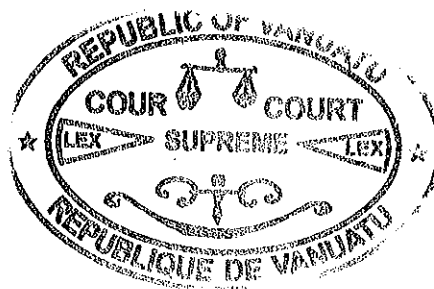
- (a) *suspend the exercise by the council of any of the powers conferred upon it by this or any other act for such period as he may think fit; or*
- (b) *dissolve the council...."*

The thrust of the Applicants' claim is that they as councillors have individually make arrangements with the Municipal Treasury Unit of the payment arrangements of the monies they each received.

The arrangements of payment are made by deduction of the salaries of each councillor through the Port-Vila Municipal Treasury.

The Claimants seem to contend that by such arrangements, they comply with the directives of the Minister and so there is no other outstanding issue because the Minister's appointment and undertaking of the inquiry has been complied with by the councillors in June 2009.

They finally say that the Minister has failed to comply with the provisions of Section 61(1) (2) (3) by issuing directive Orders or any investigations or procedures as outlined in the above sections.



On the common facts, on 9 September 2009, the Minister was informed that despite his letter to the Councillors on 3 June 2009, no repayment was made. The Minister was further informed that Councillors made advances and they are still outstanding despite the Minister's directives to all Councillors on 3 December 2008.

The Minister has dissolved the Port-Vila Council on 11 September 2009 in accordance with Section 61(3)(b). The facts show that the Minister had complied with the provisions of Section 61 of the Municipalities Act [CAP.126]. The Minister had provided opportunity to the Councillors to remedy the situation. The Claimants fail to show to the satisfaction of the Court that they have an arguable case to challenge the decision of the Minister of 11 September 2009 dissolving the Port-Vila Municipal Council.

The Instrument of the dissolution of the Council (Port-Vila) is valid and will rely on the full term and effect of the Instrument of Dissolution.

The Claimants are not entitled to the relief sought in the claim.

The claim is therefore struck out.

The Respondents are entitled to their costs to be agreed or taxed.

**DATED at Port-Vila this 7<sup>th</sup> day of October 2009**

**BY THE COURT**

**Vincent LUNABEK  
Chief Justice**

