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

Civil Case No. 140 of 2006

**BETWEEN:** **GROUPE NAIROBI (VANUATU) LIMITED**
Claimant

**AND:** **THE GOVERNMENT OF THE REPUBLIC OF VANUATU**
Defendant



# JUDGMENT

1. This is a claim for judicial review.

2. There is no dispute about the following facts:-

   (a) In April 2005, the Claimant agreed to purchase land for VT130,522,000;

   (b) On 27 May 2005, the Claimant sought a VAT refund of VT14,602,248;

   (c) On 8 July 2005 that claim was disallowed by the Acting Director of the Inland Revenue Department;

   (d) On 1 January 2006 the Defendant enacted legislation called the "*Value Added Tax (Amendment) Act No. 47 of 2005*" so that thereafter the definition section of the original VAT Act read as follows "*second hand goods does not include livestock and land*".

   (e) This charge was specified as having commenced on 1st August 1998;

   (f) The effect of the amending legislation was to give legislative force to the Defendant's decision to disallow the Claimant's application.

3. The Claimant argues:-

   (i) That the amending legislation should be interpreted as only having come into effect on 1st August 2006 and not on 1st August 1998;

(ii) That this legislation is retrospective and contravenes the principle that all statutes (especially tax statues) are prima facie construed as having prospective operation only;

(iii) That this legislation contravenes Article 5 (j) of the Constitution which protects against "*unjust deprivation of property*".

4. The Claimant concedes that its arguments concerning the commencement date of the amending provision and the presumption against retrospective legislation are subject to the clear expression of Parliament's will and intent in the legislation itself.

5. In this respect, I agree with the Defendant's submissions. In my view Parliament's intentions and will are perfectly clear. This is retrospective legislation which affects a taxation statute. Parliament intended it to be so. That is clear from the wording used and the layout of the amending Act. The same applies to the commencement date. It is perfectly clear that Parliament intended to back-date the law change to make it coincide with the commencement of the original VAT legislation. I accept the Defendant's submissions.

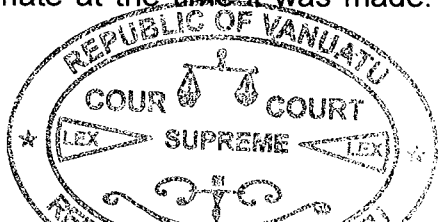
6. I turn to the argument that the effect of the legislation is to unjustly deprive the Claimant of property. The preliminary issue is whether this amending legislation is "*unjust*".

7. I consider "*unjust*" to mean contrary to justice. In *Re Kempthorne Prosser & Co [1964] NZLR 49, 52* Dalglish J. said "*In my view a person is 'unjust' when he does not observe the principles of justice or fair dealing and an act can be said to be 'unjust' when it is not in accord with justice or fairness*".

8. The Defendant was perfectly entitled to enact this amending legislation and there is no suggestion that the legislation was not enacted in accordance with due process. It is the effect of the legislation which concerns the Claimant. Any legislation may be unfortunate in the effect it has on an individual but that does not, to my mind, mean that the legislation is contrary to justice.

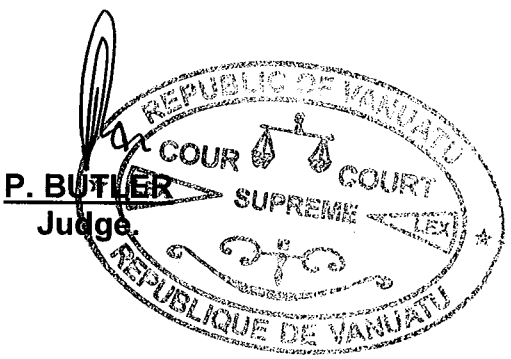
9. Given my finding that the amending Act was not unjust there is no need to go on and consider whether the effect of the Act was to deprive the Claimant of "*property*". The application for judicial review is declined. Each party should bear its own costs.

10. I end by saying I have some sympathy for the Claimant's position. The claim it made was legitimate at the time it was made. There would not, I



am told, be a flood-gates effect if the Defendant now were to reconsider its position. This is only claim which would need to be considered.

**DATED at Port Vila, this 13th day of May, 2009.**




**P. BUTLER**
**Judge.**