

*Ching
Dun Van Tles*

(Civil Jurisdiction)

BETWEEN : ANDRE FRANCOIS

- Applicant

AND : THE HONORABLE JUSTICE
TOMPKINS

- First Respondent

AND THE HONORABLE ACTING CHIEF
JUSTICE LUNABEK

- Second Respondent

Coram : Mr Justice Regget Marum

JUDGMENT

This was a Constitutional Petition proceeded with under S.218 of the C.P.C. by the Applicant against the two judges of the Supreme Court. At the preliminary stage of the proceeding on the matter, the Applicant counsel applied in objecting the Attorney General appearing for the judges. A written submission was tendered and advance further by submission on the basis of the principle of separation of powers that contain and implied in the Constitution being that :

1. The Attorney General's Office is not an established office in the Constitution.
2. Its not an office under the Constitution
3. Attorney General was created by an Act of Parliament.
4. The Attorney General is the Principle Legal Adviser to the Government and not the Republic.

5. He is to represent the Minister of Justice as head of the Judicial Service Commission.
6. Attorney General is to provide advice to the Minister of Justice.
7. For the Attorney General to provide advise to the Judiciary and for the Judiciary to depend on the Attorney General to defend its interest in Court or elsewhere would severely damage and destroy the vital principle of separation of power under the Constitution.
8. The proper procedure is for the President and the Judiciary to have separate funds to have outside lawyers of their choice.

Jack Kilu in reply, in submission stated that the government is the one and the same thing being that :-

1. the judicial arm,
2. the executive arm and
3. the legislative arm of the government

And further the Law Officers Act, s; 1(3) gives the right to the Attorney General to represent the Judiciary and what more it has been a practice in the past where the President and Speaker were involve in other court matters which the Attorney General represents those office. Further there are no laws allowing the judiciary to seek private lawyers to represent them in Courts.

Establishment of office of Attorney General

It is obvious that the office of the Attorney General was not established under the Constitution. However, it was established under the Law Officers Act [CAP] 118 under s.1 of the Act and also prescribes its functions. Section 1(1) (2) (3) and (4) states:-

- 1.s1(1) There shall be an Attorney General of Vanuatu who shall be the Principle Legal Advisor to the Government.
- 2.s1(2) The Attorney General shall exercise such function and performed such duties as may from time to time be conferred upon it by law.
- 3.s1(3) The Attorney General shall represent Vanuatu in all Civil Proceedings in the Courts and shall on behalf of Vanuatu exercise

any of her rights, prerogatives, privileges or functions before any court.

4.s1(4) The Attorney General shall participate in all meetings and deliberations of the Council of Ministers but shall have no vote.

Those four functions are separate and distinct functions imposed on the Attorney General to perform whenever such duties arises for performance, it is not correct to say that the Attorney General only function is to give legal advise to the government and not elect to perform other three functions imposes on the Attorney General by law to perform. Therefore, one of the Attorney General function is to represent Vanuatu in all civil proceedings in Court.

What is meant by "Vanuatu" under s.1 (3). There are no Constitutional definition as to "Vanuatu". In absence of this, the Interpretation Act can be used, as the Law Officers Act is an Act of Parliament, unless there are two Vanuatus, which is not the case here.

"Vanuatu" as define in the Interpretation Act means "the "Republic of Vanuatu" in which under Article 1 it refer to the Republic of Vanuatu as a sovereign democratic state of which under Article. 33 the head of the Republic is the President.

Jack Kilu in submission stated that the three arms of the Government are one and is same thing. Attorney General has represented the Speaker and President in the Supreme Court and Appeal Court and this has been a practice.

In the Interpretation Act it define "government" meaning "the government of the Republic of Vanuatu".

In view of "Vanuatu" as stated under s.1(3) of the Law Officers Act it referred to both the Republic of Vanuatu as a sovereign democratic state and the government of the Republic of Vanuatu. Further more, s.1(3) is an open provision without limitation permitting the Attorney General to exercise on behalf of Vanuatu any of her rights, prerogative, privileges or functions before any court. The judiciary is the third arm of the government of the Republic of Vanuatu of which s1(3) applies and there is no reason as to why the Attorney General can not represent the judiciary and other government departments within the government of the Republic of Vanuatu.

I have no relevant authority submitted to me as to representation by Attorney General in representing judges in the Supreme Court and the judicial officers of the Court. However, the only authority is in the Civil case No. 2 of 1997 Dinh Van Than -v- Minister of Finance & Ors (unreported) where the Court of Appeal in its judgement of the 9th October 1997 found at page 7 :

The citing of a judge in a Constitutional Petition as well as being in conflict with the constitution will mean that the judges will have to request the Attorney General on their behalf and apply to have them struck of the proceedings.

The applicant counsel submitted that representation by the Attorney General for judges have not been argued out other than in this matter.

Again this will not change the ruling binding on the Supreme Court and I am bound to apply the rules as formulated in the above case.

Further, on the issue of separation of powers as advance by the Applicant counsel also will not change the binding principle on the supreme court by the decision of the appeal court as such ruling on the above case was on the same issue on representation by the Attorney General. I therefor refuse such application and do grant the Attorney General to represent the judges in the matter before me.

Further I would agree with the Applicant counsel, only on the right of a choice of counsel, on separate funding for judges by the Vanuatu government to hire outside lawyers as accorded to the other two arms of the government in representing judges when they become party to a case ,however this will be a matter entirely for the Vanuatu government.

There are other matter in the submissions in support of the application, however, in view of the fact that the substance of this application is yet to be decided, I prefer not to advance my decision any further other than confining to representation.

DATED at Port Vila this 22 nd day of September 1998.



REGGETT MARUM. MBE

Acting Judge

Mr Roger de Robillard appeared for the Applicant
Mr Jack Kilu appeared for the Respondents