

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

BETWEEN: JOHN ROBERT SCANTLIN

First Plaintiff

AND: MODREA MULLEN

Second Plaintiff

AND: THE ATTORNEY GENERAL, representing
the Government of Vanuatu

Defendant

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

CIVIL CASE NO. 133 OF 1991

JUDGEMENT

By writ of summons dated 24th September 1991 the plaintiffs seek orders and/or declarations that:

1. the cancellation of their Honorary Citizenships dated 19th September 1991 are null and void
2. the orders and directions for their removal from Vanuatu dated 20th September 1991 are null and void
3. the defendant be restrained from removing the plaintiffs from the jurisdiction

An affidavit in support was filed with the summons and a statement of claim the following day.

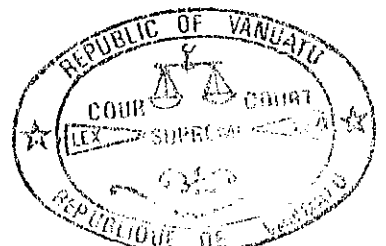
Having heard from the advocate for the plaintiffs on an ex parte summons for interlocutory relief the court ordered the matter to be heard inter paties as sufficient time remained before the removal orders were expressed to become effective to give notice of the application to the defendant.

Today 27th September 1991, inter parties, Mr. Hudson for the plaintiffs has repeated his submissions made on 24th September 1991. The Attorney General has read those submissions.

It is the plaintiffs' contention that Honorary Citizenship as granted to them may only be taken away in a limited number of circumstances, such circumstances being prescribed in s.14 and 15 of Cap. 112 and Art. 13 of the Constitution.

There being no suggestion that any of these provisions have been contravened, they maintain that the purported cancellation of their citizenship is ultra vires.

There application is therefore for judicial review of that decision. Judicial review requires leave of this court before it may properly proceed. Such leave has not yet been sought. It is to be hoped



that Mr. Hudson will if the case is to proceed any further, make such an application.

The question of cancellation of citizenship is crucial to the plaintiffs' case, as the subsequent orders of the Ministers of Home Affairs must have been invalid if they were made in respect of a citizen. Indeed it is only on this ground that they are challenged.

I have sought from Mr. Hudson material to support his contention that the power of the Head of State to revoke an Honorary Citizenship order is limited in the way that he maintains. He has not provided me with such material. I therefore look to the general rules, assisted by the Interpretation Act, which lead me to the conclusion that the President, having been given the power to grant Honorary Citizenship, has the power to remove it and that that power is not fettered as Mr Hudson maintains..

I cannot therefore grant interlocutory relief on what is before me today, as firstly no leave has been obtained for judicial review and secondly as at the moment I see no serious question to be tried.

In the course of hearing argument I indicated to Mr Hudson that I considered the balance of convenience to be with the plaintiff. It follows were this Court to be presented with a serious question which necessitated a trial that interlocutory relief would result.

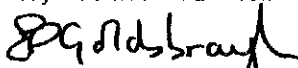
The Attorney General has indicated his intention to file a notice of motion to dismiss the statement of claim. The plaintiffs have raised objection to any abridgement of time. I will not order that time be abridged, and the Attorney General's motion will be heard as soon as the required notice has been given.

He has also given notice of his intention to commence proceedings for certain declarations in relation to the original grants of Honorary Citizenship. This Court notes the expressed intention but makes no order in relation to that matter.

Application for interlocutory relief dismissed with costs ordered to be paid by the plaintiffs.

Dated this 27th day of September 1991

By order of the court



E P Goldsbrough
Acting Chief Justice.