

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

Judicial Review Case No. 30 of 2015

**BETWEEN:** UNELCO  
Claimant

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

**AND:** UTILITIES REGULATORY AUTHORITY  
Second Defendant

**Coram:** *Justice Oliver A. Saksak*

**Counsel:** *Mark Hurley for the Claimant/Applicant*  
*Kent Tari for the First Defendant*  
*Dane Thornburgh for the Second Defendant/Respondent*

**Date of Hearing:** *12<sup>th</sup> November 2015*

**Date of Decision:** *13<sup>th</sup> November 2015*

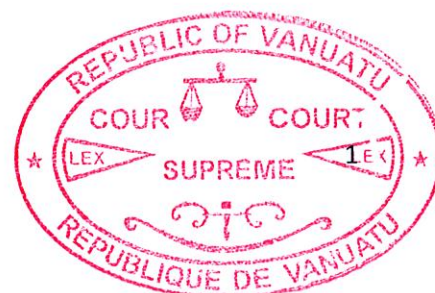
---

## DECISION

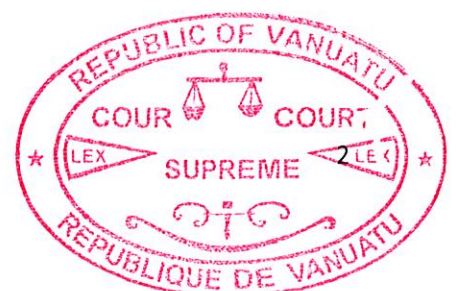
---

### WHEREAS –

1. The Court heard Mr Hurley on submissions in relation to an urgent application filed on 6<sup>th</sup> November 2015; and
2. Upon reliance on the evidence by sworn statements of David Lefevre dated 6<sup>th</sup> November and 9<sup>th</sup> November 2015 filed in support of the said application; and
3. Upon Mr Tari not making any submissions in favour of or in opposition to the application by the applicant; and indicating that the State will simply abide by any orders of the Court; and
4. Upon hearing Mr Thornburgh who –



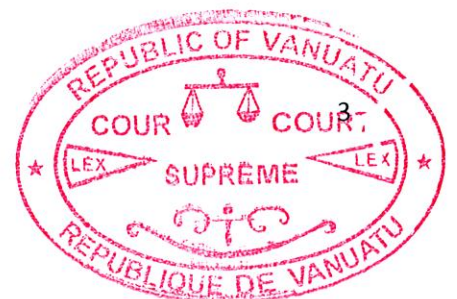
- (a) Made a cross-application for security for costs pursuant to Rule 15.18 of the Civil Procedure Rules No. 49 of 2002;
  - (b) Made application raising objections to the admissibility of paragraphs 49 to 56 including the Report of Marc Perraud annexed as DL1 (TAB.24) to the sworn statement of David Lefevre dated 6<sup>th</sup> November 2015; and
  - (c) Who opposed the urgent application of the applicant based on and in relation to his written submissions in opposition filed on 12<sup>th</sup> November 2015; and
  - (d) Further, upon relying on the sworn statement of Dr Hasso C. Bhatia filed on 12<sup>th</sup> November, 2015.
5. And upon hearing Mr Hurley in reply; and
  6. In relation to the Second Defendant's application for security for costs, upon being satisfied that the applicants have given adequate undertaking as to damages, it was decided that the application for security for costs be declined and the application dismissed; and
  7. In relation to objections to admit evidence on the basis of hearsay and opinion, upon being satisfied the evidence given by Mr Lefevre at paragraphs 49 to 56 including the Report at TAB. 24 (DL1) by Marc Perraud, it was decided that all those evidence were inadmissible and therefore struck out from the balance of the statement; and
  8. In relation to the urgent application for interlocutory orders, upon acknowledging that the appropriate tests are enunciated in the American Cynamid Co v. Ethicon Ltd [1975] AC 396 and that only two of those tests have been met by the Claimants as follows:



- (i) The Claimant/applicant have demonstrated they have a serious issue to be tried.
  - (ii) The balance of convenience lies in favour of the applicant; and
9. Further being satisfied that there are other circumstances that justify the granting of the orders sought by the applicant, except for the request for consolidation of this proceeding with Judicial Review Case No. 25 of 2014 and Judicial Review Case No. 4 of 2015; and
10. Upon being satisfied there is urgency in light of the Final Order taking effect from 15<sup>th</sup> November 2015;

**NOW THEREFORE IT IS DECIDED THAT –**

- (1) The urgent interlocutory application be allowed as a commonsense approach to maintain the status quo, despite that all the tests in the American Cynamid case are not made out by the Claimant;
- (2) The following orders be granted upon the Applicant's undertaking to the Court to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the interlocutory order the subject of the Applicant's application or undertaking or of any interlocutory continuation (with or without variation) of interlocutory order or undertaking –
  - (a) Until the final judgment handed down by the Court, the First and Second Respondents be hereby restrained from:
    - (i) taking any steps to implement the Final Decision or seeking to compel the Applicant to implement the Final Decision;



- (ii) taking any steps to pursue the Applicant for failure to implement the Final Decision; and
  - (iii) Save in respect of paragraph 2, making any public announcements regarding the Final Decision (or its implementation);
- (b) The First Respondent be hereby required to issue a media release in accordance with its standard practice advising that the Final Decision (as published in the Gazette) is subject to Judicial Review proceedings and adjustments to water tariff (if any) will not take effect until the proceeding is complete.

**10.2. AND DECIDING FURTHER THAT–**

- (a) The Claimants may have a claim for damages against the First Defendant;
- (b) That Rule 17.8 does not apply at this stage.

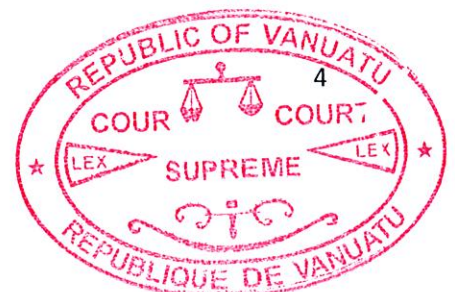
**11. And upon hearing Mr Thornburgh and Mr Hurley further in relation to**

- a) the consolidation request by the Claimant; and
- b) that amounts collected by the Claimant in excess of the tariff amounts be placed in an escrow account;

**IT IS DECIDED FURTHER THAT –**

- a) the consolidation request be declined as it is not properly made; and
- b) the request for an escrow account be declined as being premature.

12. Finally to progress the matter to final hearing, it is decided that as the matter is of a wider public interest, that the case be heard on an urgent basis and in that regard it is further decided that –



- a) The time required for the filing of defences be abridged and shortened.
- b) The First and Second Defendants be hereby required to file and serve their defences and cross-claims if any, and sworn statements within 7 days from the date hereof (by Friday 20<sup>th</sup> November 2015).
- c) The Claimant be required to file and serve replies and defences to cross-claims (if any) within 4 days thereafter (by Wednesday 25<sup>th</sup> November 2015).
- d) There be a full hearing on Thursday 26<sup>th</sup> November 2015 at 10.00 hours.
- e) Costs in the cause.

**DATED at Port Vila this 13<sup>th</sup> day of November 2015.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

