

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

Civil
Case No. 23/1928 SC/CIVL

BETWEEN: JOSEPH SUTA
Claimant

AND: THE REPUBLIC OF VANUATU
Defendant

Hearing: 29th day of January 2024
Before: Justice W. K. Hastings
Distribution: Mr. KT Tari for the Claimant
Mr. F Bong for the Defendant
Submissions: 16th day of April 2024 from the Defendant
22nd day of April from the Claimant
Judgment: 3rd day of June 2024

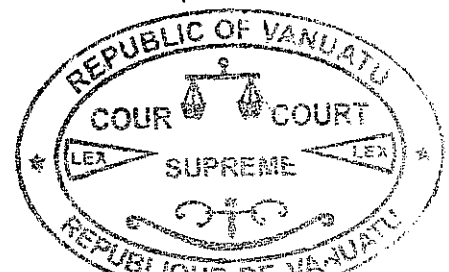
JUDGMENT

1. Josepho Suta was born on Wednesday 14 August 1968 in Port Vila. His birth certificate states that both his mother and his father were born on Wallis. It says nothing about whether or not he is a person of Ni-Vanuatu ancestry.
2. On 22 December 2022, Allan Liki, the Acting Secretary General of the Citizenship Office and Commission, wrote to Mr Suta a letter with the heading "Certification of Vanuatu Citizenship." The letter was addressed "to whom it may concern." It stated:

This is to certify that Mr Suta Josepho is a Citizen of Vanuatu by virtue of Article 9 of the Constitution of the Republic of Vanuatu. His father is from Efate Island, Shefa Province. Josepho was born in Vila Central Hospital, Efate on 14th day of August 1968.

He obtained his French Passport on the 01st September 2022 and has been classified as a Dual Citizen.

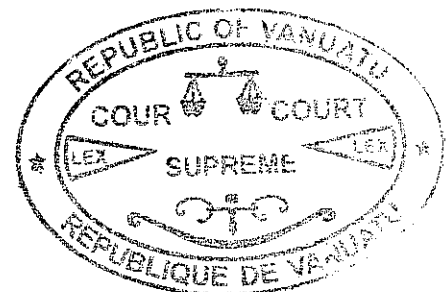
3. Mr Suta used this letter to obtain a Vanuatu passport which was issued to him on 27 February 2023. He then entered into an employment agreement and secured a loan from Bred Bank for the purchase of a motor vehicle.



4. On 2 May 2023, Mr Liki wrote to Mr Suta a letter by which he purported to revoke the letter of 22 December 2022. He informed Mr Suta that he had instructed the Passport Office to cancel his passport *"since you have not been awarded with a Vanuatu Citizenship Certificate."*
5. Mr Suta claims the Republic breached its duty of care to him by not scrutinising his application carefully, and by issuing and then revoking Vanuatu citizenship. He claims general, special and exemplary damages having relied on these documents to secure employment and a loan. Alternatively, he seeks an order that the revocation of his passport and citizenship were unlawful, unreasonable and unjustified, and an order that the defendant *"re-issue the Claimant with his Vanuatu Citizenship as he was born in Port Vila ..."*.
6. In its defence, the Republic states that birth in Vanuatu does not mean that the Claimant is automatically entitled to citizenship *"because he was born before independence and his parents are not indigenous Ni Vanuatu or has no ancestry of Vanuatu."* The Republic says *"without screening carefully the documents provided by the Claimant, issued a letter on 22 December 2022 certifying that the Claimant is a citizenship of Vanuatu by virtue of Article 9 of the Constitution."* The Republic also states that it told the Claimant which form to use to submit his application for citizenship, and is still waiting for the application to be made. The Republic denies the Claimant is entitled to the relief sought and says the amounts sought in damages *"are excessive and should be assessed by the Court."* Finally, the Republic states that the alternative remedy sought by the Claimant (a declaration and order), is misconceived because this is not a claim for judicial review.
7. Mr Suta is now classified as a prohibited immigrant. He is not, however, subject to a deportation order. I accept that Mr Liki told him on 29 May 2023 he would assist Mr Suta to complete the correct application form, and that Mr Suta has not done so.

The issues

8. Before trial, Mr Bong and Mr Tari agreed that the issue they wanted me to decide was whether Mr Suta made an application for citizenship in December 2022. I will refer to this as "Question 1."
9. After trial, this changed.
10. In the Defendant's closing submissions filed on 16 April 2024, Ms Samuel stated the issue as *"Whether the Claimant was entitled to become an automatic citizen of Vanuatu under Article 9 of the Constitution, when his parents and grandparents do not belong to a tribe or community indigenous to Vanuatu?"* I will refer to this as "Question 2."
11. In the Claimant's closing submissions filed on 22 April 2024, Mr Tari submitted, *"The Claimant's significant issue for this Court to determine is whether the Defendant through the Office of Citizenship was negligent (statutorily) in issuing the certification reference note that led the Claimant to place reliance on that reference note to apply for Vanuatu passport and employment."* I will refer to this as "Question 3."

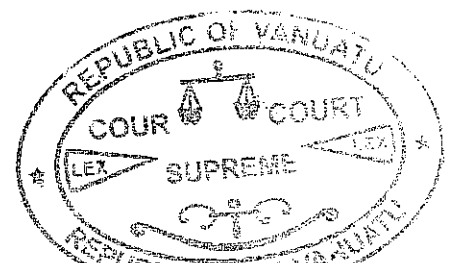


12. The change from an agreed issue at the beginning of the trial, to separate statements of the issue after trial, creates a difficulty because the evidence at trial was focused on the original statement of the issue. There is however enough evidence to answer two of the three questions, and to fashion a way forward for the parties.
13. Before moving on to the evidence, counsel are reminded (and I have reminded myself) of the following timely advice from the Court of Appeal. In *Teaching Service Commission v Vanuatu Teachers Union* [2024] VUCA 5 at [46], the Court of Appeal provided a note of caution in respect of an application to determine single issues as counsel have done in this case:

Before leaving the matter, we note that this case is another illustration of the long experience of the courts that the benefits of hearing and determining some issues in a proceeding in advance of others are often more illusory than real. It is not uncommon in litigation in which this course has been adopted for it to be found that other issues arise which were not anticipated, that the court does not have all the necessary evidence, or that there is an overlap with other issues not then being tried. Another disadvantage is the fragmentation of the litigious process, including while appeals are pursued. This is not to deny that there may be cases in which the determination of one or more issues in the litigation in advance of others will be appropriate, but considerable care is required before that course is adopted.

The evidence

14. Mr Suta gave evidence. In his sworn statement, he states that the defendant approved his application for citizenship on 22 December 2022. He states he "*relied on the approved certificate of Vanuatu Citizenship*" (the letter of 22 December 2022) to apply for a Vanuatu passport. He does not say in his statement what he submitted before 22 December 2022 to obtain the letter dated 22 December 2022.
15. When cross-examined by Mr Bong, Mr Suta confirmed he submitted copies of his birth certificate and French passport, and no other documents, to the Citizenship Office. This would be consistent with an assumption that the claimant was automatically entitled to citizenship under Article 9 of the Constitution. He then said he filled in an application form as well, in the presence of a woman at the Citizenship Office. He produced a receipt, but it was for his passport application and was dated 5 and 17 January 2023. He said he did not receive a certificate as a result of filling in the application form and lodging copies of his birth certificate and French passport. He said he only received the letter of 22 December 2022. He said he did not have or receive a copy of his application. Under questioning from me, I understood him to say he filled in two forms he was told were citizenship applications, the second because the first one was the wrong form.
16. Mr Liki also gave evidence. In his sworn statement, he stated that the letter of 22 December 2022 was issued "*without carefully screening his birth certificate.*" He confirms that the letter "*was unreliable and inappropriate.*" He annexes examples of reliable and appropriate letters to applicants



informing them their applications for citizenship were successful, and a citizenship certificate that he says must be presented to the Director of Immigration before a passport is issued.

17. He confirmed in Court that the letter of 22 December 2022 was based on the mistaken assumption that Mr Suta's parents were ni-Vanuatu as required by Article 9 of the Constitution. Although Mr Suta submitted a copy of his birth certificate which states his parents were both from Wallis, Mr Liki said this was not picked up due to an oversight at a busy time of year. He said when they realised their mistake, he wrote to Mr Suta on 2 May 2023 to inform him that he revoked the letter of 22 December 2022 because Mr Suta was not entitled to citizenship under Article 9 of the Constitution. He said when Mr Suta came into the Citizenship Office on 29 May 2023, he told him to submit a fresh application for citizenship on the proper form. He said he does not have the power to confer citizenship; only the Citizenship Commission can do that once an application is complete. He said his office has no record of having received any completed citizenship application form from Mr Suta.
18. I will observe that there is no evidence that Mr Suta was given any notice of the intention to revoke the letter of 22 December 2022, or any opportunity to address the concerns of the Citizenship Office.

The law

19. Article 9 of the Constitution states:

9. Automatic citizens

On the Day of Independence the following persons shall automatically become citizens of Vanuatu –

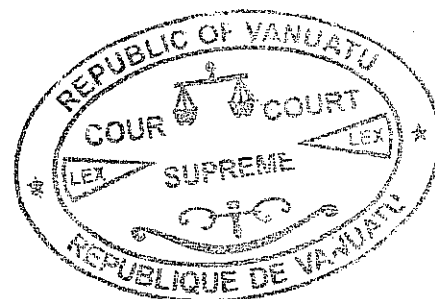
- (a) a person who has or had four grandparents who belong to a tribe or community indigenous to Vanuatu; and*
- (b) a person of ni-Vanuatu ancestry who has no citizenship, nationality or the status of an optant.*

20. Section 5 of the Citizenship Act [Cap 112] as amended by the Citizenship (Amendment) Act 2013 states that the Citizenship Commission has the power to approve and revoke citizenship:

5. Functions and powers of the Commission

- (1) The Commission shall carry out such functions as are provided for it in this or any other Act.*
- (2) The Commission shall have such powers as are conferred on it specifically or by necessary implication by this or any other Act and shall generally in addition have such powers as shall enable it to exercise any of its functions.*
- (3) Without limiting the generality of subsection (2), the Commission has the following powers:*

- (a) to consider and approve applications for citizenship; and*



(b) to revoke a citizenship that has been granted if:

- (i) the citizenship was granted in a fraudulent manner; or*
- (ii) the citizenship was granted contrary to the provisions of this Act or the Constitution; or*
- (iii) the person after being granted citizenship is not complying with the restrictions provided in this Act.*

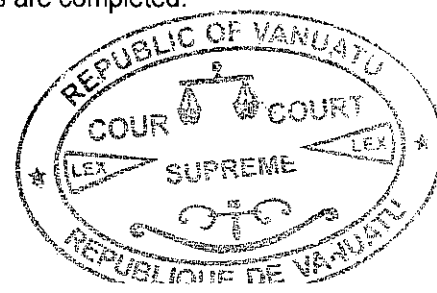
21. Section 8B of the Citizenship Act sets out the powers of the Secretary General:

8B. Functions of the Secretary General

The Secretary General has the following functions:

- (a) to act as the Chief Executive Officer of the Commission; and*
- (b) to advise the Commission on matters related to the exercise of the functions of the Commission; and*
- (c) to notify members of the Commission of meetings; and*
- (d) to ensure meetings are organised within the annual budget ceiling of the Commission; and*
- (e) to take minutes of all meetings of the Commission; and*
- (f) to issue letters of certification of citizenship; and*
- (g) to liaise with foreign embassies and foreign governments on matters of citizenship; and*
- (h) such other functions as may be conferred on it by this Act or any other Act.*

22. On Mr Liki's evidence, the Citizenship Office requires an application for citizenship to be made on Form A (application for naturalisation under s 12 of the Citizenship Act); Form B (application for citizenship by a non-citizen married to a citizen under s 10 of the Citizenship Act); Form C (a) (application for citizenship entitlement under s 10 of the Citizenship Act); or Form C (b) (application to regain citizenship under s 18 of the Citizenship Act). Once the application is made, the Secretary General of the Citizenship Office and Commission informs the applicant that their application is approved in principle, and that they must complete a number of tasks, including sitting a Bislama test, before a Citizenship Certificate is issued. Only the Citizenship Commission has the power under s 12 of the Citizenship Act to approve applications for citizenship once the tasks are completed.



23. Mr Liki annexed to his sworn statement examples of letters approving in principle an application for citizenship and a citizenship certificate.

Submissions

24. Mr Tari submitted on behalf of the Claimant that the Defendant owes a duty of care to the Claimant and carries the burden of screening applications for Vanuatu citizenship. The Defendant admitted that it made a mistake when it appeared to grant citizenship to the Claimant and then purported to revoke it. Having made this mistake, the Claimant submitted that the Defendant cannot come to Court now and argue that the Claimant did not follow the appropriate procedures when he applied for citizenship. In reliance on the letter of 22 December 2022, the Claimant obtained employment and took out a loan before he received the letter purporting to revoke his citizenship on 2 May 2023. The Claimant submitted that, as a result of the Defendant's negligence, he has suffered financial loss and has been classified as an illegal immigrant. The Claimant also submitted,

He is prepared to lodge a new application for Vanuatu citizenship under the relevant provisions of the Citizenship Act as indicated by the Defendant, should the Court grant him the liberty and opportunity to do so.

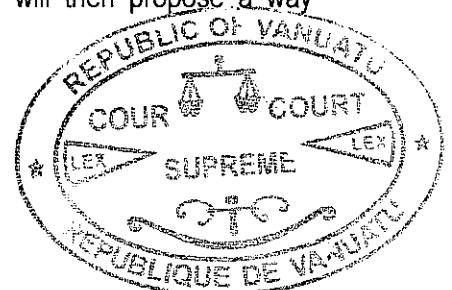
25. Ms Samuel submitted on behalf of the Defendant that there is no evidence that he lodged an application for citizenship. She submitted that when he lodged his birth certificate and French passport, his purpose was "to obtain certification of his birth certificate that he was born in Vanuatu." She submitted the Citizenship Office is responsible for scrutinising citizenship applications, and the Passport Office at the Department of Immigration is responsible for receiving passport applications and issuing passports. She submitted that the Claimant was never issued with a citizenship certificate, and that

it would be wrong in law and fact, should this Court conclude that, that letter [of 22 December 2022] properly represents an issuance of Certificate of Vanuatu Citizenship, because the Claimant failed to meet the requirements under Article 9 of the Constitution. The Claimant does not have parents or grandparents who belong to a tribe or community indigenous to Vanuatu.

26. Ms Samuel concluded that the Claimant is not entitled to become an automatic citizen of Vanuatu because he does not meet the requirements of Article 9 of the Constitution, and as such he must submit a proper application for citizenship on the appropriate form.

Discussion

27. I will deal with each question the parties asked me to answer, starting with the agreed statement of the issue at the start of the trial, and moving on to each party's statement of the issue after the trial. Focusing on what is actually claimed and defended in the pleadings, I will then propose a way forward.



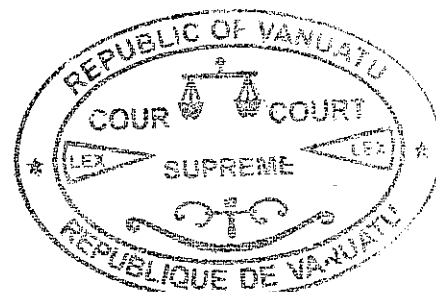
Question 1: Did Mr Suta make an application for citizenship in December 2022?

28. There is no dispute that Mr Suta attended the Citizenship Office. There is evidence that Mr Suta's purpose in attending the Citizenship Office was to obtain official proof of citizenship. There was no evidence that indicated that his belief that one is a citizen of Vanuatu by virtue of being born in Vanuatu was not genuinely held. Characterising what he was doing as seeking certification of his birth certificate that he was born in Vanuatu, as the Republic submitted, or, as he submitted, that he was essentially following the bureaucratic procedures the officials in the Citizenship Office required of him, does not alter the evidence of his belief that he was a citizen of Vanuatu by virtue of birth, and that he wanted official proof of citizenship so that he could obtain a passport, employment and a loan. I am satisfied that he thought he was doing what he was told at the time was necessary to obtain recognition of what he believed to be was his Vanuatu citizenship.
29. As to whether or not he actually made an application on the correct form, he stated that he gave copies of his birth certificate and French passport to the Citizenship Office, and filled in one citizenship application form, and possibly two, in the presence of an unidentified woman who worked there. He did not produce a copy of his application or a receipt to show an application had been made. The only receipt he produced was for his passport application, which he said relied on the 22 December 2022 letter. He did not produce a sworn statement from the woman he said took his application form at the Citizenship Office. Mr Liki said his office has no record of ever having received an application for citizenship. In the absence of evidence of a copy of an application form or a receipt from Mr Sutu, and in the absence of any record showing the Citizenship Office received an application, there is no evidence to show that Mr Suta submitted the correct form either to confirm his citizenship or to apply for citizenship.
30. I find that Mr Suta went to the Citizenship Office intending to obtain official acknowledgement of Vanuatu citizenship. On the evidence before me however, I find that Mr Suta did not make an application for citizenship in December 2022.
31. The answer to Question 1 is "No".

Question 2: Is Mr Suta entitled to become an automatic citizen of Vanuatu under Article 9 of the Constitution, when his parents and grandparents do not belong to a tribe or community indigenous to Vanuatu?

32. Article 9 of the Constitution requires a person to have four grandparents who belong to a tribe or community indigenous to Vanuatu. Although there is evidence that Mr Suta's parents are from Wallis, there is no evidence before the Court as to who Mr Suta's grandparents were, and there is no evidence as to whether or not they belonged to a tribe or a community indigenous to Vanuatu.
33. There is insufficient evidence to answer Question 2.

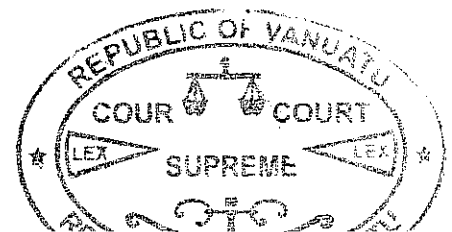
Question 3: Was the Office of Citizenship negligent in issuing the certification reference note [the letter of 22 December 2022] that led the Claimant to place reliance on that reference note to apply for Vanuatu passport and employment?



34. The Citizenship Commission is given the power specifically to consider, approve and revoke, applications for citizenship in s 5 of the Citizenship Act. Having found Mr Suta did not make an application for citizenship, the obligation to consider and approve an application for citizenship is not engaged. He did, however, submit his French passport and birth certificate, along with one or two unspecified application forms, with the intention of obtaining recognition of the citizenship he thought he had by reason of his birth in Vanuatu.
35. Mr Suta did not receive a letter approving in principle any application for citizenship, nor did he receive a certificate of citizenship. On Mr Liki's uncontradicted evidence, the letter of 22 December 2022 was irregularly issued after incomplete scrutiny of the birth certificate Mr Suta submitted to obtain an official acknowledgement of citizenship. There is no evidence to suggest that Mr Suta knew to expect a letter approving an application in principle or a citizenship certificate. The letter of 22 December 2022 was on official letterhead and plainly said that Mr Suta was a citizen of Vanuatu by virtue of Article 9 of the Constitution. In doing so Mr Suta was misled into thinking he could rely on it.
36. Although s 5 of the Citizenship Act is not engaged, I am satisfied that the Citizenship Office owed a duty of care to Mr Suta to scrutinise the documents he submitted and his reason for submitting them. One example of this duty of care is expressed as a guiding principle of the public service in Chapter 1 of the Public Service Staff Regulation Manual. Guiding Principle 2(e) requires the public service "*to perform its functions in an impartial, inclusive, and professional manner*" and 2(l) requires it "*to observe and comply with the rule of law.*" These Guiding Principles are derived from s 4 of the Public Service Act [Cap 246], which states that public servants must perform their functions in a professional manner (s 4(a)) and observe the law (s 4(k)). By not properly scrutinising the birth certificate and issuing the letter of 22 December 2022, the Citizenship Office did neither.
37. The Defendant's admission that it failed to properly scrutinise the documents submitted by Mr Suta, and that as a result the letter of 22 December 2022 was issued in error, is an admission that it breached that duty of care. Mr Suta gave uncontradicted evidence that that he relied on that letter to obtain a passport, employment and a loan.
38. I find therefore that the Office of Citizenship was negligent in issuing the certification reference note [the letter of 22 December 2022] and that Mr Suta relied on that reference note to apply for a Vanuatu passport and employment.
39. The answer to Question 3 is "Yes".

The way forward

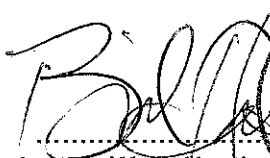
40. Having found the Defendant acted negligently, there will need to be a hearing to determine the quantum of damages.
41. Mr Tari submitted that Mr Suta is prepared to lodge an application for citizenship under the appropriate provisions of the Citizenship Act as indicated by the Defendant. The Defendant submitted that it offered to assist the Claimant in filling out the appropriate form and submitting an application for citizenship. Although he does not need it, but has requested it, I grant Mr Suta the



liberty to lodge the appropriate application for citizenship, and I urge him to accept the Defendant's offer of assistance.

42. The next conference will be on **6 June 2024 at 12 noon**. The purpose of that conference will be to timetable steps to the quantum hearing.
43. Costs will be determined following the quantum hearing. They will be taxed if there is no agreement.

DATED at Port Vila this 3rd day of June, 2024
BY THE COURT


Justice W. K. Hastings

