

**IN THE MATTER OF :**

**An application by CRISTIAN  
ROGER de ROBILLARD for  
Leave to apply for an  
Order of Certiorary**

**AND :**

**IN THE MATTER OF :**

**An order dated 11th day of March  
1996, made by the Minister of  
Foreign Affairs and Immigration  
pursuant to the Immigration  
Regulation 1971.**

Coram. : Mr. Justice Lunabek  
Mr. R. Sugden Counsel for the Applicant  
Mr. O. Saksak, the Attorney General for  
the Respondent

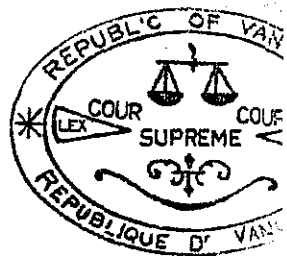
**JUDGEMENT**

This is an Ex Parte Summons for leave to apply for an order of Certiorari to quash an Order made by the Minister responsible for Immigration on 11th March 1996, declaring Mr. Christian Roger de Robillard an undesirable immigrant in purported exercise of his power under Section 15(2) of the Immigration Act (CAP 66).

The application was made ex parte to the Court and was accompanied by a statement setting out the name and description of the applicant, the relief sought, and by affidavits verifying the facts relied on to support the application in accordance with Order 61 rule 2 of the Western Pacific (High Court) Rules 1964.

The grounds of the application are that :

- . In making the said Declaration the Respondent denied the Applicant Natural Justice :



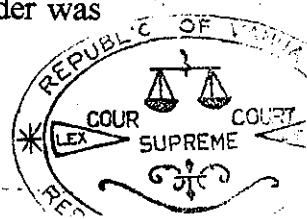
- (i) The Applicant was given no notice of any allegations made against him that were relied on as justifying the making of the said Declaration and has still not been advised of any such allegations ;
- (ii) The Applicant was given no opportunity to be heard as to why the said Declaration should be made ;
- (iii) The Applicant was given no notice that the making of such a Declaration was being considered by the Respondent .

On 17 July 1996, Mr. Sugden made a preliminary application that because Order 61 rule 2 of the Western Pacific (High Court) Rules provides : "An application for such leave ... shall be made ex parte to the court...", the Attorney General should not be allowed to appear on behalf of the Respondent at this stage. I refuse to accede to that preliminary application and I allow the Attorney General to remain in Court and made his reply if he so wishes.

The Applicant filed an Affidavit and made written submissions to the Court in support of his application.

It is orally submitted in Court that there is sufficient evidence that in making the said order, the Applicant had suffered damages. He was not given any Notice of the Declaration against him. He has not given opportunity to make his representations as to why the Order should be made. He has no notice that the order was made. It is further submitted for the Applicant that the Respondent by making the order in this way must observe the Rules of Natural Justice. There is, therefore, Prima Facie that this is not done in this case and that an order of Certiorari would lie and requested that leave be granted so that an application for order of Certiorari be given.

Mr. Oliver Saksak, the Attorney General submitted on behalf of the Respondent that the Applicant has no standing because he is a prohibited immigrant and he is not within the jurisdiction of this Court. The case would have been different if the Applicant is still in Vanuatu to challenge the order made against him. The Learned Attorney General also submitted that there would be practical difficulties in dealing with the matters in the service and filing of affidavits and obtaining evidence from the Applicant by the very reason of his current status as a prohibited immigrant. It was further submitted on behalf of the Respondent, that the exercise of the Ministerial power was done under Section 15(2) of the Immigration Act (CAP 66) and that the Constitution of the Republic of Vanuatu (Art. 5 (1)) is in support of that Ministerial power. Although Vanuatu recognises the rights to every person in Vanuatu, these rights do not cover the situation of persons who are outside the jurisdiction at the time the order was made.



Court considerations :

I have had the opportunity of hearing the Learned Attorney General's oral submissions. I have indeed had the same opportunity of perusing the Applicant's affidavits and supporting documents and submissions on his behalf. The affidavits and supporting documents of the Applicant contain, it seems to me, both relevant and irrelevant material. Speculations and views are indeed expressed.

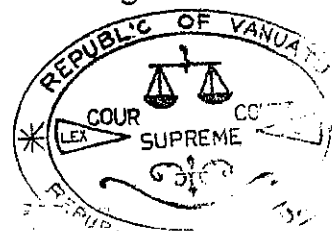
The question to be answered by this Court is whether the facts which are made out in the affidavits and reiterated in the oral and written submissions in support of the application are sufficient to warrant granting leave to apply for an order of Certiorari.

Having considered the affidavits and documents in support, the Court is satisfied that there is Prima facie evidence that the Applicant has standing. It is true that the Applicant is an alien. But he did enter this country by leave. He had obtained a Residency Permit for a period of one (1) year which should be expired only on 25 October 1996.

The fact that the Applicant was declared an "undesirable Immigrant" while he was out of this jurisdiction does not preclude him from challenging the validity of the said Declaration before the Courts of law of this country. The effect of the Order made against him is to revoke his Permit before the time limit expires. In that respect, he ought, it seems to me, to be given an opportunity of making representations : for he would have a legitimate expectation of being allowed to stay for the permitted time. This is not the case. The Minister is a person having legal authority to determine a question affecting the rights of individuals, and, therefore, he was bound to observe the principles of natural justice when exercising that authority even in respect of non citizen who have obtained Residency Permit unless it can be shown to the satisfaction of the Court that the Residency Permit was obtained unlawfully or otherwise.

On the basis of these considerations, I am prepared to grant leave requested by the Applicant and I, thus, make the following orders :

1. That leave be granted to the Applicant to bring an application for orders of Certiorari and other orders pursuant to Order 61 Rule 2 by way of judicial review of the exercise by the Respondent as Minister of Immigration pursuant to Section 15(2) of the Immigration law as evidenced by the Declaration in respect of the Applicant as an "undesirable immigrant" of 11th March, 1996 or any other act, order or declaration relating thereto and to quash the same as being ultra vires, invalid, and a nullity ;

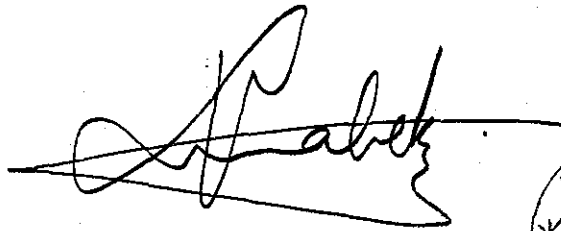


2. That arrangements be made between both Counsels so that the Applicant may give evidence in accordance with Order 39 Rule 11 of the Western Pacific (High Court) Rules of 1964.

3. That costs and incidental to this application be reserved.

**Dated at Port-Vila this 23rd day of July 1996**

**BY THE COURT**



.....  
**VINCENT LUNABEK J.**  
**Judge**

