

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

**Civil
Case No. 18/364 SC/CIVL**

BETWEEN: Public Land Transport Authority
First Claimant

AND: Shefa / Port Vila Public Land Transport
Second Claimant

AND: Port Vila Cruise Association
First Defendant

AND: Republic of Vanuatu
Second Defendant

Coram: *Justice Aru*
Counsel: *Mr. L. Napuati for the First Claimant*
Mr. P. Fiuka for the Second Claimant
Mr. D. Yawha for the First Defendant
Mr. T. Loughman for the Second Defendant

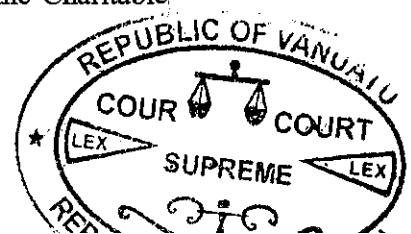
JUDGMENT

Introduction

1. This case concerns a dispute between the parties over management and operations of public land transport vehicles at the main Wharf during cruise ship days.

Agreed facts

2. The Public Land Transport Act No 4 of 2015 (the Act) establishes the Public Land Transport Authority (PLTA) as a body corporate with one of its main functions to oversee the carrying on of the business of providing public land transport services within Vanuatu. Section 11 of the Act recognises six (6) main land transport associations which must be registered with the PLTA. And one of this is the second claimant, the Shefa/Port Vila Public Land Transport Association (SPVPLTA). Secondly it requires that these associations must be registered under the Charitable Associations (Incorporation) Act [CAP 140] Act.



3. Section 46 of the Constitution of the SPVPLTA recognises that there may be sub associations of the SPVPLTA. The first defendant, Port Vila Cruise Transport Association (Port Vila Cruise) is established as a registered sub association of the SPVPLTA.

4. From October 2017 it had been managing and controlling operations at the main wharf during cruise ship days. Around the same time it had also been collecting 200VT as an access fee to the main wharf on cruise ship days. The legality of the fee and management of the wharf was disputed by the claimants.

5. At a meeting of the PLTA on 28 November 2017, the Board agreed that the SPVPLTA:-

“ will look after and manage the wharf issues as it is in their area jurisdiction and all the Shefa affairs will have to be dealt with by SPVPLTA and should there be pressing matters then Shefa will take it up with the Authority . Port Vila Cruise will no longer control traffic at the main wharf it will be SPVPLTA.”

6. Despite the decision, Port Vila Cruise continued to manage the main wharf during cruise ship days.

7. On 7 February 2018 the claimants filed an urgent application seeking restraining orders against Port Vila Cruise .At the relevant time the second defendant had not been added as a party.

8. The urgent application was heard on 9 February 2018. In granting the application, two orders were issued against Port Vila Cruise namely that:-

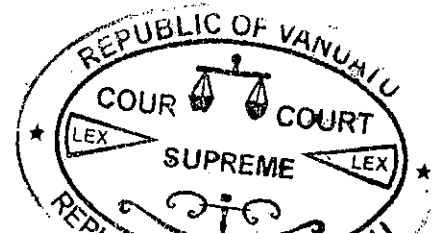
“(1). The defendant, its agents, friends and its land transport operators are restrained from managing and controlling the operations of public land transport at the main wharf; and

(2). The defendant, its agents, friends and its land transport operators are restrained from managing and controlling the operations of public land transport at the main wharf without the lawful authorisation of the claimants.”

9. These orders remain in force and have not been set aside.

Pleadings

10. The gist of the claim is that since registration as a charitable association, Port Vila Cruise assumed all powers in managing the main wharf on cruise days without lawful authorisation from the claimants. The claimants allege that as a result their members have suffered tremendous loss and damages.



11. The relief sought is damages in the sum of VT1, 200,000 for loss of revenue. The other relief sought was the restraining orders previously granted.
12. Port Vila Cruise denies the claim on the basis that by virtue of the SPVPLTA constitution, they are a sub association of the SPVPLTA and therefore are lawfully carrying out their activities in managing the main wharf during cruise ship days. It was also asserted that as a sub association, there is no provision to remove or terminate them.

Issues

13. The following issues arise:-

- a) Whether the claimants are entitled to damages;
- b) Whether Port Vila Cruise has been lawfully appointed by SPVPLTA to manage the main wharf;
- c) Whether Port Vila Cruise has the right to manage and control the operations of the main wharf during cruise ship days;
- d) Whether the newly appointed subcommittee has been lawfully appointed by the by the SPVPLTA

Discussions

Issue 1: whether the claimants are entitled to damages

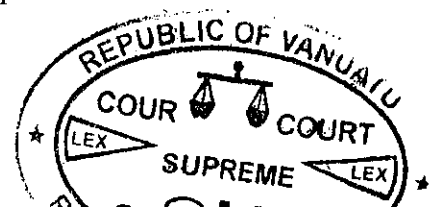
14. Rule 4.10 of the Civil Procedure Rules applies to a claim for damages and provides in sub rule (2) and (3) as follows:-

“(2) If general damages are claimed, the following particulars must be included:

- (a) the nature of the loss or damage suffered; and*
- (b) the exact circumstances in which the loss or damage was suffered; and*
- (c) the basis on which the amount claimed has been worked out or estimated.*

(3) In addition, the statement of the case must include any matter about the assessment of damages that, if not included, may take the other party by surprise.”

15. As mentioned above the first claimant is the regulator of public land transport services in Vanuatu. The second claimant is a charitable association registered pursuant to s 11



of the Act. Its membership is comprised of land transport operators operating within Port Vila and SHEFA province.

16. At paragraph 8 of the claim , the claimants plead the following:-

"8. As a result of the defendants continuous unlawful action and activity at the wharf, the claimant members have suffered tremendous loss and damages.

Particulars

- i) The claimant members are given second treatment rather than the same opportunity to operate and make business any where in Vila;*
- ii) In the event the defendants operators pick up all the tourist, the claimant members have to be turned back after arriving at the wharf at 5am in the morning;*
- iii) The claimant operators can loose up to VT 10,000 a day should the defendant continue to control the wharf."*

17. The evidence filed in support of the claim was deposed by the Chief Executive Officer of the first claimant Mr Tabigerian and the President of the second claimant Mr Massing. A single sworn statement was filed by a Mr Johnny Walker saying he represents 400 members. He was not called by the claimants. There is also no evidence from the 400 members that they suffered damage as alleged. Mr Walker also does not say what damages he suffered. Mr Tabigerian and Mr Massing were the only witnesses called by the claimants and were cross examined. There was no evidence that either of them or the PLTA and SPVPLTA suffered damages as pleaded.

18. There is no evidence that the claimants are entitled to damages. Therefore I answer the first issue in the negative.

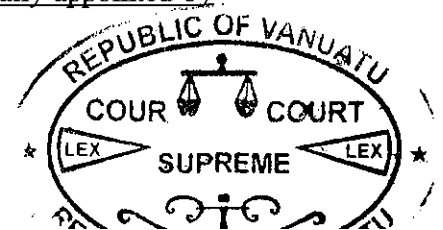
Issue 2: Whether Port Vila Cruise has been lawfully appointed by the SPVPLTA to manage the main wharf

19. The answer is no. There is no evidence of any decision or instrument of appointment that Port Vila Cruise was appointed by the SPVPTA to manage the main wharf. The PLTA board decision of 28 November 2017 vests authority to manage the main wharf in the SPVPTA.

Issue 3: Whether Port Vila Cruise has the right to manage and control the operations of the wharf during cruise ship days;

20. The answer is no. The right to manage the main wharf rests with the SPVPTA. There is no evidence that they have authorised Port Vila Cruise to manage the main wharf on their behalf.

Issue 3: Whether the newly appointed subcommittee has been lawfully appointed by the by the SPVPLTA



21. The SPVPLTA has the overall control and management of the main wharf as per the PLTA decision. It can appoint a subcommittee or sub association to undertake management on its behalf BUT it must do so in accordance with the provisions of its constitution.

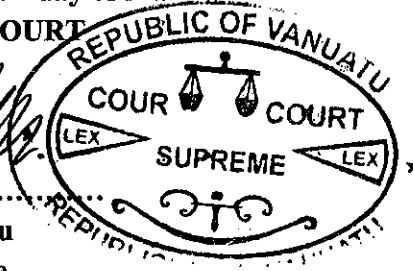
Conclusion

22. The management of the main wharf is an internal issue for the SPVPLTA and it must be resolved by its members in accordance with their constitution.

23. The claim is therefore dismissed and the defendants are entitled to costs on a standard basis to be taxed or agreed.

DATED at Rort Vila this 27th day of March, 2020

BY THE COURT



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D. Aru
Judge