

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

Judicial Review  
Case No. 16/3950 SC/JUDR



BETWEEN: NAWOTA KALOWIA EDDIE TARIPOAMATA

Claimant

AND: REPUBLIC OF VANUATU

Defendant

**Date of HEARING:** 3rd day of March, 2017 at 8:30 AM  
**Before:** Justice Oliver Saksak  
**In Attendance:** No appearance for Claimant ( Daniel Yawha)  
Adeline Bani for Defendant

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DECISION

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1. This case was last called on 30<sup>th</sup> January 2017 at 10:00am. Ms Bani was present but Mr Yawha was not. Ms Bani informed the Court that the claim had been served on the State Law Office but that the claimant had not issued prior notice as required by section 6 of the State Proceedings Act. This was put to the attention of Mr Yawha by letter dated 23<sup>rd</sup> December 2016. Ms Bani then submitted that based on the Court of Appeal ruling in Civil Appeal Case No.21 of 2013 Republic.v. Kwang sing 1 that failure operates as a complete prohibition to the commencement of a proceeding against the State. Counsel proposed two options:-
  - a) To adjourn and order compliance, or
  - b) Award wasted costs of VT 5.000 and issue directions.
2. The Court adopted the second option to award wasted costs of VT 5.000 and directed the claimant to file and serve sworn statements in support of the claim within 14 days. The Court then adjourned the case to 3<sup>rd</sup> March 2017 for a Rule 17.8 hearing at 0830 hours.



3. At 0830 hours today when the case was called Mr Yawha again was not present. My associate informed me prior to the sitting in chambers that attempts were made over the phone about three times but with no success.
4. The Court noted the presence of Mr Alain Fred Obed and Mr Kalsau Tari, Chairman of the Siviri Council of Chiefs. Mr Obed said he appeared as representative of the Council of Chiefs. But the Court was not told what interest the Chiefs have in this matter. They are not a party.
5. Mr Obed sought indulgence of the Court to adjourn the matter and give him the opportunity to take instructions following the last orders issued on 30<sup>th</sup> January 2017 and take appropriate steps to remedy the failures. The Court declined the request for reason the Council of Chiefs are not a party to this case.
6. I gave Ms Bani a further opportunity to address me on any issues. Counsel referred to the last orders and informed the Court that there has still been no compliance and that the State maintained its position.
7. I decided that the Court should take a fallback position and to make a decision on the claimant's failure to comply with section 6 of the State Proceedings Act. On the authority of this case law cited by the State, it is clear that the claimant is prohibited from commencing this proceedings.
8. The end result is that this proceeding is struck out in its entirety. Ms Bani asked that the wasted costs awarded on 30<sup>th</sup> January 2017 be maintained against the claimant. The Court accepted the request but was of the view the wasted costs order should be against the claimant's counsel, Mr Yawha.



9. Accordingly this proceeding is hereby struck out and the file is to be closed as complete. Mr Yawha is ordered to pay VT 5.000 as previously ordered to the State Law Office within 7 days from the date hereof.

**DATED at Port Vila this 3<sup>rd</sup> day of March 2017**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

