

(Civil Jurisdiction)

BETWEEN: KWANG SING SIX EIGHT COMPANY

Claimant/Applicant

AND: WU KIM MING

Defendant/Respondent

Mr Justice Oliver A. Saksak

Ms J. La'au for the Claimant
Mr C. Leo for the Defendant

Date of Hearing and Oral Decision: 7th February 2013
Decision Published: 18th February 2013

DECISION

1. On 26 November 2012, the Claimant sought urgent interlocutory orders issued ex parte in the following terms:-

“(a) That the Defendant stop carrying out any work and/or further developments including foreshore developments within leasehold title 03/OI93/028 until further orders of the Court.

(b) Breach of this order would result in the Defendant being arrested and brought before the Court to be dealt with for contempt of court order.

(c) Liberty to the Defendant to apply on 48 hours notice.”

2. On 5th December 2012, Counsel for the Defendant filed an application to set aside those orders.



3. The application was fixed for hearing on 12th December 2012 however neither Counsel for the Claimant nor the Defendant appeared and the matter was adjourned to 7th February 2013.
4. At the hearing of the application on 7th February 2013, the Court noted the following documents filed by the Claimant as respondent –
 - (a) The Claimant's undertaking as to damages foiled on 21 December 2012;
 - (b) The further sworn statement of Wu Kim Kuen filed on 26th November 2012; and
 - (c) The sworn statement of Mayor Trevor Moliva filed on 7th February 2013.

The Court noted also the following documents filed by the defendant as applicant –

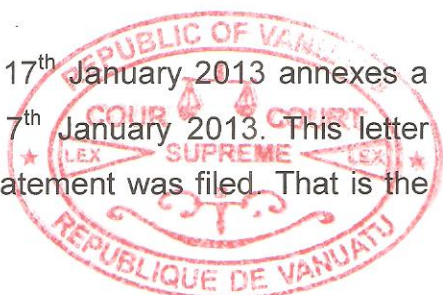
- (a) Sworn statement of John Salong filed on 5th December 2012; and
- (b) Supplementary statement of John Salong filed on 17th January 2013.

5. After having considered all those evidence, the Court handed down an oral decision that the defendant's application to set aside the interlocutory orders of 26th November 2012 be dismissed with costs in favour of the Claimant on the standard basis as agreed or be determined by the Court.

6. The Court now publishes its reasons as follows:-

(a) The defendant is not the proprietor of Title 03/OI198/028 therefore the Orders of 26th November 2012 are appropriate to be in place and should not be set aside.

(b) The sworn statement of John Saling dated 17th January 2013 annexes a letter by the Town Planning Officer dated 7th January 2013. This letter bears the same date on which the sworn statement was filed. That is the



first concern. Secondly, the letter is not annexed by the maker. As such it cannot be admitted as evidence.

(c) There were some concerns raised by Counsel for the defendant that –

- (i) The claimant had not filed any undertaking as to damages. This has now become a non-issue as the Claimant filed an undertaking as to damages on 21st December 2012.
- (ii) The Claimant had not filed any Supreme Court Claims as the basis of his application. This argument is untenable. This case did not have to be allocated a separate case No. as 44 of 2012. It should have been made pursuant only to Civil Case No. 1 of 2010 or to Civil Appeal Case No. 12 of 2012. However, the Court has treated it as a continuation of Civil Case No. 01 of 2010 and as such, it was not necessary to have another claim as the substance.

7. The foregoing are the main reasons why the defendant's application was dismissed with costs.

8. The Court records that this matter is being prolonged or delayed unnecessarily by the defendant. The Court urges the defendant to adopt a commonsense approach and to agree to a subdivision of the title. Only then can he be registered a proprietor of his portion and then he could be free to do all that he envisages to do. At the moment, he simply cannot act in any way. As such, the Order of 26th November 2012 must remain in place.

DATED at Luganville this 18th day of February 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

