

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

CONSTITUTIONAL CASE No. 11 of 2014

BETWEEN

GUY MARCEL ALAIN BERNARD
and MARIE CELINE BENARD

APPLICANTS

-AND-

THE REPUBLIC OF VANUATU

RESPONDENT

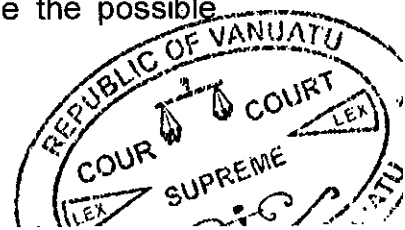
Before Chetwynd J
Mr Guy Benard in person
Mr Napuati for Mrs Marie Benard
Ms Lahua for the Respondent
Hearing 8th July 2015

Judgment

1. I have published two extensive minutes in this case, one on 11th March and the second on 8th June. In the latter I set out a course I proposed to take regarding judgment. At the hearing today I asked if all the parties had received a copy of the minute from 8th June. All parties confirmed that they had. I asked if any of the parties had any application to make or submissions or representations to put to the court. There were no applications made or submissions or representations put to the court. In the circumstances I proceeded to read an abbreviated copy of this judgment.

2. It is clear that judgment must be entered for the Applicants. The file shows that the Secretary General of the Citizenship Commission wrote to the Applicant Mr Guy Benard on 25th May this year. The letter is attached to the 4th sworn statement of Mr Benard which was filed on 29th May. The letter states that at its 5th Ordinary meeting on 22nd May the Vanuatu Citizenship commission had decided to revoke the decision it made on 20th November 2014. That earlier decision was one to revoke the citizenship granted to Mr Guy Benard on 7th December 2007. That decision was contained in a letter dated 26th November 2014. Copies of both that letter and the May 25th letter were annexed to the sworn statement as GB1 and GB2.

3. That should be an end to the matter because there is now no longer any decision to revoke Mr Bernard's citizenship. Unfortunately it is not an end to the matter because the rest of the letter dated 25th May 2015 requires Mr Benard to do certain things and provide copies of documents within three months. There is no indication of what will happen if he does not do so but, given the Respondent's past behaviour towards Mr and Mrs Benard, the implied threat must be the possible

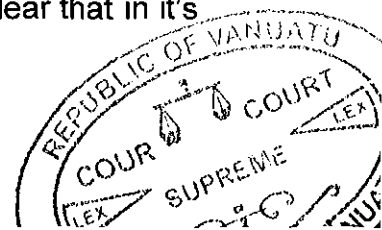


revocation of citizenship. All that can be said about that is at least it was an improvement on the Commission's previous approach which was the summary revocation of citizenship without giving the Applicants any chance to gainsay the allegations being made. A more obvious failure to adhere to the basic rules of natural justice is hard to find. If the second letter of 25th May 2015 not been written I would have made an order countering such oppressive behaviour in any event. Clearly though that in itself will not be enough to protect the Applicants.

4. In the circumstances it is necessary to look further at the Respondent's behaviour. In the Response and Counterclaim (to the Application of 15th December 2014) filed on 23rd April 2015 the Respondent's main complaint seems to be that between February 2003 and 2007 Mr Benard did not have residence permits. I pointed out to the Respondents in my minute of 11th March that they had, apparently, overlooked the provisions of section 12(8)(b) of The Citizenship Act. Despite that the Respondent persisted in it's defence. The Respondent then also added, for good measure no doubt, that it did not have a copy of the original application made by Mr Benard or any information about him renouncing his French nationality. To my mind this basically was an admission they had lost the file. Rather than reconstruct the file themselves they were insisting the Applicants did so "or else" !

5. This was repeated in a letter from the State Law Office dated 11th June 2015. The letter told Mr Benard that he had been given 3 months to answer "allegations" including one that he did not renew his residency permit from February 2003 to 7th December 2007. The letter went on to say because of his "illegal residency" he was deemed to be of "bad and /or negative character". It was also stated that Mr Benard had never "denounced" his French citizenship. I have presumed that should have been a reference to renouncing his French citizenship. These were remarkable allegations to be levelled at Mr Bernard on that date and ignored basic information which was already in the State Law Office's possession (and presumably with the Secretary General of the Citizenship Commission as well). That must be the case because on 15th December 2014 Mr Benard had filed a sworn statement with annexures attached. Pages 22 and 23 seem to me to have provided the "proof" now demanded by the Respondent. If there is some doubt about that, that doubt disappears on 5th May 2015 because on that date the Applicants filed a bundle of documents. All the information required by the Respondents was included in that bundle, including details of Mr Benard's employment with the Vanuatu Maritime Authority. In addition the State Law Office would have seen my minute dated 8th June.

6. Presumably the letter was written by the State Law Office on instructions from their client and because it was written in the terms that it was written in I have absolutely no confidence that there will be no further attempts to revoke the Applicants' citizenship. For the avoidance of doubt I make an order that the decision reached by the Citizenship Commission during the 2nd ordinary meeting held on the 20th November 2014 as set out in their letter of 26th November 2014 is an infringement of the Applicants' fundamental rights. I make the further order that it is of no effect. I further order that the Respondent, whether through the offices of the Citizenship Commission or otherwise, shall not cancel or threaten to cancel the Applicants' citizenship without first obtaining the leave of this court. I do not wish to obstruct the Respondent carrying out its functions and duties but it is clear that in it's



dealings with the Applicants the Respondent cannot be relied upon to act in a fair and responsible manner. The order restraining the Respondent as set out above is necessary to protect the likely infringement of the Applicants' rights in the future.

7. The Respondent shall pay the costs of the second named Applicant, Mrs Marie Celine Benard on an indemnity basis. Mr Benard has been acting in person and is therefore only entitled to recover his actual disbursements.

8. I have adjourned the assessment of damages or compensation to another date. The parties agreed that the Applicants will provide, that is file and serve, written submissions on the issue of compensation by close of business on 28th July. The Respondent will provide written submissions in response by close of business on 18th August 2015. Any final submissions by the parties must be filed and served by close of business on 25th August 2015. A written decision on compensation including, if appropriate, any award of exemplary damages or compensation, will be handed down shortly thereafter.

Dated 8th July 2015


Chetwynd J

