

**BETWEEN: SERGE MAMELIN**

Claimant

**AND: THE MINISTER OF YOUTH AND SPORTS**

First Defendant

**AND: THE REPUBLIC OF VANUATU**

Second Defendant

**Coram: Justice Stephen D. Felix**

**Counsel: Saling Stephens (Late) for the Claimant  
Sammy Aron from the State Law Office for the Defendants**

**Date of Hearing: 17 August 2018**

**Date of Judgment: 12<sup>th</sup> December 2019**

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## RESERVED JUDGMENT

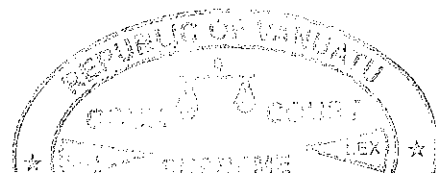
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### Introduction

- (1) The Claimant, Mr Serge Mamelin, is a private contractor who owns machineries and is conducting clearing and cleaning businesses in Port Vila.
- (2) He claims that sometime from 2012 to 2015, the then Minister of Youth and Sports, late Morking Stehens Iatika, approached him somewhere in the North of Efate while he was doing a clearing work, and verbally instructed him to mow the lawn at all government owned playing field around Port Vila such as Kawenu field, Korman field, Fresh water field and also around the office compound of the Ministry of Youth and sports.
- (3) He Claims that an invoice of a total amount of Vatu 2.080.000 was submitted to the Ministry of Youth and Sports after completion of the works undertaken but no payments were made to this date.

### Discussion:

- (4) The defendant's counsel on behalf of the Republic, disputed the claim on two main grounds:
  - a) Firstly, that there was no legally binding contract formed between the parties, and
  - b) Secondly, that the late Minister of Youth and sports, had no authority under the Vanuatu National Sports Commission Act No. 14 of 2014 and had not followed the right procedure



when instructing the claimant to do maintenance work on the mentioned sports field around Port Vila,

- (5) The claimant's only witness is the claimant himself, Mr Serge Mamelin. He confirmed during examination in chief and also during cross-examination that there was no written agreement entered, but that the contract was only a verbal one between himself and the then Minister of Youth and Sports, late Morking Stephens Iatika.
- (6) Also during cross examination, Mr Mamelin confirmed that he did not sign any contract with the Minister or the ministry of Youth and Sports but he only responded to the Minister's request and that he only trusted and obeyed him because he was the Minister of Sports at that time.
- (7) Mr Mamelin also agreed that the Vanuatu National Sports Commission (VNSC) did request him to cut the grass on some specific fields in 2011.
- (8) The sworn statements of Noel Simeon of the VNSC confirmed that Mr Mamelin has been paid VT 28.000 for one invoice dated 8<sup>th</sup> March 2011 and another VT 25.000 for another invoice dated 27<sup>th</sup> March 2011.
- (9) The defendants maintain their positions that there was never any formation of any legally binding contract between Mr Mamelin and the Minister of Sports or the Government.
- (10) And that, even if there was a verbal discussion and understanding between the then Minister of Youth or Sports and the claimant, those discussions and undertakings could not constitute a legally binding contract because it's formation is void under the VNSC Act.
- (11) The successor of late Morking Stephens, the then Minister of Sports Mr Don Ken had attempted to raise the matter before the Council of Ministers (COM). However COM only acknowledged the issue and endorsed the process of finding a solution. There was never a COM resolution passed approving the payment of VT 2.080.000 to the claimant.
- (12) Section 6(a) of the Vanuatu National Sports Commission Act, provides that

#### **6 Functions of the Commission**

*The Commission has the following functions:*

- (a) to promote the development of sports in Vanuatu; and*
- (b) to provide for facilities for sports and recreation; and*
- (c) to promote the use of sporting facilities in the urban and rural areas of Vanuatu; and*
- (d) to maintain Government owned sports facilities; and*



*(e) to investigate developments in sports and disseminate knowledge and information about such developments; and*

*(f) to promote athletes to professional levels in their respective National Federations; and*

*(g) to be responsible for the promotion and advancement of National Federations; and*

*(h) to advise the Minister on all matters relating to the development of sports; and*

*(i) to co-ordinate and promote activities for the development of sports; and*

*(j) to initiate, encourage and facilitate researches and development in sports; and*

*(k) to encourage and support regular competition in all sports at all levels; and*

*(l) to provide in partnership with National Federations specialised sports programmes; and*

*(m) to assist with the organisation and funding of community sports development programmes; and*

*(n) to establish standards for delivery at all levels of sports development; and*

*(o) to assist the Ministry of Education to develop programmes for physical activities and sports in schools; and*

*(p) to promote sports opportunities, provision of relevant equipment, programmes and personnel, for the training of people with disabilities; and*

*(q) to support national sporting organizations and other related organizations in their planning, administration and development; and*

*(r) to co-operate with national and international sporting organizations in aiming to foster a sporting environment that is free from the unsanctioned use of performance enhancing drugs and doping methods; and*

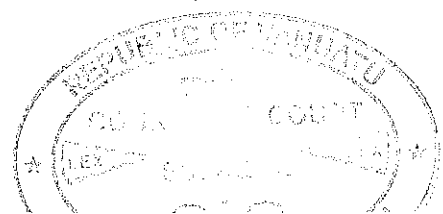
*(s) to develop policies and make rules to ensure the safety and protection of all persons involved in any sports.*

**(13) Section 7(2)(k)**

*.....Without limiting subsection (1), the Commission has the power to do all or any of the following:*

*(a) to acquire, purchase, hold, manage and dispose of real or personal property;*

*(b) subject to the prior approval of the Minister responsible for finance, to borrow or lend money on such terms and conditions as the Commission thinks fit;*



*(c) subject to the approval of the Minister, to formulate and implement policies in respect of the furtherance of and assistance to sports generally;*

*(d) to recommend to the Council that grants be made to any person or organization to undertake studies, assignments, commissions or investigations, or gain further appropriate experience, whether within Vanuatu or overseas, in respect of matters approved by the Commission;*

*(e) to recommend to the Council that grants be made or subsidies be paid to any person or organization engaged in the execution or promotion of any sporting activity, on such conditions as the Commission recommends;*

*(f) to collect, examine, disseminate, or publish any information relating to sports, or to any particular form of sports;*

*(g) to examine and consider any existing or proposed policies or practices, or other matters, relating to sports, and with the approval of the Minister, to make recommendations to any appropriate person, organization or authority;*

*(h) to carry out or encourage and support other persons or bodies in carrying out, research and studies into matters concerning sports and to disseminate knowledge and advice on such matters;*

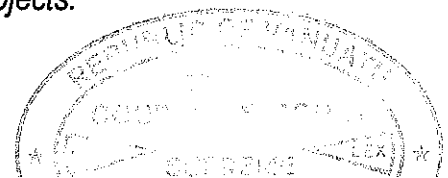
*(i) to advise, co-operate with or assist Government Departments, local authorities, voluntary organizations or other bodies or persons on any matters concerned with sports;*

*(j) to develop any land or other property and to build and maintain buildings or other structures;*

***(k) to enter into agreements with any local authority, corporation, society, firm or person for the management and maintenance of any land, buildings or facilities relating to sports;***

*(l) to charge fees for admission to land or buildings vested in it or under its control, or in respect of any activity promoted, arranged or controlled by it, as the Commission thinks fit;*

*(m) to establish or act as trustees of any charity, organization or body, the objects of which are in accordance with any of the Commission's objects.*



- (14) The claimant stated in paragraph 3 of his sworn statement dated 13<sup>th</sup> December 2016 that the agreement was between himself and the then Minister of Youth and Sports. It was only verbal, and it required the claimant to cut the grass and maintain Korman grounds, Freshwater field, Kawenu field, Malapoa College field, Siviri field, Takara Field and the compound of the Ministry of Youth and Sports and that the defendant would pay him a total of VT 2.080.000.
- (15) The claimant further stated that the defendant has breached the contract and failed to pay him VT 2.080.000 despite the fact the he has done maintenance work on the fields and places mentioned.
- (16) The invoice of VT 2.080.000 issued by the claimant however did not specifically state the detailed breakdown of the different works carried out by the claimant from 2012 to 2015.
- (17) According to the sworn statement of William Nasak, a former Director General of the Ministry of Youth and Sports Development, the Ministry has no records of any contract made by the Ministry and the claimant, through the VNSC and no records of any outstanding invoices validated for payment to Mr Mamelin.

### **Findings**

- (18) The claimant has failed to discharge his burden of prove on the required standard.
- (19) In the absence of any evidence supporting the existence of a lawful and legally binding contract between the Government and the claimant, and in the absence of any evidence showing the actual work done by the Claimant, the Council of Ministers or the current Minister of Sports or even the Vanuatu National Sports Commission cannot be obliged to pay any invoices issued by the claimant based on some personal arrangements he had made with the Minister of Sports who had acted beyond his powers.

### **Conclusion:**

- (20) Based upon the evidence adduced by the claimant and the defendants and based on the findings made by this Court I hereby dismiss the claimant's claim entirely.
- (21) I also order that each party pay their own costs, in this proceeding.

**DATED at Port Vila this 12<sup>th</sup> Day of December 2019**

**BY THE COURT**



**STEPHEN D. FELIX**

**Judge**

