

**BETWEEN:** TRANSPARENCY INTERNATIONAL VANUATU  
COMMITTEE (INC)

Claimant

**AND:** THE MINISTER OF LAND RECORDS  
First Defendant

**AND:** DEPARTMENT OF LANDS STAFF  
Second Defendants

**AND:** JOE LIGO, PETER PATA, BENUEL TABI, WILLIE  
KALO, RICHARD DICK, THOMAS MALVANU,  
CELESTINE DELAVEAU, ROSETTE KALMAET, JOE  
KELISON JOES, RACHEL POKI, VIVIANE WILFRED,  
JOSEPHINE ANTAS, GWEN WELLS, JEAN MARK  
PIERRE, GEORGE KERBY, NOELLA RAVO, JIMMY  
SANO, BIMAN REZEL, MADELEINE  
Third Defendants

*Before:* Justice Oliver A. Saksak  
*In Attendance:* Claimant – no appearance  
Counsel – Hardison Tabi and Adeline Bani for the First Defendant  
Counsel – Daniel Yawah for the Second Defendant  
Third Defendants – no appearance

*Date of Hearing:* 8<sup>th</sup> day of December 2016

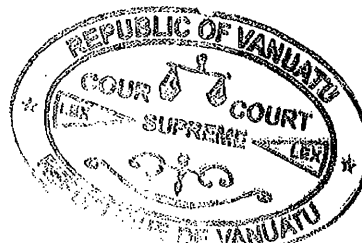
*Date of Decision:* 21 December 2016

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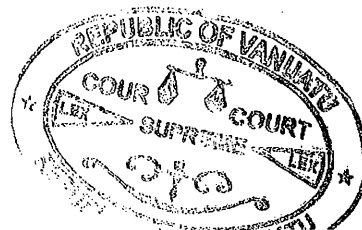
### DECISION

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1. On 8 December 2016 I heard two applications, the first by the State (First Defendant) to become the claimant in this proceeding, and the second is by the Second Defendants that the amended claim of the claimant be struck out for want of prosecution.
2. The Claimant was previously represented by Mr. Eric Molbaleh of Lent Tevi and Associates. Mr. Molbaleh filed a notice of ceasing to act on 2 September 2016.
3. The application made by the State was opposed by Mr. Yawha who argued it would be an abuse of process if the Court allowed the application. It is noted that on 6 June 2016 when the First Defendant filed their defence the Minister had admitted that the decision made on 3 August 2014 was unlawful and as such there was no defence, but that the Minister would simply abide the orders of the Court.



4. It was submitted by Mr. Tabi that having so admitted, the only remaining issue for the Court's determination is whether the leases already issued pursuant to that decision and registered should be cancelled. Moreover it was argued by the State that the State should be added as the Claimant on a relator basis because the rights sought to be enforced are public law rights. Mr. Tabi submitted that without any specific legal provisions the Court should exercise its inherent jurisdiction to effect this charge.
5. The State relied on the case authorities of Vanuatu Rowing Association (Inc) v. Minister of Lands & Ors. JR 16 of 2013 and Kalo Sandy v. Vanuatu Rowing Association (Inc) & Ors. CAC 30 of 2015 in support of their arguments and submissions.
6. While these cases are helpful in other respects, they do not assist the Court in determining the issue of whether or not the Minister as First Defendant could be made the Claimant in this proceeding in place of Transparency International Vanuatu Committee (Inc).
7. I have given careful consideration to the State's application to become the claimant in this proceeding. In my view the application is misconceived. The Minister is named as the First Defendant. He could not possibly be the defendant and the claimant at the same time. The most sensible and appropriate approach is first to have him removed as the First Defendant and then seek an additional order substituting him as the Claimant or Second Claimant. This in my view could be done pursuant to Rule 3.2 (3) of the Rules.
8. For the reasons given I hereby dismiss the application of the First Defendant.
9. As for the application to strike out the proceeding the answer is both "Yes" and "No". As regards the Second and Third Defendants the claims of the Claimants are struck out for want of prosecution.
10. As regards the First Defendant, having made a clear admission on 6<sup>th</sup> June 2016 that the decision made on 3 August 2014 was unlawful, the First Defendant has no defence and no prospect of successfully defending the claim in respect of the first relief sought, which is that the said decision should be quashed. Accordingly the decision made by the former Minister dated 3 August 2014 is hereby quashed on ground of illegality.
11. The remaining two reliefs sought in the amended claims of the claimant filed on 18 March 2016 cannot now be determined in light of the defences of the



remaining defendants. These may be live issues which would have to be heard and determined in another proceeding which may be instituted by the Republic at some stage. But that is for another time.

12. As for costs, there will be no order as to costs in relation to the two applications. But in relation to the proceeding, the Second Defendants only are entitled to their costs of and incidental to the proceeding on the standard basis, as agreed or taxed by the Master.

**DATED at Port Vila, this 21<sup>st</sup> day of December, 2016.**

**BY THE COURT**

