IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU)
)

Civil Case No. 99 of 1991

(CIVIL JURISDICTION)

IN THE MATTER OF

an application by Kalkot Matas Kelekele, a member of the Vanuaaku Pati of Vanuatu for certain declarations for specific performance of the special contract existing between the members of the Vanuaaku Pati in the form of its constitution, rules and resolutions.

BETWEEN:

KALKOT MATASKELEKELE representing some members of the Executive Council as such and as members of the Vanuaaku Pati, and some members of the Vanuaaku Pati, and himself as member of the Executive Council and member of the Vanuaaku Pati.

Plaintiff

AND:

IOLU JOHNSON ABIL, 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, and other members of the Vanuaaku Pati, and themselves as members of the said Executive Council and as members of the Vanuaaku Pati.

Defendants

[No 1]

Coram: Goldsbrough J.

JUDGMENT

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

By writ of summons dated 26 July 1991, the plaintiff herein, in a representative action, claimed relief as set out in the summons against the defendants. That claim

was supported by an affidavit of the plaintiff of the same date. In response the defendants again on 26 July 1991 filed a notice of motion to strike out the claim, on the grounds that it did not disclose a reasonable cause of action and two other grounds which were not pursued at the hearing.

The hearing took place on Saturday 3 August 1991 and the court's decision was given on Sunday 4 August 1991.

The case before the court arises out of a decision of the Executive Committee of the Vanuaaku Pati of 10 July 1991. That decision called for a meeting of the Congress of the party to be held at Mele Village on the island of Efate on Wednesday 7 August 1991. It suggested an agenda for that meeting, which suggested agenda included the election of a new Executive Committee. It is said that this decision goes against an earlier decision of Congress, which earlier decision according to the party constitution may only be changed by a subsequent Congress.

Representative actions are permitted under Order 17 rule 9 High Court (Civil Procedure) Rules 1964. This is such an action. It meets the justice of the case, in that there are two opposing views over whether a Congress should be held on 7 August 1991. Whilst no issue was raised over the propriety of a representative action, the defence raised the issue of the plaintiff's locus standi.

The plaintiff and those (unspecified) persons he claims to represent, the supporters of the view that no Congress should be held until (as the earlier Congress resolved "Emae before the end of June 1992"), are each of them members of an unincorporated association formed originally in 1971 and now known as the Vanuaaku Pati. It is a political organisation. It has a written constitution. Membership of it is voluntary.

On behalf of the defendants it was submitted that this court should not interfere in the affairs of a private unincorporated association of people. Authority for this view appears in *Cameron v Hogan* [1934] 51 LRC at p.358. That case was decided by the High Court of Australia. Contrary authority appears in *John v Rees* [1962] 2 All E.R. beginning at page 274. The same topic is considered in the learned text book "Equity - Doctrines and Remedies" Meagher, Gummow and Lehane 2nd Edition at para 2154 et seq.

It is the view of this court that the law to be applied here is that found in *John v Rees*. Applying that law this court is of the opinion that it is open to any member of a voluntary unincorporated association to bring an action to court when that member alleges the association to have failed to comply with its own rules or constitution, or, where they apply, it has failed to observe the rules of natural justice.

John v Rees is also useful in explaining the courts function in this type of case. I therefore adopt the words of Megarry, J. when he says, "I must make explicit what all lawyers will recognise as implicit, but which those who are not lawyers may not fully appreciate. I am not in the least concerned in this case with the rightness or the wrongness or the desirability or undesirability of any political views or policies that there may be. This is so whether the views or policies are political in the ordinary external sense, in relation to other political parties or otherwise, or whether they are internal politics within the confines of any political or other unit. My concern is merely to see that those concerned in these proceedings obtain justice according to law, irrespective of politics".

The doctrine illustrated in *John v Rees* shows that a contract exists between the members of an association such as the Vanuaaku Pati. Thus any member may ask the court to consider any alleged breach of that contract. In this case, the plaintiff alleges that the rules of the Pati have been or are about to be broken by and consequent upon a decision of the Executive Committee of the party.

First it was argued by the plaintiff that the decision of the Executive on 10 July 1991 was not made in accordance with the Constitution of the Pati. It was conceded that the purported passing of a similar (indeed identical) resolution by the Executive on 1 July 1991 was defective. The plaintiff's contention in relation to the decision of 10 July 1991 was that the Executive purported to re-affirm a decision which had not been properly made on 1 July 1991 and was therefore incapable of re-affirmation. He suggested that the "resolution of 1 July 1991 was invalid". That of course was not the case. The resolution was never invalid, only its passing. The same resolution was capable of being considered at the meeting of 10 July 1991, indeed was and was passed.

This ground must therefore fail.

It was then argued by the plaintiff that the Executive resolution of 10 July 1991, was ultra vires the Executive since it conflicted with a decision of the 21st Congress of the Pati, held in Anetyium in April 1991. This was supported by references to the VP Constitution where it is provided that (page 27, Cont.):

> "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".

The relevant decisions made by Congress can be seen in the document marked 'B' attached to the affidavit of the plaintiff, p. 50 - 51. They are :

"4 Election Blong Executive Council

a) Kongress emi stanap long Chapter 3, Section (d), subsection (iv) blong Pati Constitution we emi soem se term blong Executive Kaonsel emi no kam long end blong 2 year blong hem yet, blong Namba 21 Kongress i save mekem niu ilekson. Be blong mekem rere Pati blong emi save winim 1991 General Election, Kongress emi luksave se anda long sem seksen blong Constitution ia, Executive Council blong Pati we i stap naoia i save holem wok kasem taem we next Kongress i electem niu Executive Council".

"6. Venue Blong Next Kongress

Kongress emi bin decide se next Kongress bambae i stap long aelan blong Emae bifor end blong June 1992".

Consideration of Resolution 4 of the Congress reveals that in fact, it resolved nothing. It merely re-iterates the provisions of the Constitution in relation to election of the

Executive and points out that the present Executive had not (then) come to the end of its two year term of office.

Resolution 6 makes it clear that it was the intention of Congress to next meet on the island of Emae before the end of June 1992.

It was contended by the plaintiff that the calling of a Congress other than on Emae and before the beginning of 1992 constituted a clash with a Congress decision. The plaintiff maintained that "bifor end blong June 1992" should be interpreted as sometime during the month of June 1992, or at least, not before 1 January 1992. In support he referred the court to the narrative contained in the minutes of the Congress.

Unless a resolution is ambiguous on its face, such a reference cannot be made. Rules of the Pati declares that words shall be given their ordinary meaning. A Congress, the resolution provides, shall be held before the end of June 1992. That in this court's view suggests such a Congress may be held at any time between the date of the Resolution and the end of June 1992.

The same rule of interpretation equally must be applied to Article 3 of the VP Constitution which the plaintiff submitted was likely to be breached if the Congress met as the Executive had asked. It provides that :

> "The Pati shall have a "Congress" which shall meet at least once a year".

The plaintiff contends that this prohibits the meeting of Congress more than once in any one year. This is clearly not what that particular provision says.

It was further contended on behalf of the plaintiff that it is an established practice of the Congress for the Congress itself to decide when and where next to meet, to the extent that this constituted an unwritten rule which must be taken into account as provided for in Article 8 (j) of the Constitution which says:

> "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".

That argument, if sustained by evidence, is tenable. It does not however provide any absolute rule. It no doubt provides that unwritten rules must be considered by any party organ in coming to any decision, but does not bind them to those unwritten rules.

It is also necessary to consider the effect on the VP, and Congress in particular, were the plaintiff to be successful in his action on this ground. Congress, having resolved at its annual meeting where and when it would next meet, could never come together, under any circumstances, before that date and other than at that place, to consider any question.

Could that be said to be "good for the work of the Pati", in the terms of Article 8 (j) of the Constitution? Whilst that may raise a question to be answered I have no doubt as to what the answer would be.

The effect, the plaintiff contends, of the two Congress resolutions 4 and 6 is that he, as a member of the presently elected Executive, should hold office therein until June 1992. He complains that the actions of the Executive in deciding that a meeting of Congress should take place on 7 August 1991 deprive him of that right, or potentially deprive him of that right.

The decision of the Executive, as pleaded, does not have the effect complained of. The mere 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 on 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.

It is no part of the plaintiff's case that Congress is not the Supreme body of the Pati, capable of changing a policy or decision of its own, subject to Article 9 (b) (iv) of the Constitution. The same Constitution makes no provision for the calling of a meeting of the Congress. It does however provide that the purpose of the Executive Council is to "ensure that Congress's purpose and decisions are put into effect faithfully". In the absence of specific provisions it is not difficult to find that the Executive Council must have the authority to call a meeting of Congress so that Congress may decide whether they wish to consider a question raised by the Executive. No doubt other officers or organs of the organisation have concurrent powers. To hold otherwise would suggest that no matter, however serious its effect on the organisation, could be brought to the attention of the Congress until its next scheduled meeting.

Having considered these arguments as submitted by the plaintiff, I conclude that this statement of claim discloses no reasonable cause of action and therefore dismiss this cause.

The question of costs is reserved to be considered. By order of the Court.

Goldsbrough J
Dated this 6th day of August 1991.