

IN THE COURT OF APPEAL OF )  
THE REPUBLIC OF VANUATU )  
(CIVIL JURISDICTION)

CIVIL APPEAL NO. 7 of 1991

IN THE MATTER

an Appeal by **KALKOT MATASKELEKELE**,  
a member of the Vanuaaku Pati from Supreme  
Court judgment given Sunday 4th August 1991  
striking out Statement of Claim of Civil Case  
No. 99 of 1991.

Appellant

BETWEEN:

**IOLU JOHNSTON ABBIL**, Vice-President of  
the Vanuaaku Pati and **DONALD KALPOKAS**,  
Secretary-General of the Vanuaaku Pati,  
representing other members of the Executive  
Council of the Vanuaaku Pati as such and  
as members of the Vanuaaku Pati, and other  
members of the Vanuaaku Pati, and  
themselves as members of the Executive  
Council and as members of the Vanuaaku  
Pati.

Respondents

[No. 2]

Coram: Mr Justice Morling  
Mr Justice Ward  
Mr Justice Martin

**JUDGMENT**

**[PRACTICE AND PROCEDURE - representative actions - application to  
strike out - CLUBS/VOLUNTARY ASSOCIATIONS]**

This is an Appeal by leave from a decision of Goldsbrough ACJ holding that the Amended Statement of Claim filed by the plaintiff in these proceedings discloses no reasonable cause of action and that, accordingly, the cause should be dismissed.

The proceedings arose out of a decision made by the Executive Council of the Vanuaaku Pati on 10th July 1991 to convene a meeting of the Congress of the party at Mele Village on the Island of Efate on 7th August 1991. One item on the agenda proposed for the meeting was the election of a new Executive Council. It was the plaintiff's claim in the proceedings that it was not competent for this item of business to be considered at the proposed meeting and that, indeed, the decision to convene the meeting was invalid and of no effect. A declaration to this effect was sought, as was an injunction restraining the defendants from calling and convening the proposed meeting. Consequential relief was also claimed.

Although the defendants, who are also members of the Vanuaaku Pati and of its Executive Council, did not dispute that the proceedings were properly commenced as a representative action, they argued before Goldsbrough J. that the plaintiff had no locus standi. They also argued that the court should not interfere in the affairs of a private unincorporated association such as the Vanuaaku Pati and that the relief sought by the plaintiff should be refused on that ground alone. Goldsbrough ACJ rejected these arguments.

He held that it was open to any member of a voluntary unincorporated association to bring proceedings alleging that the association has failed to comply with its own rules or constitution.

On the hearing of the Appeal the defendants did not argue that His Lordship's decision was incorrect in this respect. His Lordship's decision is supported by authority: See *John v Rees* (1962) 2 All E.R. 274, although there is other authority to the contrary: see *Cameron v Hogan* (1934) 51 CLR 358 and the cases cited in Meagher, Gummow and Lehane, *Equity Doctrines and Remedies* 2nd Edition para. 2154 et seq.

The right of the plaintiff to bring the proceedings was at the very least arguable, and it would not have been appropriate to strike out the Amended Statement of Claim because of the alleged want of standing in the plaintiff. It is clear law that a pleading should not be struck out when it discloses a reasonably arguable cause of action: see Halsbury, *Laws of England*, 4th Edition, para 73 and cases there cited and *General Steel Industries Inc. v Victorian Railway Commissioner* (1949) 78 CLR 62. Similarly, a pleading should not be struck out because of the plaintiff's lack of standing unless that lack is demonstrably clear. That is not the case in the present proceedings.

Of course, the decision that the plaintiff had sufficient standing to bring the proceedings did not determine the real question at issue between the parties.

That question was whether the allegations made in the Amended Statement of Claim disclose a reasonably arguable cause of action.

The Amended Statement of Claim is a lengthy document and it is impracticable to summarise the whole of its contents in these reasons. However, it is necessary to identify some of the critical allegations and the material pleaded in support of them.

It is common ground that a resolution passed at a meeting of the Executive Council held on 1st July 1991 was defective because of the absence at that meeting of a proper quorum. An allegation is then made that it was not possible for the Executive Council to pass a similar resolution at the meeting held on 10th July 1991. However, there is no allegation that there was not a proper quorum at the meeting held on 10th July 1991. This being so, we do not think that a reasonably arguable cause of action is disclosed in the Amended Statement of Claim in so far as the relief claimed is based upon the alleged impropriety of the resolution passed on 10th July 1991 merely because it was in similar terms to the invalid resolution passed on 1st July 1991.

Further allegations are made in the Amended Statement of Claim that the decision taken by the Executive Council on 10th July 1991 was ultra vires because it conflicted in two respects with decisions of the 21st Congress of the Vanuaaku Pati held in April 1991. The decisions of the Executive Council were in the following terms:

"Election of Executive Council

- 4 Based on Chapter 3 section (d) sub-section (iv) of the Party constitution, Congress agreed that the Executive Council had not reached the end of its two year term in office, during this 21st Congress meeting in order for Congress to carry out a new election. But in preparation, to ensure that the Party wins the 1991 General Election, Congress also realises that under that same section of the constitution, the present Executive Council of the Party can continue to hold office until the next Congress elects a new Executive Council".

"Venue of Next Congress

- 6 Congress has decided that the next Congress will be held on the Island of Emae before the end of June 1992".

Section 3(d) of the constitution provides for the establishment of an Executive Council, and paragraph (x) of that section provides as follows:

"The Executive Council may make decisions in respect of its purpose to the extent that those decisions do not clash with the decisions of the Congress or the Commissars' Council".

The reference in paragraph (x) to the Executive Council's purpose is a reference to the purpose of the Executive Council as described in section 3(d) paragraph (viii) which provides that:

"The purpose of the Executive Council is to ensure that Congress's purpose and decisions are put into effect faithfully".

The primacy of Congress's decisions is made clear by section 3(a) paragraph (viii) which provides:

- “A decision of Congress can be modified, changed, suspended or cancelled only by another decision of Congress”.

Further, section 9(b) provides as follows:

“Clashes In Decisions Or Policies

- (i) When there is a clash between a decision or policy of the Congress and those of another body within the Pati, the decision or policy of the Congress shall be followed”.

We can see no inconsistency in the resolution of 10th July 1991 with decision 4 made at the 21st meeting of Congress. As Goldsbrough ACJ observed in his reasons, decision 4 merely restated some of the provisions of the party's constitution in relation to the election of the Executive and notes that the present Executive Council had not, as of April 1991, come to the end of its two year term of office.

It is true that at its meeting on 10th July 1991 the Executive Council resolved that the agenda for the meeting of Congress convened for 7th August 1991 was to include the election of a new Executive Council. However, in our opinion, it cannot be said that the decision of 10th July 1991 conflicted in any way with decision 4 made by the 21st Congress.

It was argued that the resolution of 10th July 1991 contravened decision 6 in respect of both the time and place fixed for the next Congress. As to the time fixed for the Congress it is to be observed that decision 6 was that the next Congress should be held “before the end of June 1992”. Plainly 7th August 1991 was before the end of June 1992. Accordingly there is no substance in the argument that the Executive Committee's decision was in conflict with decision 6 in this respect.

The words “before the end of June 1992” cannot have been intended to refer to a date in the month of June 1992 because the constitution itself provides that the Congress shall meet at least once a year - vis section 3(a)(i). Since the 21st Congress was held between 21 and 28 April 1991, it would have been unconstitutional for the Congress to have decided not to meet until the month of June 1992. The Congress's decision must be construed as referring to the holding of a meeting on some date before 28th April 1992. The 7th August 1991 was such a date.

The allegation that the resolution passed on 10th July 1991 was invalid because it changed the venue of the next Congress is of greater substance. We see the force of the plaintiff's argument based as it is on the provisions of the constitution to which we have already referred. There is some attraction in the argument (based on Section 3 (viii)) that a decision of Congress cannot be changed by a decision of the Executive Council and that hence it was not possible for the Executive Council to convene a meeting of Congress at any place other than on the Island of Emae. But we think that a close examination of the whole of the party's constitution leads to the conclusion that the Executive Committee was acting within the scope of its authority

when it decided on 10th July 1991 to convene a Congress on 7th August 1991 at Mele Village.

As we have observed, the purpose of the Executive Council is to ensure that Congress's purpose and decisions are put into effect faithfully. The purpose of Congress, as stated in section 3(a) (vi) of the constitution is:

"To ensure the good administration of Pati affairs to work for the welfare of Pati members, the community and the nation as a whole".

The Executive Council, as its name implies, is charged with the general administration of the party's business. The calling of a Congress to discuss matters of importance to the party is plainly within the Council's normal functions. There are no specific provisions in the constitution as to convening of meetings of Congress.

Hence it may safely be implied that it is within the Executive Council's power to convene meetings at times and at places it thinks appropriate. At any given time during the course of a year business may arise which may require consideration by a special meeting of Congress. It cannot have been contemplated by the draftsman of the constitution or by the party's members that Congress would not be able to meet even though the Executive Council had resolved that it should do so to consider urgent or important business. To deny the power of the Executive Council to convene a meeting of Congress at an appropriate location would be to frustrate the very purpose for which the Executive Council is established.

In our opinion, the references to "decisions" in the paragraphs of the constitution to which we have referred are references to decisions dealing with substantive or policy matters. They are not references to decisions of an administrative kind. The plaintiff conceded that it was within the power of the Executive Committee to decide to convene a meeting of Congress at a place different from the place which Congress may have selected on an earlier occasion. We were informed from the bar table that the Executive Committee made just such a decision on a past occasion. It would be impossible for the Executive Council to carry out its functions with reasonable efficiency if it could not make such a decision. Similarly, it could not efficiently carry out its functions if it did not have power to convene a meeting of Congress when occasion requires.

We are fortified in reaching this conclusion by the terms of section 9 (a) of the constitution which provides as follows:

"The constitution shall be read according to the ordinary meaning of the words used. When the meaning of words or the intention of the constitution is not clear, a sensible interpretation should be given in the spirit of the Pati's aims and work, and not according to the technical meaning of words".

An alternative case is pleaded in the Amended Statement of Claim that the decision of the Executive Council was ultra vires because it conflicted with the provisions of section 8(j) of the constitution which is in the following terms:

"Rules of the Pati are written but unwritten rules of conduct which are considered to be good for the work of the Pati may be given some weight".

It is alleged in the Amended Statement of Claim that it is an established practice of the Congress for it to decide for itself when and where it shall meet, that this practice is an unwritten rule of conduct within the meaning of section 8(j) and that accordingly the Executive Council's decision was ultra vires.

However, even if it be accepted that it is an established practice for the Congress itself to decide when and where it shall next meet, that does not lead to the result that the Executive Council's decision was ultra vires.

Section 8(j) does not cast any obligation on the Executive Council to treat an unwritten rule of conduct as decisive. The application of an unwritten rule of conduct may, for good reason, be considered inappropriate in certain circumstances and hence not good for the work of the party. In most circumstances it may be good for the work of the party that Congress should only meet on a date and at a location determined by it. But there may be circumstances where adherence to an unwritten rule of conduct to that effect may not be conducive to the good work of the party. It was open to the Executive Council to come to the view that the unwritten rule which is pleaded in the Amended Statement of Claim was not, in the circumstances that existed on 10th July 1991, good for the work of the party.

Moreover, all that section 8(j) provides is that an unwritten rule of conduct may be given "some weight". It is not obligatory for the Executive Council to give such a rule any, or any particular, weight. The decision of the Executive Council cannot be said to have been ultra vires because of the provisions of section 8(j).

It would appear that the plaintiff's purpose in bringing the present proceedings was to ensure that he, as a member of the Executive Council, would not lose his office until a meeting of Congress to be held on the Island of Emae at some time before the end of June 1992. His complaint essentially was that if a meeting of Congress were to be held on 7th August 1991 he might be prematurely deprived of his office.

But, as Goldsbrough ACJ pointed out, the decision of the Executive Council which the plaintiff sought to have declared invalid did not deprive him of any of his rights. As His Lordship said:

"The decision of the Executive as pleaded, does not have the effect complained of. The calling for a meeting of Congress cannot have the effect of binding that Congress. The Executive have suggested an agenda for the Congress meeting. When it meets, Congress must decide whether to accept that agenda. Congress must choose if it wishes to elect a new Executive".

"The decision of the Executive complained of calls for a meeting of Congress. Congress must decide if when it meets, it wishes to consider any matters. It must decide its own agenda. It has the right to change one of its earlier decisions. If the plaintiff loses his place off the Executive, which he had expected to retain until 1992, it will be the result of a Congress decision, not the result of an Executive decision".

In our opinion the matters pleaded in the Amended Statement of Claim do not disclose any cause of action upon which plaintiff has any reasonable prospects of success.

In these circumstances, we think the orders made by Goldsbrough ACJ were correct. It follows that the appeal must be dismissed with costs.

2 September 1991

Mr Justice Morling  
Court of Appeal Judges

Mr Justice Ward

Mr Justice Martin