

BETWEEN: Kilbride Limited
Applicant

AND: Republic of Vanuatu
Respondent

Date of Hearing

9 July 2019

Before:

Justice G.A. Andrée Wiltens – in Chambers

Counsel:

Mr M. Hurley for the Applicant – not present

Date of Decision

Mr L. Huri for the Respondent – not present
1 August 2019

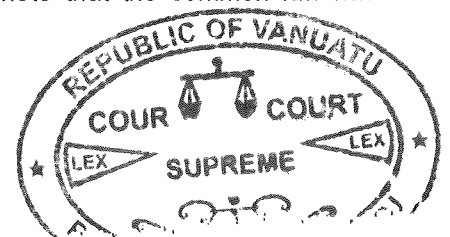
JUDGMENT

A. Introduction

1. The Applicant has made a Constitutional Application that its constitutional rights have been breached in the manner that the Government has passed amending legislation so that compulsory acquisition of leasehold land owned by the applicant no longer involves the significant compensatory consideration of market value.
2. In the course of the litigation, orders for disclosure were only partly complied with, which led to an application for further disclosure.
3. The Respondent claims legal professional privilege over the material withheld from disclosure.
4. The applicant is keen to have those documents disclosed and challenged the withholding.
5. The process agreed on was that Mr Huri would provide the documents to the Court so as to obtain an independent determination whether legal professional privilege attaches to any or all the withheld documents.
6. Having now received and inspected the documents, this is my decision.

B. Applicable Law

7. There is a general right to inspect documents in civil litigation, and parties to litigation have the right to inspect such documents that are considered to be proportionate, given the nature of the case. However, the right to inspect is subject to a number of exceptions. One of these exceptions is where legal professional privilege is claimed, as proscribed by the common law.
8. Legal professional privilege attaches to communications between client and legal adviser which are intended to be confidential. It follows that not all communications between client and legal adviser are exempt from inspection/disclosure. However, I note that the common law has



fiercely protected this and other exceptions, with ample authority to the effect that the protection against disclosure must not be narrowly interpreted.

9. With those considerations in mind, I now explain my reasoning in respect of each of the documents in relation to which legal professional privilege is claimed.

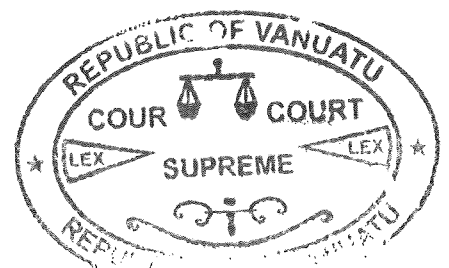
C. The Documents

10. I list the documents provided:

- (i) Letter, dated 18 September 2014, from the Minister of Lands to the Attorney General;
- (ii) Letter, dated 26 September 2014, from the Valuer General to the Minister of Lands;
- (iii) Letter, dated 11 May 2017, from the Acting Director of the Department of Lands to the Attorney General;
- (iv) Letter, dated 12 May 2017, from the Minister of Lands to the Attorney General;
- (v) Decision No. 93 of 2014, dated 15 July 2014, made by the Council of Ministers;
- (vi) Decision No. 32 of 2016, dated 10 March 2017, made by the Council of Ministers;
- (vii) Draft Bill, prepared in 2014, of the Amendment of the Land Acquisition Act;
- (viii) Draft Bill, prepared in 2017, of the Amendment of the Land Acquisition Act;
- (ix) E-mail correspondence, dated 9 October 2014 to 27 May 2017, between the State Law Office and various clients;
- (x) Decision No. 90, dated 16 May 2017, made by the Council of Ministers;
- (xi) Letter, dated 22 May 2017, from the Malvatumauri Council of Chiefs President to The Minister of Lands; and
- (xii) E-mail correspondence, dated 12 May 2014 to 27 June 2014, between the State Law Office and various clients.

D. Discussion

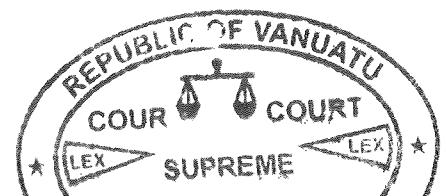
11. The State Law Office is the legal adviser to all Republic of Vanuatu Government Departments and the Ministers with oversight of those Government agencies.



12. Document (i) is a letter of instruction by the Minister of Lands as to the drafting of proposed amending legislation. The ultimate intention was for the bill to be released into the public domain. Accordingly, there cannot be a justifiable claim that the communication is confidential.
13. Document (ii) is not a communication between legal adviser and client. There is no basis to claim legal professional privilege, even though the document is copied to the State Law Office.
14. Document (iii) is a suggestion by the Acting Director of Lands to the Attorney General that an amendment to the Land Leases Act would complement the proposed amendments to the land acquisition process. It ends with an instruction to please draft the proposed suggestions – which were ultimately intended for public consumption. This document does not appear to me to be confidential, even though it is between a legal adviser and client.
15. Document (iv) is an instruction by the Minister of Lands to the Attorney General as to the drafting of proposed amending legislation. The resulting product was intended to be debated in the public domain. There is nothing confidential about this communication.
16. Documents (v), (vi), and (x) are advising the Minister of Lands of decisions by the Council of Ministers. Both are copied to a large group of persons, including the Attorney General. They are not a communication between client and legal adviser; nor are they confidential documents.
17. Documents (vii) and (viii) are draft Bills for the Amendment of the Land Acquisition Act. They are not communications between legal adviser and client, and they are not intended to be confidential – the final product will be published in the public domain.
18. Document (ix) is a series of emails. They deal with mundane matters such as the need to complete drafting, when and where meetings will be held and similar communications between State Law Office employees and the Minister of Lands and members of his staff. They are not confidential.
19. Document (xi) is a letter to the Minister of Lands by the President of Malvatumauri inviting the Minister to make a presentation. It is not a communication between legal adviser and client; it is not confidential.
20. Document (xii) is a series of emails between State Law Office employees and the Minister of Lands with others persons copied in. They discuss possible amendments to the proposed amending Bill. They are not confidential communications, and the ultimate product is intended for public consumption.

E. Decision

21. While some of the documents withheld are communications between legal adviser and client, several are not and cannot therefore be withheld on the basis of legal professional privilege. Further, where the communications are between client and legal adviser, in my considered opinion they are not confidential and therefore cannot be validly withheld from disclosure/inspection.
22. Accordingly, I direct Mr Huri to forthwith disclose all the withheld documents to Mr Hurley, unless he wishes to appeal this interlocutory ruling. In that case he will have to file an appeal



and seek leave to appeal with suitable sworn statements in support within 7 days of the date of this decision.

23. In the circumstances, the applicant has been put to unnecessary costs in pursuing its claims. It is accordingly entitled to the costs of the application, which I fix at VT 20,000. The respondent is to pay the costs awarded within 14 days.

**Dated at Port Vila this 1st day of August 2019
BY THE COURT**

G.A. André Wiltens
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Justice G.A. André Wiltens

