

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

Civil Case No. 30 of 2015

**BETWEEN: NORTHERN ISLANDS STEVEDORING
LIMITED**

Applicant

AND: PRAVINESH CHAND

First Respondent

AND: ANZ BANK (VANUATU) LIMITED

Second Respondent

AND: BRED BANK (VANUATU) LIMITED

Third Respondent

AND: WESTPAC BANK CORPORATION

Fourth Respondent

AND: NATIONAL BANK OF VANUATU

Fifth Respondent

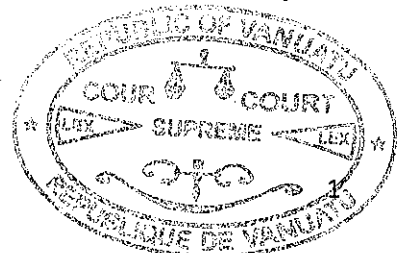
Hearing: *Friday 20 February 2015 at 10.30 am*

Before: *Justice S M Harrop*

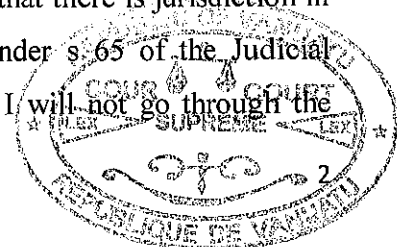
Counsel: *Dane Thornburgh for the Applicant*

ORAL JUDGMENT

1. On 18 February 2015 at 11.20 am Mr Thornburgh filed on behalf of the Applicant an urgent ex parte pre-proceeding application seeking injunctive orders, a sworn statement of urgency from Peter Sakita on behalf of the Applicant, a further sworn statement from him as to urgency and an undertaking as to damages signed by him on behalf of the applicant.
2. Mr Thornburgh sought an urgent ex parte hearing and this was convened on Friday 20 February at 10.30 am before me.

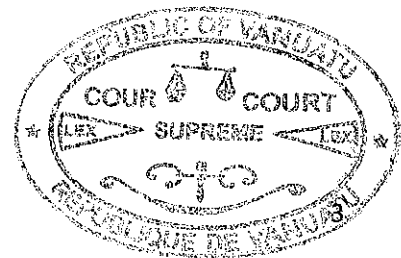


3. Before the hearing I raised with Mr Thornburgh the issue of whether Mr Sakita as a representative of the shareholders of the Applicant had authority on behalf of the Company to make the application. Normally of course it is the directors of a company who have the power to take such steps on its behalf. This caused Mr Thornburgh to file a further sworn statement which annexed the Articles of Association of the company and the minutes of an extraordinary shareholders' meeting held at Mr Thornburgh's offices on Tuesday 17 February 2015 at 3.00 pm.
4. Without going into great detail in this judgment being prepared in urgent circumstances, I am satisfied that this is a rather unusual company in that power in ownership is vested in the shareholders as is the power to appoint directors and the accountant. In circumstances where the shareholders resolve to suspend the entire board of directors, as happened at the meeting on 17 February, the effect of Article 51(6) is that the shareholders automatically become casual members until a new director or directors are appointed.
5. As a shareholder Mr Sakita therefore does have the basis to act on the behalf of the company in making this application. Indeed one of the resolutions of the meeting on 17 February was that the company make this application.
6. In simple terms the concern of the company is that Mr Chand who is its chief executive officer has been making unauthorised payments from the company's account into four personal bank accounts which he holds, one at each at Luganville branches of the four banks referred to in the intituling.
7. In addition it is alleged that Mr Chand without the authority of the company has signed two deeds of release of their obligations to the company of the Members of Parliament. These deeds are annexed to Mr Sakita's substantive statement as are details of the bank accounts and of the payments into them which the company has discovered.
8. Having read the various materials provided by the Applicant I am satisfied that the urgent ex parte pre-proceeding orders should be made and that there is jurisdiction in the rules and/or the inherent jurisdiction of the Court under s. 65 of the Judicial Services and Courts Act to make them. In this judgment I will not go through the



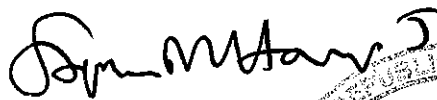
details but essentially I consider it is reasonable in the light of the evidence filed to restrain Mr Chand from dealing with any Niscol assets which may be in his possession or control as chief executive and in particular that he be restrained from dealing with the four bank accounts into which it appears unauthorised payments have been made.

9. Since the papers were filed there has been publicity and there is a headline on the front page of today's Daily Post to the effect that the applicant has now "fired" Mr Chand. The underlying article in fact describes some him as having being suspended rather than dismissed.
10. Being rather cautious about relying on the newspaper, I asked Mr Thornburgh during the hearing to ascertain the position so far as his client is concerned. He tells me that yesterday Mr Chand was indeed served with a letter of suspension from his position as chief executive and that Mr Chand has returned some keys allowing him access to Niscol premises. He is apparently still living in Niscol-provided accommodation pending investigation of the allegations.
11. If anything that seems to me to add some weight to the application because Mr Chand is obviously aware now of the seriousness of the situation and any inclination he may have had to deal with the funds in his bank accounts and/or to leave the country (he is a Fijian National) would on the face of it be reinforced by his suspension.
12. While the Court is cautious about restricting the movements of a defendant against whom nothing has yet been proved and following an application made even before a proceeding is filed, I am satisfied in the circumstances that the full and fair assessment of the allegations requires that Mr Chand be restrained from leaving Vanuatu and that he surrenders his passport.
13. I recognise those restraints are significant in respect of a person against whom nothing has yet been proved. However any prejudice in that regard can be addressed by imposing a very short return date for this matter. I allocate a conference at **3.00 pm on Tuesday 24 February 2015.**



14. Self-evidently because of that date but also of course because of the concerns which lie behind this application, urgent service of the orders which I am about to make is required.
15. With the short return date Mr Chand will have the opportunity, should he wish to leave the country for good reason in the near future to make an application for the orders to be varied.
16. For now I make orders in terms of the application filed on 18 February in terms of paragraphs 1(a) and (b), 2 and 3. I vary the application for order no. 4 simply to read: "That the respondent be restrained from leaving Vanuatu." There will be new order no. 6 as follows: "The matter is listed for conference at 3.00 pm on Tuesday 24 February 2015 and accordingly urgent service of these orders is required."
17. The order that costs be in the cause will accordingly become order no. 7.
18. Mr Thornburgh is to file as soon as possible draft orders according to this judgment and I will of course peruse and, if in order, signed these and release them for service this afternoon.

BY THE COURT



STEPHEN HARROP

Judge

