

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

**Civil**  
**Case No. 23/736 SC/CIVL**

**BETWEEN:** **ENTREPRISE DINH VAN TU LIMITED**  
Claimant

**AND:** **THE REPUBLIC OF VANUATU**  
Defendant

**Before:** *Hon. Acting Justice Oliver A. Saksak*

**Counsel:** *Julian Wells for the Defendant/Applicant*  
*Mark Fleming for the Claimant as the Respondent*  
*Justin Ngwele for Andrew Bai for Second Intended Defendant*

**Date of Hearing:** *3 November 2023*

**Date of Decision:** *7<sup>th</sup> November 2023*

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**DECISION**

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1. On 3 November 2023, I heard counsel in relation to the application by the Republic to join Jay Ngwele as the Second Defendant to this proceedings.
2. I gave a short oral decision dismissing the application with costs to the Claimant and to the intended defendant.
3. I now provide my reasons for that decision.
4. The application was filed on 14 June 2023 under Rules 3.2 and 18.1 which states:

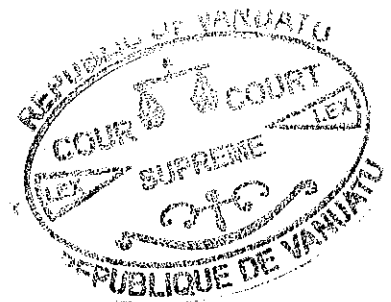
*"Adding and removing parties*

*3.2 (1) The court may order that a person becomes a party to a proceeding if the person's presence as a party is necessary to enable the court to make a decision fairly and effectively in the proceeding.*

*(2) The court may order that a party to a proceeding is no longer a party if:*

- (a) the person's presence is not necessary to enable the court to make a decision fairly and effectively in the proceeding; or*
- (b) for any other reason the court considers that the person should not be a party to the proceeding.*

*(3) A party may apply to the court for an order that:*



- (a) a person be made a party to the proceeding; or
- (b) a person (including the party applying) be removed from the proceeding.

(4) A person affected by a proceeding may apply to the court for an order that the person be made a party to the proceeding.

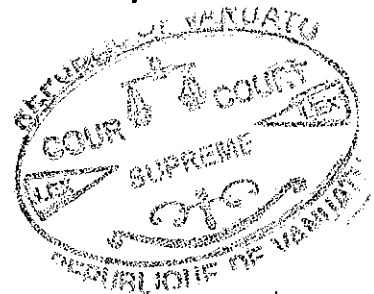
(5) An application must have with it a sworn statement setting out the reasons why the person should be made a party, or be removed as a party.

5. Rule 18.1 provides for extending and shortening time as follows:

*"Extending and shortening time*

**18.1 (1)** *The court may, on its own initiative or on the application of a party, extend or shorten the time set out in these Rules for doing an act."*

6. The application was supported by the evidence by sworn statements of August Letlet, Johnson Binaru and John Cliff Soaram all filed on 14 June 2023.
7. At the hearing Mr Fleming objected to paragraphs 2 and 3 of the statement of August Letlet, to paragraphs 2, 3 and 4 of Johnson Binaru's and to paragraphs 3 and 4 of John Cliff Soaram's statements. The basis of those objections were that these were opinion and/or legal submissions and were irrelevant and should be inadmissible.
8. Mr Fleming submitted also that the application failed to provide reasons why Mr Ngwele should be joined as a defendant in compliance with subrule (5) of Rule 3.2.
9. Mr Ngwele adopted and supported the submissions made by Mr Fleming as per his written submissions filed on 2 November 2023.
10. I accepted the submissions and arguments by Mr Fleming and ruled that those parts of the sworn statements by Mr Letlet, Mr Binaru and Mr Soaram objected to were inadmissible. As such, the balance of their statements fell far short of providing any reasons why Mr Ngwele should be made a defendant.
11. The sworn statement of Loic Dinh filed on 2 November 2023 by Mr Fleming on behalf of the Claimant in support of the objections raised were revealing and convincing.
12. The documents annexed to the sworn statement reveal that Mr Christopher Emelee who held the Ministerial Portfolio in 2020 before Mr Ngwele had dealt with these contracts as well but the application does not seek to join him.
13. Mr Ngwele held the Ministerial portfolio in 2021 and wrote very similar letters with almost similar contents as his predecessor in December 2020, and in February and March 2021 to the Claimant company about emergency road maintenance. Those letters were copied to other recipients including the Director General and Director of the Ministry of Infrastructure and Public Utility.



14. Mr Binaru wrote to the Director of Finance on 7 June 2021 ("ILD 4") He makes very specific reference to PWD's contribution towards upgrading of access road to farming communities at Abattoir, Erangorango and Tecouma Green Hill and the fact they are to be treated as emergency congruent with the State of Emergency announced as a result of COVID-19 and TC Harold. This included the PWD's request to the Central Tenders Board to approve procurement under the sole sourcing provision of the Tenders Act. And finally he said almost at the end:  
*"Therefore, PWD has packaged the following as one contract*
1. *Erangorango road upgrade.*
  2. *Greenhill road upgrade.*
  3. *Abattoir road upgrade."*
15. With those documentary evidence, the argument and submissions that the Directors General of Finance and of Public Works Ministry were not made aware of those contracts are untenable and are rejected.
16. For those reasons the application failed. The Defendant including Mr Ngwele were entitled to costs on an indemnity basis but limited only to three hours instead of six hours as claimed by Mr Fleming.
17. The costs allowed to the claimant at VT 40,000 per hour x 3 hours = VT 120,000. And to Mr Ngwele at VT 30,000 x 3= VT 90,000
18. The defendant shall pay those costs within 28 days from the date of this decision.

**DATED at Port Vila, this 7<sup>th</sup> day of November 2023  
BY THE COURT**



**Hon. Acting Chief Justice Oliver A. SAKSAK**

