

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU  
(Civil Jurisdiction)

Civil Case No.52 of 2011

BETWEEN: VANUATU NATIONAL  
COUNCIL OF WOMEN  
First Claimant

AND: MARIANNE BANI  
Second Claimant

AND: ARTHUR FAERUA and  
DORESDAY KENNETH  
First Defendant

AND: REPUBLIC OF VANUATU  
Second Defendant

Coram: Mr Justice Oliver A. Saksak

Counsel: Mr Colin Leo for Applicant/Claimants  
Mr Arthur Faerua for First Respondents  
Mr Godden Avock for Second Respondents

Date of Hearing: 1<sup>st</sup> April 2011.

Date of Judgment: 4<sup>th</sup> April 2011.

## JUDGMENT

1. This Judgment provides reasons for the decision and orders delivered and issued on Friday 1<sup>st</sup> April.
2. On 29<sup>th</sup> March 2011 the applicant filed an Urgent application seeking the orders granted in paragraphs (1) to (5) inclusive issued on 1<sup>st</sup> April. The Application was brought under Rule 7.7(a)(1) of the Civil Procedure Rules No.49 of 2002.

3. The applicant relied on the evidence in the sworn statements of Mrs. Bani dated 29<sup>th</sup> March and 31<sup>st</sup> March 2011 respectively.
4. On 31<sup>st</sup> March 2011 a formal Notice of Hearing was issued by the Chief Registrar calling this matter for hearing at 0830 hours on 1<sup>st</sup> April 2011.
5. On 1<sup>st</sup> April only Mr. Leo and the First Claimant were present with Mr. Avock. The First Respondents were not present. Mr. Avock requested for an adjournment because he had not received instructions. He asked for the matter be adjourned to either 4<sup>th</sup> or 5<sup>th</sup> April. The request for adjournment was opposed by Mr. Leo and the Second Claimant.
6. The Court therefore decided that being an urgent application, and that from the materials before it, the Court was satisfied the Claimants would be seriously disadvantaged if the Court did not sit quickly to hear and consider the application. Under the circumstances the Court thought that only a short adjournment was necessary and therefore stood the matter over to 2 O'clock on Friday afternoon for hearing.
7. At 2 O'clock p.m. Mr. Leo, Mr. Faerua and Mr. Avock were in attendance. Mr. Faerua filed a response to all the grounds raised by Mr. Leo. No sworn statements were filed by Mr. Faerua, Mrs. Kenneth or any others on behalf of the Second respondents.
8. Mr. Faerua invited the Court to rule on the question of whether the appointment of the administrators has lapsed. He submitted the whole issue hinged on this issue. Mr. Avock agreed and submitted the Claimants had no cause of action against the Second Respondents. Mr. Leo made lengthy submissions starting with the historical back ground of the case and making references to the sworn statements and annexures in support of every assertion made by his clients. Mr. Leo invited the Court to consider three documents in determining the issues raised. These documents are –

- (a) The Consent order dated 7<sup>th</sup> August 2009 marked MB2;
- (b) The Decision of the Magistrate's Court dated 21<sup>st</sup> December 2009;
- (c) The Agreement dated 15<sup>th</sup> December 2010; and
- (d) Summary of Events of 21<sup>st</sup> March 2011 marked MB5.

9. From all the submissions made it appears there were only two issues the Court had to be concerned with. These are –

- (a) Whether or not the appointments of Mr. Arthur Faerua and Mrs. Doresthy Kenneth as administrators of the First Applicant had lapsed? and
- (b) Whether or not there was a cause of action against the second defendant or respondents?

10. In respect of the first issue three documents are relevant:-

- (a) The consent order dated 7<sup>th</sup> August 2009 which states that -  
*"Pending the final determination of the issues inherent in this proceedings, the parties hereby consent to the following orders:*
  - (i) *That Arther Faerua and Doresthy Kenneth manage and administrate the affairs of the Vanautu National Council of Women (VNCW) on an interim basis until the proceeding in Civil Case No.39 of 2009 is fully determined by the Court.*
  - (ii) *Without derogating from the generality of paragraph (1) immediately above, that Arthur Faerua and Doresthy Kenneth mange all funds of the VNCW held at the Westpac Banking Corporation and any other commercial institution in Vanuatu until the proceeding in Civil Case No.39 of 2009 is fully determined by the Court.*
  - (iii) *That the word "manage" exposed in paragraph 2 immediately above shall for the purpose of this order mean authority to act on all the affairs and matters of the VNCW including the withdrawal and deposit of funds in furtherance to the good and efficient administration of VNCW.*
  - (iv) *That Arthur Faerua and Doresthy Kenneth shall provide a comprehensive report to the VNCW or to any lawful executive of the VNCW, on all matters and tasks to which in their interim term, may have undertaken.*

Dated at Port Vila this 7<sup>th</sup> day of August 2009.

(Signed)  
Colin B. Leo  
Defendants' Lawyer

(Signed)  
Jack I. Kilu  
Claimant's Lawyer

(Signed)  
Stephen D. Felix  
Chief Magistrate"

11. On 21<sup>st</sup> December 2009 the Magistrates Court having heard Mr. Leo and Mr. Kilu made findings that –

- “(i) The issues before the Court are issues concerning the terminations of employment of the Claimant as President of the VNCW by the Defendants.
- (ii) The Claimant has not named the VNCW as a party to the proceeding and has also sued the Defendants in their capacities because she also is claiming that the Defendant's meeting and that the Board also has no powers under the VNCW constitution to terminate for employment as President of the VNCW.
- (iii) VNCW is a public body supported by the Government and the remedies 1 and 2 sought by the Claimant in the original Court Claim filed on 21<sup>st</sup> of April 2009 are remedies which ONLY the Supreme Court can make under Rule 17 of the CPR.
- (iv) Under Article 8.3(1) of the VNCW Constitution it also provides for disputes involving the President of the VNCW to be referred to a mediator appointed by the Board. However, because some of the Board members are also parties to this current dispute it would be appropriate to refer to the whole matter back to the National Conference of the VNCW to appoint a new Board and a new President.”

Having made the above findings the Court then ruled that –

- “(i) The claims filed on the 21<sup>st</sup> April 2009 is not within the jurisdiction of this Court because this Court has no power to grant the remedies sought.
  - (ii) The parties are at liberty to take the matter to the Supreme Court (Sic).
  - (iii) (Sic) Court if any further interim Court orders are required pending a final resolution of the National Conference.
  - (iv) Parties bear their own costs.”
12. The above decision made no mention of the termination of Mr. Arther Faerua and Mrs Doresthy Kenneth as interim administrators of VNCW. The Court merely found it had no jurisdiction to deal with the matter and gave liberty to the parties to apply to this Court if they wished to pursue the matter further.

In essence it meant that Mr Faerua and Mrs. Kenneth continued as interim administrators until 15<sup>th</sup> December 2010 when by expressed agreement parties through their respective counsel agreed that Esline Turner, Mackenzie-Reur and Marianne Bani (Second Claimant) were the new administrators of VNCW. Effectively Mr. Faerua and Mrs. Kenneth's interim terms or appointment came to an end on that date.

13. Mr. Faerua informed the Court that Mrs. Turner and Mrs. Mackenzie-Reur have resigned voluntarily as administrators. That being so it is now clear that only Mrs. Marianne Bani, the Second Claimant or applicant herein is the remaining administrator of VNCW to this day. As such she is entitled to bring this application.
14. There was some suggestion that Mrs. Bani was suspended from office but as there was no evidence by the defendants, that matter could be a substantial issue. Counsel did not invite the Court to make findings and rule on the point and the Court did not consider that matter.
15. The final issue is in relation to whether or not there was a cause of action against the second defendants?  
The relevant document providing evidence of this is Annexure marked "MB5". The first paragraph on page one reads in Bislama as follows:-  
  
*"Minista blong Justice – Ralph Regenvanu, Fes Political Advisor blong hem Ata Faerua, Advisor blo hem Anthea Toka mo DG blong hem Rusol Nari oli bin tekem two Polis Officer ikam lo ofis blong VNCW lo namba 21 March 2011 lo 3.30 p.m. olsem and wokbaot stret ikam insaed lo ofis blong VNCW and karemaot key blong ofis lo mi. Ralph emi talem lo Polis Officer blong searchem bag blong mi and oli lockem door blong ofis ia."*
16. There is also a further document marked "MB4" which is a letter dated 21<sup>st</sup> March 2011 to Mrs. Bani. The letter is signed by Mrs. Kenneth, Mr. Faerua and Mr. Russel Nari, the Director General, and is duly stamped.

17. These are sufficient to establish a cause of action against the second defendants. They are therefore correctly named and should remain as second defendants in the action.
18. There was unchallenged evidence by the Claimants also that the defendants had placed security guards on the premises of VNCW.
19. From those evidence, the Court was satisfied that the Claimants were being intimidated and that the affairs of VNCW were being disturbed or interfered with. These warranted the need to issue the orders which were issued on 1<sup>st</sup> April 2011.

DATED at Port Vila this 4<sup>th</sup> day of April, 2011.

BY THE COURT



OLIVER A. SAKSAK  
Judge