

**BETWEEN: CHRISTOPHE KARIE AND
SYLVIE QENEGEIE trading as BELAIR
FARM**
Claimants/ Appellants

AND: THE DIRECTOR OF CUSTOMS
Defendant/ Respondent

Coram: Mr. Justice Oliver A. Saksak

Counsel: Nigel Morrison for the Appellants/ Applicants
Sakiusa Kalsakau for the Respondent

Date of Hearing: 6th and 7th February 2018

Date of Judgment: 22nd May 2018

JUDGMENT

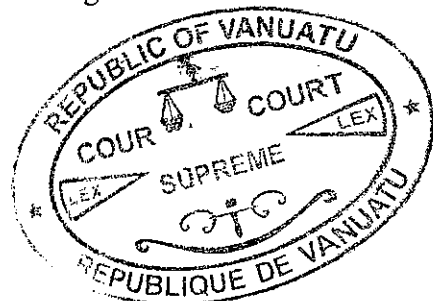
Introduction

1. The Claimants filed their proceeding as an appeal pursuant to section 187 (1) of the Customs Act No. 7 of 2013 (the Act). It states-

“ (1) A person claiming an interest in goods forfeited and seized under this part may, within 20 days after the date on which a notice is given to that person under section 182, apply to the Court for an order that the seizure be disallowed and the goods restored to the owner ... ”

Background Facts

2. On or about 10th May 2016 the applicants imported 6 containers of sandalwood (the wood) into Vanuatu from New Caledonia. Their intention was to re-export the wood from Vanuatu. The 6 containers arrived on the vessel Forum Pacific and were initially stored at property at a Bladinere Estates.
3. Upon arrival of the wood the applicants completed and lodged in the first instance an IM9 declaration.



4. Subsequently upon request the applicants completed and lodged IM5, EX3, and IM4 declarations and provided a security bond.
5. However on 18th May 2017 the respondent issued a Seizure Notice (the Notice) under section 182 of the Act and seized all the wood imported by the applicants. The Notice was duly served on the applicants on the same date.
6. The Notice alleged offences committed by the applicants under sections 55, 64, 169, 170 and 174 of the Act. The allegations included allegations that the applicants had intentionally misstated the value of the wood in the 6 containers.
7. The applicants therefore applied under section 187 of the Act seeking-
 - a) A determination that the applicants have acted lawfully at all times,
 - b) An order setting aside the seizure notice,
 - c) The return of all the sandalwood to their custody,
 - d) Costs, and
 - e) Such further or other reliefs the Court deems just.
8. The applicants denied all the allegations made by the respondent.

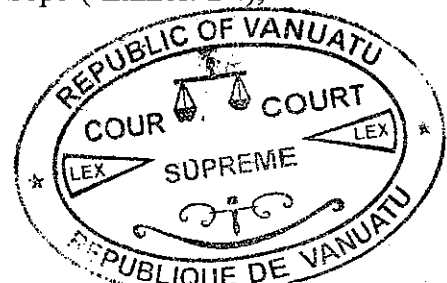
The Evidence

A.By Claimants

9. The Court heard oral evidence from Sylvie Qenegeie, Christophe Karie and from Jonathan Naupa. They were cross examined in relation to their sworn statements by Mr Kalsakau. All their sworn statements were tendered into evidence as Exhibits C1, C2, C3, C4, C5, and C6. A cheque for the sum of VT 240.000 dated 8th November 2016 was tendered as Exhibit C7.

B.By the Defendant

10. The defendant called evidence from Harold Tarosa,(Exhibit D1), Stephen Nilwo (Exhibit D2), Mackenzie Naupa (Exhibit D3), Kalory Sope (Exhibit D4), Gabriel



Gauchet (Exhibit D5) and Jairus Linparus (Exhibit D6). All the witnesses were cross-examined by Mr Morrison.

The Issues

11. Mr Morrison raised the following;

“ Are there sufficient grounds for the Court to determine in accord with section 187 of the Customs Act 2013 that the seizure be allowed and the goods restored to the owner?”

12. Mr Kalsakau raised the issue of whether or not there was reasonable cause to seize the goods?

Discussions

13. The facts are not in dispute.

14. The complaint of the claimants is about the Seizure of 6 containers of sandalwood imported into Vanuatu by them from New Caledonia in May 2016.

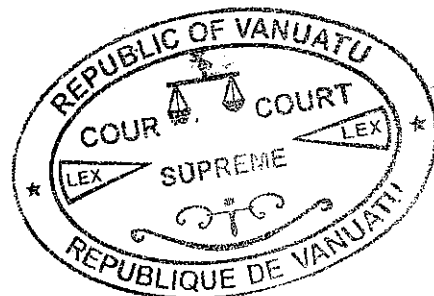
15. The Defendant issued a Notice of Seizure under section 182 of the Act. The procedure for seizure is provided in section 181 of the Act. Relevantly it states in subsection (1) as follows:-

“1. A customs officer or any authorised person may seize any forfeited goods or any goods that he or she has reasonable cause to suspect are forfeited.”

16. Section 182 states-

“1. If goods are seized under section 181, customs must as soon as practicable, give notice in writing to any person known or believed to have an interest in the goods or if that person is overseas, to his or her agent in Vanuatu, of the seizure and the reasons for the seizure, in the approved form.”

17. Section 1 defines “ forfeited goods” to mean “ goods that are forfeited to the State under section 180.”



18. Section 180 lists goods that are to be forfeited to the State in respect of which an officer has reasonable cause to suspect an offence has been committed under:

Sections 55, 64, 68, 69, 169, 174, and 175 of the Act among others and includes under subsection 1 (n) "all goods that have been unlawfully imported into Vanuatu..."

19. The Seizure Notice issued on 18th May 2017 alleged offences under sections 55, 64, 169, 170, and 174 of the Act.

20. Section 55 provides for offences in relation to entries as follows:-

" 1 A person who:

- a) Fails to make an entry required under this Act, or*
- b) Makes an entry required under this Act that is incorrect or defective in a material particular,*

Commits an offence punishable on conviction to a fine not exceeding VT 100.000

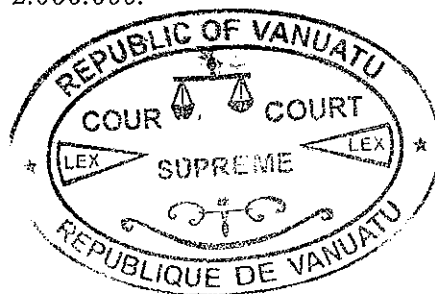
2. A person who makes an entry that the person knows is incorrect or defective in a material particular commits an offence punishable, on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding VT 1.000.000, or both."

21. Section 64 provides for offences in relation to exportation of goods as follows-

" (1) A person who:

- a) Acts in contravention of subsection 61 (1) or (4) or*
- b) Fails to comply with a request made under paragraph 6, (2) (b), or*
- c) Fails or is knowingly concerned in any failure, to comply with section 62 ,*
or
- d) Acts in contravention of section 63, or*
- e) Is knowingly concerned in a contravention of subsection 92 (3) (which relates to draw back on certain goods), commits an offence.*

2.A person who commits an offence against paragraph (1) (a), (b) or (c) or (d) is liable on conviction to a fine not exceeding VT 2.000.000.



3. *A person who commits an offence against paragraph (1) (e) is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 2.000.000 or both.*

22. Section 169 provides for offences in relation to documents or statements as follows-

“ A person who:

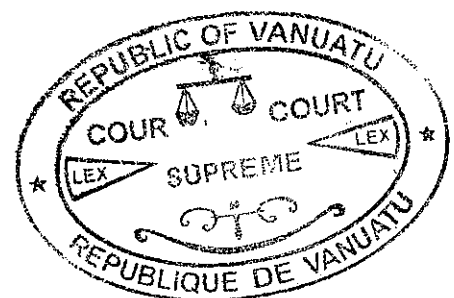
- a) Makes a false declaration or written statement, or*
 - b) Produces or delivers to a custom officer, a false or forged document or statement, or*
 - c) Produces or delivers to a custom officer a document or statement that is incorrect in any material particular,*
- Commits an offence punishable on conviction to a fine not exceeding VT 100.000.”*

23. Section 170 provides for offences in relation to declarations as follows-

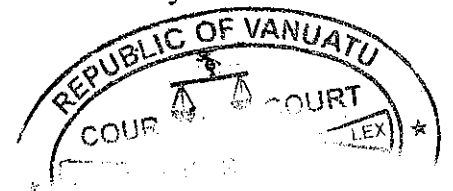
“ A person who-

- a) makes a false declaration under the Act, or*
- b) Knowingly produces or delivers to a customs officer a false or forged declaration, or*
- c) Knowingly produces or delivers to a customs officers a declaration that is incorrect in any material particular, commits an offence punishable, on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT 5.000.000 or both.”*

24. The Seizure Notice issued in May 2017 is in evidence before the Court but as it is not in contention the Court must accept its existence as a matter of fact and of law. Secondly the period in which it was issued is some 8 months apart from the first Seizure Notice issued on 29 September 2016, and some 12 months after the 6 containers arrived in May 2016. But again these appear not to be in contention and the Court does not have to be concerned with it.

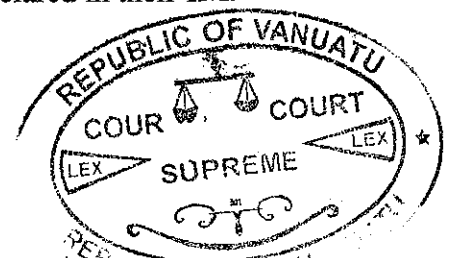


25. The real issues were (a) whether the actions of the claimants at the time of arrival of the 6 containers of sandalwood were such as to give rise to reasonable suspicion on the part of custom officers to warrant seizure of the wood as forfeited goods, and (b) whether the issuance of the Seizure Notice in May 2017, was lawful.
26. From the evidence the Court finds the following acts and/or omissions of the Claimants which gave rise to reasonable suspicions to custom officers-
- a) The Claimants carry on business as Belair Farm had a licence for the period 29/4/016 to 31/12/016 and their licence was for “ CHICKEN FEED/ IMPORT”. See sworn statement of Sylvie Qenegeie- Exhibit C1 Annexure SQ1.
 - b) Their application to import annexed as SQ2 is for Sandalwood Timber and not for chicken feed, inconsistent with their Business Licence.
 - c) The contract annexed as SQ 6 by Sylvie Qenegeie is a partnership contract and not a sale contract.
 - d) When the claimants sold some sandalwood to Stephen Nilwo and Jonathan Naupa from the wood that were under the contract to be only in transit in Vanuatu, their actions were suspicious and in violation of their contract.
 - e) The contract is dated 10th May 2016. It states the estimated value of the sandalwood at XPF 41.004.000 or VT 43.566.750. Sylvie Qenegeie was aware of this amount. This is the same amount that appears on Invoice dated 26/4/016 annexed as GG1B to the sworn statement of Gabriel Gauche (Exhibit D5). Sylvie Qenegeie signed the Invoice. She knew this amount but failed to disclose it to Mr Tarosa. Had she done so an IM9, Im5 or EX 3 would not have been advised or used.
 - f) However when she and Christophe Karie met with Harold Tarosa in early May 2016, they both told Mr Tarosa they did not know the value of the Sandalwood in the 6 containers. As a result Mr Tarosa advised them to complete an IM9 with further details which they did and indicated the value as XPF 41.004.000 on 10th May 2016.



On 2nd June 2016 they lodged an IM5 form indicating the value of the Sandalwood at VT 1.200.000, an obvious inconsistency and undervalue.

- g) On 5th August 2016 Wild Operations Limited issued a blank cheque (see Annexure JL6 to the sworn statement of Jairus Linparus Exhibit D6). This is in direct contravention of section 184 of the Act which requires cash payment or a bank guarantee. One would expect the cheque to have come from Belair Farm.
- h) On 3rd June 2016 the Claimants lodged an EX3 form for sandalwood in 6 containers indicating a total amount of VT 1.200.000. (See Annexure JL 7-Jairus Linparus statement). This did not reflect the correct value of wood in the 6 containers.
- i) Later on 3rd June 2016 the claimants lodged an IM4 (see Annexure JL8) for 2000kg to Jonathan Naupa. He paid for these at VT 600 per kg. On 23rd June 2016 Wild Operations Limited bought another 1800 kgs of wood at VT 1.080.000 (see JL 27). On 25th June 2016 Wild Operations Ltd sold this quantity to Taiwan in 2 categories. Sandalwood logs at 1600 kgs at \$ 43.50 for \$ 69.600.00 and sandalwood chips at 200kgs at \$ 5.00 for \$ 1000.00 (see JL 28) . In cross, Mr Naupa said he stepped in to assist the claimants and this was a test sale and purchase to achieve the best price to benefit the New Caledonian farmers.
- j) There was no evidence of any further sales to Taiwan after that sale. The sandalwood logs were sold at \$ 43.50, that is about VT 4000. Compared to the sale price of VT 600 in New Caledonia, that was a good price by about 8 times. There is no evidence by the claimants that Jonathan Naupa ever advised them again of the price he got after that transaction. It begs the question whether the claimant's intention to re-export the wood after they imported them to Vanuatu was genuine. After all they obtained an EX3 form which requires that they should have exported within 6 months, but did not do so.
- k) Jairus Linparus made extensive investigation. Amongst others he found an Invoice by Association Drehu Tapaka (JL 14) that states the value of the wood at VT 352,317,700 for 69.728.09 kgs. The claimants however declared in their IM9 the



sum of XPF 40.004.000 for 68.340 kgs of wood in the 6 containers. What happened to the balance of the wood and where are they?

1) There is no evidence by the New Caledonian farmers or Tapaka Drehu to confirm the price of VT 600 per kilo. The documents handed up by Mr Morrison from the Bar table cannot be evidence unless confirmed by the maker.

27. The list could be continued but in my view, these are sufficient for the Court to be satisfied that when the customs officers were faced with those acts and/or omissions on the part of the claimants, they had sufficient grounds giving them reasonable suspicions that the woods in the 6 containers were forfeited goods, warranting the issuance of the Seizure Notice dated 18th May 2017.

28. I find the evidence of the claimants lacked credibility. Jonathan Naupa was evasive in all his answers in cross, so much so that the Court should be cautious to accept his evidence as truthful. The Court prefers the evidence from the defence witnesses to the claimant's evidence. From those evidence the Court is satisfied the claimant had violated sections 55, 64, 169, 170, 174 and other relevant sections of the Act.

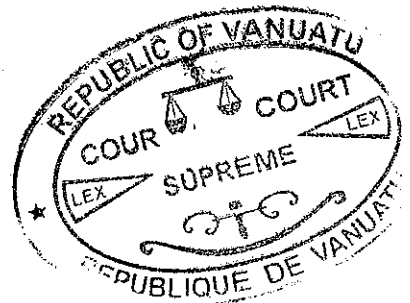
29. The whole affair went derail when the two claimants failed to give the value of the wood to Mr Harold Tarosa in the first place. Had they done so, they would have avoided all the pains of completing all the other forms. They therefore cannot blame the custom officers for following their advices.

30. The issuance of the Seizure Notice on 18th May 2017 by the respondent was therefore lawfully done and it must be sustained.

The Result

31. The appeal by the Claimants is therefore dismissed.

32. Under section 188 (2) of the Act all the sandalwood in the 6 containers are condemned to the State.



33. The appellants will pay the costs of the respondent on the standard basis as agreed or taxed.

DATED at Port Vila this 22nd day May 2018

BY THE COURT


OLIVER A. SAKSAK

Judge

