

CDs

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

Civil Case No. 144 of 2011

**BETWEEN :** LORD MAYOR, WILLIE P.  
SAETEAROTO, DEPUTY LORD MAYOR,  
RUBEN OLUL, PAKOA FRED, CHARLIE  
SAKARAIHAH, JENNY TASALE, HARRY  
NAKO, NOEL LANGO, VAI MAKI, PAUL  
A. HUNGAI, CHARLES QUENSELL,  
JERRY ESROM, ULRICH SUMPTOH,  
TONY WRIGHT, GEORGE W.SIRI  
Claimants



**AND:** THE MINISTER OF INTERNAL AFFAIRS  
First Defendant

**AND:** OLGA TARI  
Second Defendant

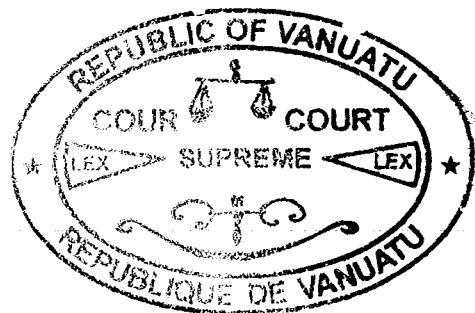
**AND:** ATTORNEY GENERAL  
Third Defendant

Coram: Justice Aru  
Date of Hearing: 12<sup>th</sup> August 2011

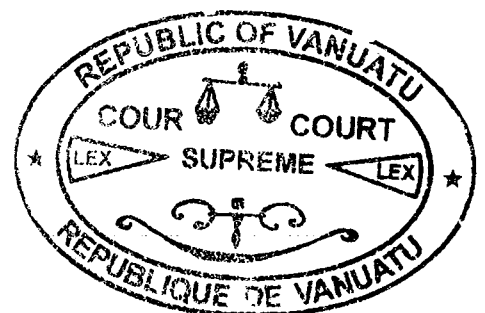
Counsel: Mr. C. Leo for the Claimants  
Mrs. V. M. Trief, Solicitor General for the Defendants

**DECISION ON URGENT INTERLOCUTORY APPLICATION**

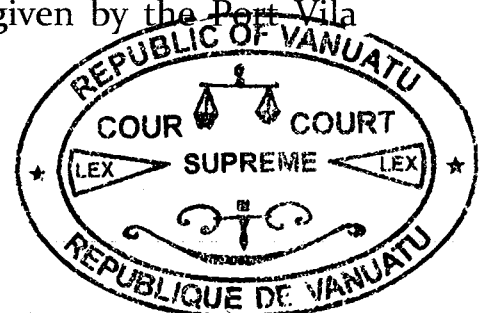
1. This is an application for Urgent Interlocutory orders made by the Applicant.
2. The Orders sought were as follows:
  - (1) That the Defendants cease from conducting any further enquiry with the affairs of the Claimant



- (2) That the suspension of the Claimant dealing with the allowances /privileges of the Claimants be forthwith removed.
  - (3) That the Second Defendant via its lawful agents release / pay all allowances /privileges due to the Claimants by Monday the 8 August 2011.
  - (4) That the Commissioner cease from pertaining her functions and duties until the substantive claim is resolved
3. The grounds for the orders sought were that:
- (1) The Claimant's Judicial Review application is pending before the court and the Second Defendant is now pursuing an inquiry notwithstanding the merits of the Claimants application.
  - (2) The Claimants have done no wrong.
  - (3) There is a serious question to be tried.
4. In support of the application the Applicants filed fourteen sworn statements of urgency, an undertaking as to damages and a sworn statement of urgency in support of the urgent application.
5. The Respondent filed a sworn statement and a response to the Application.
6. The Respondents' position in brief is that the application does not meet the requirements of rule 7.5 of the Civil Procedure Rules. Furthermore that if the court grants the remedies sought it would be deemed to be assuming the role of the First Respondent decision maker being the Minister. Secondly that the Urgent Application is an attempt to have the Court swiftly determine the substantive matter and thirdly that it is an abuse of process and that if the application is granted then the effect of the substantive claim would be rendered redundant.



7. Rule 7.5 of the Civil Procedure Rules provides for applications for interlocutory orders before a proceeding is started and sub rule (1) states that a person may apply for an interlocutory order before a proceeding has started if:
  - (a) the applicant has a serious question to be tried; and
  - (b) the applicant would be seriously disadvantaged if the order is not granted.
  
8. Sub rule (3) provides that the court may make the order if it is satisfied that:
  - (a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and
  - (b) the applicant would be seriously disadvantaged if the order is not made.
  
9. Having read the material before me and having heard both Counsels, I make the following findings. Firstly, that the submissions put forward by Counsel for the Applicant in challenging the process of the suspension and the Report of the enquirer are matters yet to be determined in the substantive claim which was filed and served on the 28 July 2011. Secondly the withholding of salaries and privileges is part of the decision to suspend which is being challenged in the substantive claim.
  
10. I accept the Solicitor General's submissions that an application for interlocutory orders is not for counsel to argue the merits of the substantive claim.
  
11. The case referred to me by Counsel for the Applicant *Port Vila Municipal Council v Attorney General & Ors Civil Case No 75 of 2003* makes this point very clear where the Chief Justice in dealing with an application of a similar nature pointed out that an application for an interlocutory injunction is not a trial on the merits.
  
12. Thirdly, the Undertaking as to Damages given by the Applicants to support the Application could not have been given by the Port Vila



Municipal Council as the exercise of the powers of the Council by the Council has been suspended.


13. In applying rule 7.5 (3) above, I am satisfied that the Applicant has a serious question to be tried but I am not satisfied that the Applicants would be seriously disadvantaged if the order is not made and I adopt the views of Bulu J in **Gilbert Dinh v Richard A Kontos & Or Civil Case No 238 of 2004** about rule "7.5 (3) of the Civil Procedure Rules that paragraph (a) and (b) are adjunctive .The court must be satisfied on both grounds for orders to be granted".
14. The application is therefore dismissed.

### Orders

1. The Respondents are entitled to Costs which are fixed at VT 20,000 to be paid by 2.00pm on Friday 19<sup>th</sup> August 2011.
2. The Defendants are to file and serve their Defence to the Claim for Judicial Review and Sworn Statements by 3.00 pm on Wednesday 17<sup>th</sup> August 2011.
3. A Conference is listed for Friday 19<sup>th</sup> August 2011 at 2.00 pm

**DATED at Port Vila this 12<sup>th</sup> day of August 2011.**

**BY THE COURT**

  
.....  
**D. ARU**  
Judge

