

**IN THE EFATE ISLAND COURT
HELD AT PORT VILA**

CIVIL CASE NO. 43 OF 2005

(SUPERVISORY JURISDICTION)

Between: ANDREW PAKOA KALPOILEP
Applicant

And: ERATAP CHIEFS, COMMUNITY
& AREA COUNCIL
First Respondent

And: DEPARTMENT OF GEOLOGY, MINES AND
WATER RESOURCES
Second Respondent

And: VATE INDUSTRIE
Third Respondent

And: M.C.I.
Fourth Respondent

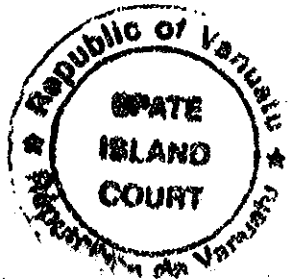
And: SECURITY COMPANY
Fifth Respondent

And: MR. PERRONET
Sixth Respondent

And: IFIRA GENERAL SERVICES
Seventh Respondent

**REVISION OF ISLAND COURT DECISION
(Section 21 (2) Island Courts Act)**

The Efate Island Court Clerk has furnished me, as the Supervising Magistrate of that court to confirm the sanctions imposed by the court in



accordance to section 14(1) of the Island Courts Act (Cap 167). For completeness, section 14 (1) thereof provides

Where an island court sentences a person to imprisonment for any period exceeding 14 days, such sentence shall not be carried out until it is confirmed by the magistrate having supervisory jurisdiction over that court.[emphasis added]

The Efate Island Court on 10th March 2006 made the following orders:

1. *That Mr. Thomas Tau, first respondent, on behalf of Eratap Chiefs, Community & Area Council had in breached orders of 20th July 2005 and ordered to pay a fine of VT 24.000 or 6 months imprisonment. Payable by 30th April 2006 before 4:30 PM.*
2. *That Mr. Tony Tevi, Second Respondent on behalf of Geology, Mines and Water Resources had in breached of Orders of 20th July 2005 and ordered to pay a fine of VT52.000 or 52 weeks imprisonment. Payable by 30th April 2006 before, 4.30pm.*
3. *That, Third, Fourth, fifth, sixth, and seventh respondents pay costs of VT2.000 each to the applicant. Payment must be made on 30th March 2006, before 4.30pm.*
4. *Party has liberty to appeal within 30 days.*

Section 14 (1) of the Island Courts Act is clear on what type of sanctions the Supervising Magistrate must confirm. It is a sentence of imprisonment exceeding 14 days. The Efate Island Court in this matter sanctioned two persons to pay court fines. I as supervising magistrate cannot exercise the power conferred by section 14(1) because there were no immediate imprisonment terms except that where a failure for the payment of fine is made then and only then can the supervising magistrate confirm the sentence thereof.

However, I have decided on my own motion in accordance to section 21 (2) to revise this proceeding. This matter is revised accordingly.

Upon revision I made the following observations and findings.

[1] The Applicant applied for injunctive relief in the following manner:

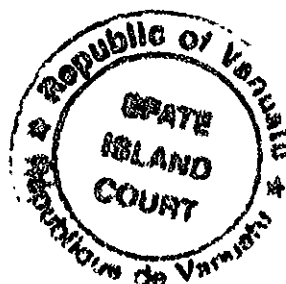


- (1) *Order that the Respondent oli no allowem any man blong extractem sand long Teouma Bay:*
- (2) *Order that the First Respondents oli no collectem payments for sand:*
- (3) *Order that this Court I cancelleme Quarry Permit VA25001 blong Eratap Community Council*
- (4) *Order that the first Respondents oli ko back long jail follem judgment blong Civil Case 29 of 2005.*
- (5) *Respondents I pem cost*
- (6) *Any other Orders we this court deems fit.*

The relief sought in this application are injunctive in nature. However, the court stated at page 2 of the judgment dated 10th March 2006 that the urgent application was made under section 19 of the Island Courts Act. This provision seeks to punish summarily for disobeying an order of summons of the court. The application was not made for sanctions to be imposed but orders for the parties to refrain from doing certain things. It appears to me that the court gave total ignorance to the relief sought. There was a total lack of consideration of the substance of the application.

[2] The parties to the proceeding, especially the respondents are bodies, business or group of persons, yet individual persons were sanctioned. Individual persons must be sued in their personal capacities as representing a group of persons or body and not vice versa, unless it is a body corporate. It was an error for the Island court to make the orders it did, as persons named in the order were not parties to the proceeding.

[3] The orders refer to breaches of court orders dated 20th July 2005 supposedly in civil case 29 of 2005. For completeness, this matter was successfully appealed against. On 9th January 2006, the Magistrates Court quashed the convictions entered against the appellants. Accordingly the orders made by the Efate Island Court in Civil Case 29 of 2005 are no longer enforceable. Even if they were enforceable, orders of Civil Case 29 of 2005 did not prohibit the conduct of anyone so that any breach thereof would result in further actions of the court. Civil Case 29 of 2005 sanctioned certain persons allegedly for breaching the orders of the court.

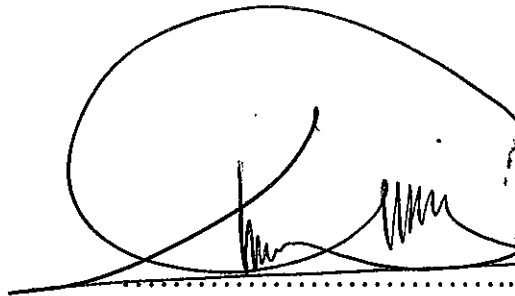


[4] I note that the initial application has 5 parties inclusive of the Applicant. However, the judgment of the court includes 8 parties altogether. It is not clear how the other three parties were joined as parties. For other parties to become parties to a proceeding, an application must be made for others to be joined as parties to the proceeding.

[5] The island court must be conscious at all times that it must act within its jurisdiction. One of the penalties imposed, notwithstanding that it was not applied for, is in excess of the island court's criminal jurisdiction.

For the foregoing reasons, I find that there had been a mistrial in this matter. Accordingly all the orders made in this proceeding are vacated and this matter is ordered to be retried in the same court constituted by three different justices.

DATED at Port Vila this 20th day of March 2006


Steve R. Bani
Supervising Magistrate

