

BETWEEN: PAIA POROU, KEN JORAM
YAVRO BOAZ representing Santo
Presbytery Trading as Santo
Community Store

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YAVRO BOAZ representing Santo
Presbytery Trading as Santo
Community Store

Claimants

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AND: SUNG EUN JOO

AND:

SUNG EUN JOO

First Defendant

First Defendant

AND: PASTOR TUENI WAN

AND:

PASTOR TUENI WAN

Second Defendant

Second Defendant

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Saling N. Stephens for the Claimants*
Mr. Edward Nalyal for the Defendants

Date of Hearing: *29th October 2013*

Date of Judgment: *5th February 2014*

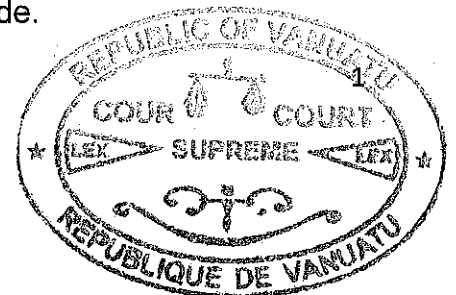
JUDGMENT

History

1. This matter was listed for trial hearing on 29th October 2013 to commence at 0900 hours. However, Counsel for the Claimants was not present and following a sensible request by Mr. Nalyal the matter was stood over for 2 O'clock in the afternoon.

2. At 2 O'clock p.m the Claimants were present but their Counsel was not. Counsel for the Defendants made two applications which were declined by the Court.

3. The Court then reluctantly allowed an adjournment of trial but fixed wasted costs in favour of the Defendants in the sum of VT181,180 and ordered payment within 14 days. It is not known whether payment has been made.



4. A preliminary legal issue was identified. This relates to the standing of the Claimants to institute the proceeding and to continue to maintain it. The Court was obligated to determine this issue in order to determine whether or not a trial hearing would be necessary.

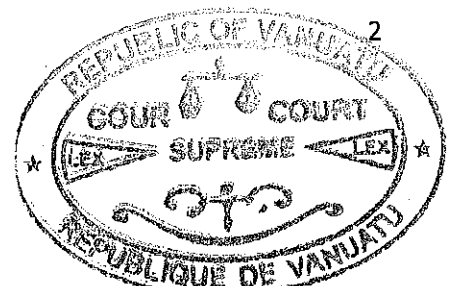
5. Directions were issued for written submissions to be filed before 5th November 2013 and by the Defendants before 12th November 2013. It was expected that following receipt of written submissions the Court would deliver judgment during the final Court of Appeal Session in November 2013. However, this did not materialize and the Court regrets the delay.

6. Mr. Stephens filed written submissions on 11th November 2013 and Mr. Nalyal filed written submissions in response on 13th November 2013.

Discussions and Considerations

7. The preliminary issue for determination is whether the Claimants had the standing to institute this proceeding and to continue to maintain it.

8. From the evidence available to the Court in the sworn statements filed by the Claimants in particular Ken Joram, it is generally accepted that Ken Joram, Paia Porou and Iavro Boaz as the then Members of the Finance Committee had standing to bring the original proceeding in Civil Case No. 27 of 2010. That proceeding was withdrawn by the Claimants in anticipation that issues would be resolved. When it failed to resolve, the Claimants sought leave of the Court to reinstate in or about 14 May 2012. This is the current proceeding. In all documents relating to the previous proceeding and the current proceeding, the Claimants are referred to in their personal names "representing Santo Presbytery Trading as Santo Community Store". Both Counsel in their written submissions accept that position particularly in view of the Certificate of Registration of Business Name dated 12th August 2009 (including its renewal on 20/11/12) issued by the Vanuatu Financial Services Commission and the Business License issued by the Government. The standing of the Claimants from 2009 through 2010 is therefore not disputed.



2011. 9. The relevant period is therefore July 2011 to date. There is unchallenged evidence by George Aki in his sworn statement dated 25 July 2012 that deposed to the Claimants' terms of office having come to an end. The deponent deposed that Ken Joram's term came to an end in February 2012 although he was given a termination letter on 27th July 2011. He further deposed that on 12th September 2012 at the Nakere Presbytery it was resolved that the term of the previous Finance Committee of which the Claimants were members came to an end and that new members were duly elected namely: Talper Nial, Willie Fraede, Neil Netaf, George Aki, Sakaraea Daniel, John Patrick, Philip Warele and Tavi Mele. He also deposed that the Presbytery had resolved that the case against the Defendants be discontinued.

10. I accept those evidence. Given those clear resolutions, I find no evidence to the contrary or in rebuttal that after July 2011 or February 2012 Ken Joram, Paia Porou and Iavro Boaz had any express authority from the Santo Presbytery to continue to maintain their claim and proceeding.

11. I arrive at the conclusion that as at 27 February 2012 these named Claimants did not have standing to maintain this claim in a representative capacity on behalf of the Santo Presbytery.

12. Accordingly, this proceeding and the Claimants' claims need not proceed to trial and are hereby dismissed in its entirety.

DATED at Luganville this 5th day of February 2014.

BY THE COURT


OLIVER A. SAKSAK
Judge

