

**IN THE SENIOR MAGISTRATE'S COURT  
OF THE REPUBLIC OF VANUATU**

**Civil Case No.83 of 1996**

(Civil jurisdiction)

**BETWEEN:           Madeleine Taleo**

**Applicant**

**AND:                 John Mahlon  
                          Taleo**

**Respondent**

**CORAM:   Reggett Marum**

**Lawyer for the Applicant:   Merrin Mason**

**Lawyer for the Respondent:   Steven Tari**

**REASON FOR JUDGEMENT**

The applicant Madeleine Taleo is married to the Respondent John Mahlon Taleo. The Applicant works with the A. G. C. Finance and the Respondent is the captain of R. V. S Tukoro which I believe is a government boat and has been with the Police force for about 18 years.

They got married in 1988 that is a general law marriage and they had three children to their marriage with the fourth child which they adopted.

In this matter the Applicant is applying under section 29 of the Courts Act for the Court to make the following restraining orders against the Respondent.

- 1- The Respondent is for a period of 12 months from the date of this order of this Court, restrained from:
  - a) assaulting, threatening or harassing the Applicant,

- b) approaching, contacting or communicating with the Applicant except in relation to the children of the marriage through the sisters of the applicant, Flora or Sarah Kalotrip
  - c) entering or going within 100 metres of the house of the Applicant's parents at Pango where the Applicant is living,
  - d) entering the Premises where the Applicant works, namely office of A. G. C. Finance in Port Vila.
- 2- The rifle owned by, and in the possession of the Respondent to be surrendered to the Police, and if the Respondent refuses to surrender it that the Police confiscate the weapon,
  - 3- If the Order is breached the Respondent be arrested by the Police and brought before the Court to be dealt with for Contempt of Court,
  - 4- The Commissioner of Police be advised of this Order,
  - 5- The Applicant or the respondent may apply to the Court for a variation of the Order at any time.

The grounds for the application are as follows:

- 1- In February 1996 the Respondent assaulted the Applicant by punching her on the head and face. As a result of the assault the Applicant had a black and swollen eye and a cut above the left eye.
- 2- The Applicant spoke to the Respondent last night 25/03/96 by phone to Solomon Islands where he is at workshop. The Applicant confronted him with evidence that he was having an affair with another workshop participant and that this affair had been going on for sometime. The Respondent denied the allegation and become very angry with the Applicant. The Applicant has moved out of the matrimonial home to live with her parents.
- 3- The Respondent returns to Vila today and the applicant is afraid he will assault her.
- 4- Because of the Respondent past behaviour the Applicant fears that the Respondent will continue to assault, harass and/or threaten her.
- 5- Further grounds as set out in the Affidavit.

The Applicant's application was supported by her affidavit of the 1st April 1996. The counsel for the Applicant informed the Court that the Applicant will be relying on her affidavit and also for her to give oral evidence. The Counsel for the Respondent informed the Court that only the Respondent will be giving evidence.

Firstly, the question is whether this Court has jurisdiction under S. 29 of the Courts Act to grant the restraining orders as applied for by the Applicant.

Section 29 of the Courts Act reads:

- 1- ***Subject to the Constitution any written law and the limits of its jurisdiction a Court shall have inherent powers as shall be necessary for it to carry out its function' s.***

Section 29, in my view has three requirements:

- 1) that the cause before it is not in conflict with the Constitution and
- 2) that the cause before it is allowed by a written law and
- 3) that the Court must have jurisdiction in the cause before it.

Further under section 29(2) the law further gives inherent jurisdiction to the Court to construe or use with such alterations and adaptation as may be necessary in order to properly apply such written laws or customs.

Firstly there is no written law which expressly provide the Court with jurisdiction to deal with the matter which is required by law under section 4 (1) (b) of the Courts Act. S 4(1) (b) reads:

***Subject to the provisions of this Part and any other law every Magistrate's Court shall have jurisdiction to try.***

Summarily:

- a) ...
- b) ***any civil proceedings in respect of which jurisdiction is by any written law expressly conferred upon the Magistrate's Court.***

Therefore under section 4 (1) (b) it is quite clear that the jurisdiction of the Magistrate must be expressly stated. In my view the Magistrate's Court do not have inherent jurisdiction as Magistrate's Court are creatures of the Statutes.

Secondly the matter taken must be instituted upon a cause of action pending before the Magistrate in which the said Magistrate has jurisdiction over or that the cause of action will be instituted later in which the Applicant must take an undertaking to institute it later.

Thirdly the restraining orders applying for are not unreasonable which may be in breach of the Constitution or any other written laws.

For the foregoing reasons I am satisfied that section 29 (1) of the Courts Act does not give jurisdiction to the Magistrates on application for restraining orders in absence of a cause of action pending before the Court which the Court has jurisdiction to entertain the matter.

It is in my view the proper construction of section 29 is that:

***Subject to the Constitution, any written laws, a Court as regards to a cause of action for the time being within its jurisdiction shall in proceeding before it grant such relief, redress or remedy, or combination of remedies whether absolute or conditional.***

Now I have this matter before me whereby the Applicant is seeking the Court mercy to grant her restraining order for her safety as she feels that her life has been threatened. The question is whether any other laws including the Constitution have an answer to such vacuum of the law.

I refer to Article 47 of the Constitution which in my view can be an appropriate law to be applied in applying for restraining orders without a cause of action pending before the Court.

Article 47 reads:

***The administration of justice is vested in the Judiciary who are subject only to the Constitution and the law. The function of the Judiciary is to resolved proceeding according to law. If there is no rule of law applicable to a matter before it a Court shall determine the matter accordingly to substantial justice and whenever possible in conformity with customs.***

I am satisfied that Article 47 gives me jurisdiction to entertain this matter where for the time being no express rule of law is applicable to it and the law to be applicable is substantial justice.

The minimum requirement of natural justice that to be adopted in this matter is the duty to act fairly and, in principle, to be seen to act fairly and this is a common law origin." ***It is not possible to lay down rigid rules as to when the principle of natural justice are to apply nor as to their scope and extent. Everything depends on the subject matter*** " Reg Vs Gaming Board for Great Britain; Ex Parte, Benaim (1970) 2Q B. 417. 430.

Article 95 of the Constitution allows the underlying laws of the British and French that were applied there on and customs as developed and adopted in Independence Day to be continued to be the underlying laws of this country.

Therefore using Article 47 of the Constitution I have two aspect of the law to adopt in entertaining the matter:

- 1- the underlying laws as the basis to determine the matter and
- 2- To use section 29 (2) of the Courts Act to make rules for myself in guiding me to determine the matter.

Section 29 (2) reads:

***For the purpose of facilitating the application of any written law or customs any provisions may be construed. or use with such alterations and adaptations as may be necessary and every Court shall have inherent powers or incidental powers as may be reasonable required in order to properly apply such written law or customs.***

For the purpose of s. 29 (2) where the word written law as appeared in this provisions it also includes the provisions in the Constitution, as referred to as Articles. Under the Interpretation Act the word "written law" means the Constitution, Acts of Parliament, statutory orders and other legislative enactments or legislative instruments having effect in Vanuatu. The Court Act is an Act of Parliament and therefore under s. 29 (2) in my view the Parliament allows the Court to make rules for itself as to properly apply such written laws or customs on a cause before it.

In this matter the applicant is seeking the Courts jurisdiction to grant such relief as applied for, as her life is under threat and she is in fear of her husband (Respondent) might cause harm or bodily injuries to her.

In this matter the evidence of the Applicant is not very much disputed by the Respondent, he admitted the argument and also the assault. They even saw the Respondent Superior which did not help very much, then the Honiara allegations arose. In my view the Honiara incident was the very concern of the Applicant. That is, when the Respondent went to Honiara she alleges against him that he had an affair with another participant Callista Murtoch. She was told of the affair by Albert's wife by phone from Honiara. She then rang him up to Honiara and asked him about the affair. The Respondent denied having any affair with Callista. Because of this she was in fear of the Respondent that if he return to Vanuatu he will assault her over the allegation. She then moved out of the Matrimonial home and moved to her parents home with the children.

One other matter that was brought up by the Respondent in his evidence was about his wife blaming him of going around with other ladies and getting sickness from them. The Respondent tendered a medical report explaining his medical status which is in the contrary.

In my view what has been going on were domestic arguments, and the assault there on and were not frequent, but the Honiara incident had a significant effect to their marriage relationship and as such the Applicant fearing for her safety in their marriage life she took out this application for restraining orders to be made against the Respondent. Therefore I am satisfied that the Court should intervene to give some protection to the Applicant and therefore I will grant certain restraining orders.

Both Counsel informed the Court that there are no rules of law governing situation as such and a common practice in this Court is to issue injunction or restraining orders and to last for 6-12 months as such order are temporary.

In making restraining orders I make the following considerations:

- 1- As to paragraph .1, I will not grant 1 (b), 1 (c) & 1(d). As the law to apply is Article 47 of the Constitution and therefore I look to Constitution if such orders will be in breach of the Constitution.

Firstly if I allow such restraining orders then this will restrict the Respondent's movement to stay and live together with his wife and children and therefore it will be in breach of Article 5 (1) (i). I find no very immediate danger to the Respondent family to warrant a restriction of movement against the Respondent to stay with his family. And therefore he is entitled to his fundamental right to continue to live together with his family without fear or threat.

Secondly if I have to grant such restraining orders then this again will restrict his fundamental duties under Article 7 (h) of the Constitution. Article 7 (h) reads:

***In case of a parent to support, assist, and educate all his children, legitimate, illegitimate and particularly to the understanding of their fundamental rights and duties and of the national objectives and the culture and customs of the people of Vanuatu.***

Therefore pursuant to Article 47 of the Constitution and section 29 (2) of the Courts Act I can make rules to facilitate the proper determination of the application, but I believe this is a matter for the Parliament to make such changes to cater for this vacuum as I believe there will be more coming, and if the law is not forthcoming, the Magistrate may continue to struck out matters under s. 29 for no cause of action in the first place or may continue to make orders which may be in breach of the provisions in the Constitution and particularly the right and duties of individuals; unless a law made by Parliament which may restrict rights and duties of individual.

For these reasons I make the following orders:

- 1- That within six months the Respondent shall not assault or threaten or insult the Applicant including the children.
- 2- That within the period of six months if you are found guilty of the offence of assault against the Applicant and children or threatening or insult, you shall be in breach of the first condition.
- 3- That the above orders shall be enforced for Contempt of this Court order.
- 4- The parties may apply to the Court for variation within the period of six months.
- 5- No costs awarded.

As for paragraph .2 of the Applicant's application I am of the view that if there is any breach of the law of this land than the matter should be reported to the Police and not for the Court to involve itself. And therefore I find that it is not appropriate for the Court to make such orders.

As for paragraph .3, .4, and .5 I need not discuss that as such will be reflected on the above restraining orders.

**DATED AT PORT VILA this 9th day of April 1996.**

  
**REGGETT MARUM**  
**Senior Magistrate.**