

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

**Civil Case No. 17/547**

**BETWEEN:** UNION OF MODERATE PATIS  
COMMITTEE  
Applicant

**AND:** NAUKA JACQUES MERIANGO  
First Respondent

**AND:** STEVEN SAU  
Second Respondent

**AND:** ELECTORAL COMMISSION  
Third Respondent

*Coram:* Mr. Justice Oliver A. Saksak

*Counsel:* Kayleen Tavoia for applicants Jacques Nauka Meriango and Steven Sau  
Robin Tom Kapapa for respondent (claimant)  
Kent Tari for the Third defendant (respondent)

*Date of Hearing:* 17<sup>th</sup> March 2017

---

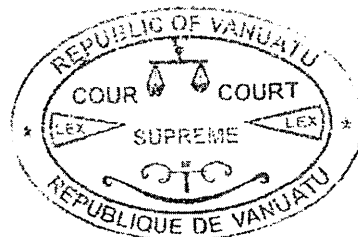
**DECISION**

---

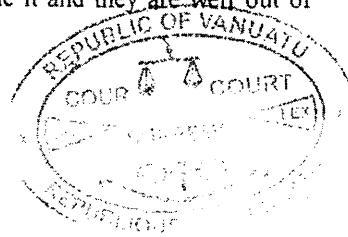
1. The Court heard 2 applications filed by Ms Tavoia on behalf of Jacques Nauka Meriango and Steven Sau (the application).

The first is an application to stay the interim orders issued by this Court on 13<sup>th</sup> March 2017 and the second application seeks leave to appeal the said orders. The first application was filed on 13<sup>th</sup> March. The application was supported by a sworn statement as to urgency by Ms Tavoia filed on 14<sup>th</sup> March and by a sworn statement by Steven Sau filed on 13<sup>th</sup> March.

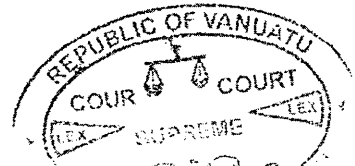
2. The application sought the stay of the restraining orders at paragraphs 1, 2, 3 and 4 but not the order restraining the third respondent under paragraph 5.
3. The Attorney General filed a response on 16<sup>th</sup> March 2017 opposing the application and denying the applicants were entitled to the reliefs sought. And the third respondent relied on the sworn statement of Martin James Tete filed at 10:00am today prior to the hearing.



4. Mr Kapapa filed written response at 8:15am on 17<sup>th</sup> March. Relying on these responses, Mr Kapapa submitted the applicants are not entitled to the reliefs they seek under both applications arguing that the applications are an abuse of process and should be dismissed with indemnity costs. The sum of costs proposed by counsel was VT 100.000.
5. Mr Tari for the third respondent confirmed that the third respondent had complied with the orders at paragraph 5 and it could therefore not possibly and practically be stayed.
6. The Court refused applications and dismissed them with an order of indemnity costs fixed at VT 100.000 against the applicants namely Jacques Nauka Meriango and Steven Sau. When the amount of costs was proposed by Mr Kapapa, Ms Tavoia did not object to the amount.
7. I now give reasons for dismissing the applications. I deal first with the application for stay. The applicants list 10 grounds in their application as follows-
  1. That the Union of Moderate Patis is made up of 2 groupings and that the other was registered on 17<sup>th</sup> November 2016. By law the faction so registered is legally recognised and it has legal status.
  2. That CC 257/2017 is still pending a hearing on 3<sup>rd</sup> May 2017. The applicants have not disclosed their claims to the Court by producing a copy or the notice fixing it for 3<sup>rd</sup> May. They have not shown who are the parties and what reliefs they are seeking. Therefore that case has no relevance or bearing on this case.
  3. That the applicants intend to lodge an appeal against the interim orders on the basis of the process of registration of the UMP as a charitable association. I agree with Mr Kapapa that this is an abuse of process. The proper process is provided by section 3 of the Charitable Associations Act CAP.140. The applicants had 14 days from 17<sup>th</sup> November 2016 to lodge an appeal to the Minister against the process. They have not done it and they are well out of time.



4. Their application was made on line and not all relevant information was received. Again the proper process is section 3 of the Act.
  5. The candidates names have been registered. This is not a problem and is not relevant.
  6. The candidates names have been gazetted as members of the UMP. This too is not a problem and is not relevant.
  7. The posters of the candidates have been sent and posted to the 4 provinces. This is not a problem and is not relevant.
  8. The candidates since 6<sup>th</sup> March 2017 have launched their campaigns. Ms Tavoia conceded that candidates submitted by her clients are not campaigning publicly and are not using the symbol and slogan of the UMP Inc.
  9. The election is expensive and costly. The applicants made a choice. They must now bear the consequences of that choice as they cannot now run from it.
  10. It is too late for them to start a new political party. This is irrelevant.
8. As for the application seeking leave, the applicants relied on the following grounds-
1. That the judge was wrong in law when he accepted the registration certificate of the Vanuatu Financial Service Commission (the VFSC) as the process adopted was on-line and was incomplete.  
I accept Mr Kapapa's submission that only the Minister can hear an appeal under section 3 of the Act. And whatever decision the Minister makes is a final decision.
  2. Placing reliance on the ruling of the Court on 14<sup>th</sup> December 2015 at paragraph 20 made pursuant to the Leadership Code Act. This argument was not raised or made before me at the hearing of the application for interim orders. And it could not be open for Ms Tavoia to raise it as an appeal ground.



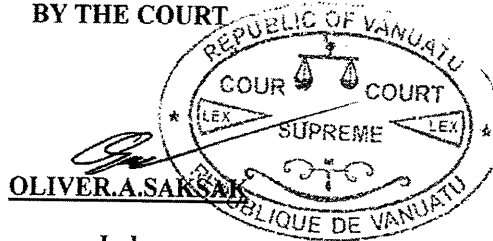
3. The limitations of the constitutional rights of a convicted leader.

Again this was not raised by Ms Tavoia at the hearing of the application on 13<sup>th</sup> March and it could not be raised on appeal as a ground.

9. It is for the foregoing reasons that I concluded the application for stay and for leave should be dismissed. As they put the respondents and especially the UMP Inc to costs, their request for costs was reasonable and the Court awarded indemnity costs at a fixed sum of VT 100.000 to be paid to the claimant by the 2 defendants and applicants herein.

**DATED at Port Vila this 17<sup>th</sup> day of March 2017**

**BY THE COURT**



**Judge**