

(Civil Jurisdiction)

IN THE MATTER of the Constitution
Of the Republic of Vanuatu

AND

IN THE MATTER of the Municipalities Act
[CAP.126]

AG-15/70/01

AND

IN THE MATTER of An Application by
HARRY VANVA, LESLEY TARI, HAM JAPETH,
AVOCK JACK, JEAN DELAVEAU, JOE NARUA,
ROY BONG, SAM NATHANA and GEORGE
TABIMAL

Applicants

AND: THE MINISTER OF INTERNAL AFFAIRS

First Respondent

AND: PAUL HAKWA

Second Respondent

**Coram: Mr Justice Oliver A. Saksak
Ms Cynthia Thomas – Clerk**

**Counsel: Mr Saling N. Stephens for the Applicants
Mr Tom Joe for the First Respondent
Mr Daniel Yawha for the Second Respondent**

Date of Hearing and of Oral Decision: Wednesday 3rd July, 2002.

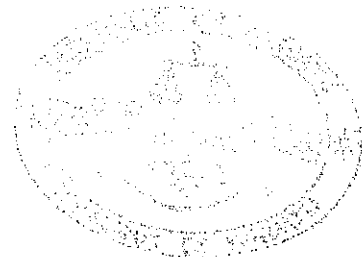
JUDGEMENT

This judgment provides the reasons for the oral decision delivered in open Court on Wednesday 3rd July 2002. On that date I dismissed the Applicants' Ex Parte Summons and awarded costs to the Respondents.

The Applicants applied by way of an Ex Parte summons which was heard inter parties. They sought the following Orders:-

- "1. An Order re-instating the Petitioners and Applicants herein to their previous offices they hold within the Luganville Municipal Council. (the council).
2. An Order removing Mr Paul Hakwa as current commissioner for the Luganville Municipal Council.
3. The First and Second Respondents, their agents and/or their servants be and are to be enjoined from taking any further steps to dismiss the offices of the Petitioners or making further appointment to the Council.
4. Such other relief as this Honourable Court deems just.
5. Costs."

The Application was supported by the affidavit of Harry Vanva who also gave oral evidence confirming the contents of his affidavit. Joe Narua and Jean Delaveau also gave oral evidence to show similar approaches made to them by Kalmer Vocor attempting to persuade them to cross the floor to join their political party to enable them to form a council. This then would become a good enough reason for the Minister to re-instate the Council. In paragraph 7 of his affidavit Harry Vanva tells of such an approach. At paragraph 8 he states that as the reasons for the immediate intervention by the Court to grant the Orders sought.



Mr Tom Joe did not produce any evidence orally or by affidavit on behalf of the First Respondent. He merely made submissions as follows:-

- (a) That there was no issue before the Court and that the Applicants had not filed an affidavit of urgency.
- (b) That an extension of the Council's suspension was for administrative convenience to allow the current commissioner to complete a report.
- (c) That the decision of the Minister extending the suspension period could only be properly challenged through a judicial review process, and that the Applicants did not institute such a proceeding.

Mr Daniel Yawha submitted that the Court as a Court of law should not be concerned with political issues but only with legal issues. He submitted that the evidence by witnesses for the Applicants were mere speculations.

Further Mr Yawha made references to and handed up three letters and a Report under cover of the Commissioner's letter dated 26th June, 2002 to the Minister of Internal Affairs. The Report is unsigned. He did not call any witnesses to testify and to confirm those documents. He further submitted that based on the Report, the Minister had not yet exhausted the avenues opened to him. He cited Civil Case No. 13 of 2001 Joe Timothy and Isaiah Isaac v. Matevulu College & Others in support of that submission.

I refused to accept the contents of documents handed up from the Bar Table by Mr Yawha as evidence in the absence of them being confirmed by the writers.

In arriving at my decision I had considered all the other submissions made by Mr Stephens and also by Mr Joe and Mr Yawha. Following are the reasons for that decision:-

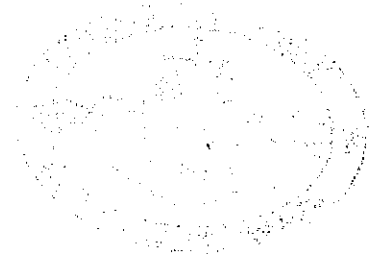


- (1) The application was and is premature. The Petitioners/Applicants have in their favour a judgment awarding them compensation for breach of natural justice. That was the judgment on 11th February, 2002. After assessment the Applicants were awarded a total VT2,582,720 to be paid within 28 days. The Petitioners got judgment on 12th June 2002. 28 days expires on or about 9th July 2002. This Application could be made after 9th July. There was nothing urgent in it to call for an *ex parte* application. Indeed I accept Mr Joe's submission that there ought to have been an affidavit of urgency but there was none. I was not persuaded that the reasons provided by the evidence of the three witnesses for the Applicants were sufficient to warrant the grant of the Orders they sought.
- (2) The Application was and is misconceived. It is not an Application by the Luganville Municipal Council. It is an application by the Mayor and eight other councillors. The suspension by the Minister of 19th October 2001 was a suspension of the whole Council of the Luganville Municipality not just these nine Applicants. The whole Luganville Municipal Council has in my understanding 12 members. The 13th member is deceased. What would happen if only these nine Applicants were re-instated? Where are the other 3 or 4 remaining members of the Council? Section 3(2) of the Municipalities Act CAP.126 states –

"Every council shall be a body corporate by the name of the Municipal Council with perpetual succession and power –

(a) to sue and be sued its corporate name;"

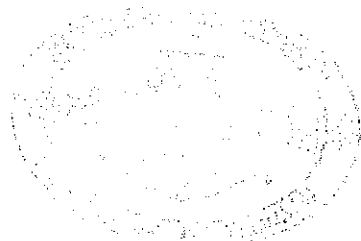
This Application is not a suit by the Luganville Municipal Council. The documents filed do not bear the Council seal. The Application is not prosecuted by the legal Counsel of the Council which are Jack I. Kilu & Associates. The Council has not complained against the suspension or its extension. The complaint is by the individual members of the Council who have got together as a group but it is not the whole Council.



To support this reasoning, I cited the case of Durayappah v. Fernando [[1967] 2 AC.337, [1967] 2 All ER.152. This was a case where the Minister had dissolved a council and appointed a person as commissioner to oversee the affairs of the council for the time being. The Mayor brought an action complaining against the dissolution. The matter went as far as the Privy Council and the appeal was dismissed. Their Lordships were of the clear opinion that the decision of the Minister to dissolve was voidable. They said it was voidable only at the instance of the person against whom the order was made, that is the council, but that the council had not complained. The appellant was mayor at the time of the Council's dissolution, but that did not give him the right to complain independantly of the council. He had to show that he was representing the Council or suing on its behalf. That is good law and I apply that principle to this case.

In Joe Timothy's Case one of the reasons for dismissing their case was that by their omissions to do certain things which would have helped them in their situation, they had failed to help themselves. Similarly here, the Applicants were given the opportunity to do certain things to facilitate their re-instatement. They refused and/or neglected to make use of the opportunity which would have otherwise assisted them in their situation. It appeared that self interest overrode the interest of the Council to which they were elected to serve the interest of the public. They did not help themselves to remedy their own situation.

- (3) Finally the Applicants came earlier to the Court through a Petition. By it they sought the same orders that they seek in their Application. The Order sought under paragraph 2 has already been declined and is therefore res judicata. The order sought under paragraph 3 has already been declined and is therefore res judicata. The only live issue is re-instatement which I did not rule on the last occasion. For all the reasons given earlier, the Order sought was refused. Further in view of their compensation order, the Applicants cannot have it both



ways. The matter now rests entirely on the discretion of the Minister.

- (4) As to costs they follow the event. I awarded costs against the Applicants on that basis.

PUBLISHED at Luganville this 5th day of July, 2002.

BY THE COURT



OLIVER A. SAKSAK

Judge

