IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
HELD AT PORT VILA
This 12th and 21st April
and 4th, and 21st June 1995

APPEAL NO. 25 OF 1995

Civil Jurisdiction

Between : LENEARU TATWIN 9 other individual and separate cases

Appellants

And : THE ATTORNEY GENERAL c/o
Attorney General Chambers
Constitution Building
Private Mail Bag 048
PORT VILA
representing the Government
of the Republic of Vanuatu

Respondent

Constitution Law	-	Article 57 (5) (7) & (8) 53 (3)
Statutes refered to	-	The Consitution
	-	The Public Service Act Cap 129
	-	The Courts Act Cap 122
	-	The Criminal Procedure Code Cap 136
	-	Interpretation Act Cap 132
Authorities	-	Bill Willie -V- Public Service
	-	Commson Civil Case No. 145 of 1992
	-	Civil Case No. 94 of 1994
	-	Civil Case Nos. 66, 78 and 99 of 1994
	-	Public Service Staff Manuel

Mr Silas Hakwa Counsel for Appellants
Mr Oliver Saksak - Solicitor General for the Respondent

This is an appeal against the Magistrates Court decision made on the 16th of March, 1995 on which each of the Appellants were summarily evicted from various Government premises they each had occupied during their terms of employment with the Public Service of Vanuatu. The facts of their cases are briefly outlined in the judgement of the Court below. Each defendant was given 30 days to move out and all rents were to be paid until the various premises were to be delivered up by the 14th of April, 1995. Pages 9 and 10 of his Worship's judgment contains various amounts which each Appellant was to pay. For reference sake, I set out hereunder the names of the Appellants and the amounts each one of them was ordered to pay as set out in his Worship
Magistrate Bruce Kalotiti Kalotrip's judgement.

1.	Philip Tasale	-	7,213 x 13 =	VT 93,774
2.	Plas Kali	-	3,933 x 13 =	VT 51,138
3.	Lenearu Tatwin	-	4,587 x 12 =	VT 55,046
4.	Seule Simbolo	-	2,489 x 13 =	VT 32,360
5.	Thomas Sperry	-	3,237 x 13 =	VT 42,086
6.	John Laan	-	11,014 x 13 =	VT143,185
7.	Alfred Kalontas	-	6,353 x 13 =	VT 82,598
8.	Amon Ngwero	-	13,335 x 13 =	VT160,355
9.	Jack Taseru	-	4,474 x 13 =	VT 58,162
10.	Liency Ala	-	4,474 x 13 =	VT 58,162
11.	James Yaviong	-	7,116 x 13 =	VT 92,520

Each of the appellants were also ordered to pay costs of VT5,000.

This appeal was listed before me for the 12th of April, 1995 for hearing. The Counsel for the Appellants did not appear. The Honourable Attorney General Mr Patrick Ellum appeared for the Respondent representing the Government of the Republic of Vanuatu submitted that the Counsel for the Appellants had contacted him by letter requesting further adjournment. He however objected to the Court making staying orders for issueance of the Writ of Possession. The Court refused to grant any staying orders since the Counsel for the Appellants did not appear to properly address the Court on this fact. Secondly Order 60 rule 7 says that an appeal shall no operate as a stay of execution under a judgement on appeal. The appeal was relisted for hearing on the 21st April, 1995. By this date the Appeal Book was not ready and the Counsel for the Appellants quite rightly submitted that, he could not proceed without all the transcripts of the Court below. Mr Saksak who now appeared for the Respondent objected to having another adjournment. The Court thought it was fair to grant

another adjournment so the Court gave direction to the Chief Clerk to prepare all transcripts forthwith and the matter was further adjourned to 4th May 1995 on which date the Court heard legal argument, and submission by the Counsel for the Appellants.

There are four grounds of Appeal in the Notice of Appeals at page 3, from page 1-2 appear large quoted portions of his Worship's judgement later in page 3 of the Notice of Appeal identifying that the grounds of appeal are based on those portions quoted. The grounds of appeal appear on page 3 of the Notice of Appeals and I see it appropriate to set them out hereunder.

" 1. That the learned Magistrate misdirected himself in law in holding that :-

" (a) the action is an action for repossession of property "

" (b) the action is clearly distinguished from the Kalsakau case "

" (c) an eviction order has been made by the government "

" (d) the Defendant has been dismissed from his service by the Government "

" (e) John Kalsakau's has nothing to do with eviction order by the Government ; and

" (f) the Court is bound to comply with the earlier cases of Attorney General -V- Johna Ala and others Civil Cases Nos. 66, 78 and 99 of 1994 "

" 2. That the learned Magistrate has made an error in law :

" (a) in not applying precedent and ratio decidendi set out in Dr. John Kalsakau's case. Civil Case No. 94 of 1994"

" (b) in holding that "the Court is only to satisfy as to whether or not the Defendants have been terminated from their service ....." and"

" (c) in failing to give due regard to general principles of law and in particular the Constitutional rights of the Defendants".

" 3. That the learned Magistrate had no admissible evidence before him to rule that the Defendant has been dismissed from his employment in the Vanuatu Public Service".

" 4. That not only was there no evidence to support the findings of the learned Magistrate, but also his judgement is against the weight of the evidence".

The grounds of appeals were argued at length and replied to by the Solicitor General Mr Oliver Saksak for the Respondent. Some of the grounds argued have substance, others have very little but the Court proposes to dispose of the grounds of appeal in the order under which they are set out in the Notice of Appeals.

The first ground of appeal contains six distinct situtations under which the learned magistrate is supposed to have misdirected himself in law in his judgement. The first of the six is that his worship misdirected himself in law in holding that "the action is an action for repossession of property". The Counsel for the Appellants argued in submission that, the Appellants cases of eviction cannot be separated or viewed differently from their purported termination by the Vanuatu Public Service Commission. He argues that since there was no proper termination of the Appellants and since it is part and parcel of the terms and conditions offered to the Appellants in the Public Service, it follows that the summary ejectment orders by his worship in the Court below were made against the weight of the evidence thus resulting in miscarriage of justice. He argued that the Appellants are entitled to the security of tenure provided by the Vanuatu Constitution. For this purpose I wish to refer to Article 57 (1) (5) (7) and (8)

" PUBLIC SERVANTS"

" 57 (1) Public Servants owe their allegiance to the Constitution and to the people of Vanuatu.

(5) " For as long as their posts exist, public servants shall not be removed from their posts except in accordance with the Constitution"

(7) " Public Servants shall leave the public service upon reaching retiring age or upon being dismissed by the Public Service Commission. They shall not be demoted without consultation with the Public Service Commission"

(8) " The security of tenure of the public servants provided for in subsection (5) shall not prevent such compulsory early retirement as may be decided by law in order to ensure the renewed of holdens of public offices"

To support those propositions advanced in the grounds of Appeal the Counsel for Appellants submitted that in any civil proceedings and be they for summary ejectment or repossession of property, the law is that it is up to the Plaintiff to prove his case by admissible evidence on the balance of probability to show that his case represents what he actually claims. That in these appeals, the plaintiff needed to prove that he owns those various properties they claim to own. There are no issues regarding whether or not the Government owns those houses since all appellants admitted in pleadings that the Government is the owner of the premises. Secondly he argues that the Plaintiff needed to prove that the premises were let to the Appellants on a monthly basis. He further argues that in the Court below there was no evidence to suggest whether or not there was a

tenancy at will, or for a fixed period or a monthly tenancy and that in any event termination of tenancy could only he effected by a Notice to Quit.

Mr Hakwa argues that under Chapter 8.1 of the Public Service Staff Manuel, the Appellants were given those official residences, Mr Hakwa refered this Court to page 40 of the transcript (page 5 of Civil Case No. 94 of 1994) the judgement of Dr. John Kalsakau's case. The Counsel for Appellants highlighted great portions of this page which he read while argueing these appeals. On the first 3 paragraph of this same page, His Honour the Chief Justice quoted from pages 13 and 14 of another case Bill Willie -V- The Public Service Commission Civil Case No. 145 of 1992 and on page 40 of the Appeal book of the current cases where his honour discusses the concept of natural justice guaranteed by Article 5(1) (d) and (2) of the Vanuatu Constitution. The concept of natural justice has been fully explained in a number of local authorities in Vanuatu. In Bulekon -V- Timakata Civil Case No. 90 of 1986, the Court of Appeal said at page 2.

> "Fundamental rights are set out in Article 5(1) which includes under paragraph (d) 'protection of law'. Article 5(2) discribes what is meant by 'protection of law'. Without repeating it in detail, one can say that it specifies the essential requirements of a fair hearing by anyone facing an allegation, that is to say, the principles of natural justice as known and understood in the tree and democratic world will be applied by the tribunal considering the allegation. All tribunals in Vanuatu are accordingly bound by the rules of natural justice whether they be administrative in function or purely judicial".

Then in the case of Bill Willie -V- The Public Service Civil Case No. 145 of 1992, His Honour the Chief Justice Mr Justice Charles Vaudin d'Imecourt said at the second paragraph of page 13.

> "So there is little doubt that the common law applies do Vanuatu as to the rules of natural justice ....."

This Court entirely agrees with the Supreme Court in Dr. John Kalsakau's case at page 4 that the rules of natural justice are enshrined in Article 5(d) of the Constitution. It could not only mean statute law, but includes the rules of natural justice and the common law principles adopted into Vanuatu by virtue of Article 95(1) and (2) of the Vanuatu Constitution. These cases above were some how or other dealing with unlawful termination of those concern but the appeal before this Court is regarding orders of evictions issued against each appellants in these appeals. Mr Hakwa argues in these appeals that because of the security of tenure under Article 57(5) and (8) and Chapter 8.1 of the Public Service Staff Manual and because of the ruling in Dr. John Kalsakau's case, housing was let to the appellants as part of their terms and conditions. He argues that a public servant is a priviledged worker. Mr Hakwa quotes from page 40 of the appeal transcript which the learned Chief Justice says in paragraph 3.

> "I accept entirely the learned Attorney General's submission that the Public Service Manual forms part of the terms of employment of every public servant".

In responds to this part of Mr Hakwa's arguement, Mr Saksak for the Respondent submitted that ground 1(a) of the appeal is totally irrelevant. He refered the Court to page 2 of the

pleadings in the Court below. I set out the relevant portions of page 2 of the pleadings for convenience sake hereunder.

"The Plaintiff is the owner and is entitled to possession of premises comprising a dwelling house known as Government House No. ....."

"The said premises was let to the Defendant by the Plaintiff on a monthly tenancy basis ....."

"The Plaintiff claims (1) possession of the said premises

(2) arrears in rent

(3) Mesne profit until possession is delivered up.

(4) Costs

In their Defence and Counter Claims filed with the Registry on the 24th of June 1994 in the Magistrates' Court each Appellant said in the first 5 paragraphs.

" 1. He admits that the Plaintiff is the owner of the premises "

" 2. He admits that the premises was let to the Defendant "

" 3. He denies that the premises were let on a monthly tenancy "

" 4. He denies that the tenancy was determined either on 30 May 1994 or 6 June 1994 "

"He does not admit that the Plaintiff is entitled to any or all of the claim made".

While this Court accepts the fact that, the Public Service Staff Manual forms part of the terms of employment of all public servants, I do not agree with ground 1(a) of these appeals and the proposition the Appellants put that the learned magistrate misdirected himself in law in holding that "the action is an action for repossession of property". The Appellants' Counsel refered this Court to Chapter 8.1 of the Public Service Staff Manuel. I also see it appropriate to refer to Chapter 8.2 of that Manual.

"Rent is payable for all officers Official housing on a monthly rate of 12% of salary, with the exception of the official residents of the President, the Prime Minister and Ministers, the Speaker of Parliament and the Chief Justice which shall be provided rent free"

I do not even agree with the proposition that housing was not let to the Appellants on a monthly basis since if we accept Chapter 8.2 as part of the terms and conditions within the Public Service, then the above provision requires rental payments on those official residents

to be made monthly. The rent is calculated at 12% of the salary scales of each officer. It is my firm belief that housing allocated to locally recruited officers, be they permanent public servants or political appointees are allocated if you like on the grace of the Government. A servant is allowed to occupy an official resident only if he pays a monthly 12% rate based on his salary scale. Let us say for arguement sake that public servants were allowed under the Staff Manual to pay their 12% rate from their pockets. What if one does not pay his rent for a lengthy period. Apparently the action available in Common law was to take out an originating Summons for a summary ejeutment proceedings against a person who was licenced to be in the premises. Chapter 8.(1) (c) of the Staff Manuel is put in these terms

> "Other locally recruited (other than temporary of local contract) officers who hold permanent or political appointments are only eligible for official housing i.e. only in so far as the Government is able to allocate surplus officially - owned accomodation for that purpose and is not at the same time leasing privately - owned housing of a similar standard ....."

The Public Servants official residents differs greatly from the point of view of official residents offered to the Head of State, the Prime Minister and his Cabinet Ministers, that of the Honourable Speaker and Honourable Chief Justice. It is a part of their terms and conditions of their service offered by the Government. In their case it is part and parcel of their terms of employment as compared to the case of the Appellants. Included in the above exception are overseas recruited officers who are entitled to official housing and who are by virtue of their terms of agreement of service to have housing provided for them. So I answer to Ground 1 (a) of the appeals that it was an action for repossession of property and the learned Magistrate had not misdirected himself on that point.

Civil Case No. 94 of 1994 was substantially quoted to this Court in arguing this appeal the Counsel for the appellants in support of ground 1 (b) Mr Hakwa argues that had the appellants been properly terminated, they would be entitled to what was legally due the them upon termination. He argued that Dr. John Kalsakau's case is central to the cause of the appellants because it determines whether or not he was lawfully terminated and that its application is relevant in the cases of the Appellants. He submitted that the Kalsakau's case be accepted as authority for the Appellants' and that the Appellant have not been lawfully terminated in accordance with the Constitution, the Public Service Act Cap 129 and the Staff Manual.

Mr Saksak argued in reply that the action of repossession taken by the Respondent is distinct and ought to be clearly distinguished from Civil Case no. 94 of 1994.

He argues that his worship did not err in law in his holding, since Dr Kalsakau's case was specifically a case to determine whether he had been lawfully terminated or not. That the appellants cases were applications taken out by the Respondents to evict the appellants who had not paid rents for lengthy periods. Mr Saksak refered the Court to the front page of Civil Case No. 94 of 1994 and on its titulation. I set part of this hereunder and it reads

> **"IN THE MATTER OF** : An application of declaration of rights under the provisions of the Public Service Act and the Constitution".

Mr Saksak further argued that Dr. Kalsakau's application was merely to determine and declare his rights. I respectfully agree with Mr Saksak on this part of his submission. Dr Kalsakau's case was not an eviction proceedings. In fact the learned Chief Justice Mr Justice Charles Vaudin d'Imecourt says on page 8 of his judgement that Dr. Kalsakau had invited the Supreme Court to declare that, the termination by the Public Service Commission was unlawful and thus the applicant sought orders to reinstate him to the Public Service. Secondly, he sought orders to restrain the Respondents from acting on contents of his termination letter of 21.3.94 and thus restraining them further from interfering with his full rights and privileges and that he be allowed to employed by the Public Service and the Government of the Republic of Vanuatu. Apparently, the appellants cases in the Court below were different from that of Dr. Kalsakau. The distinction lies in the nature of the cases under which the proceedings were instituted in the Registry. Thus the Respondent's cases for repossession was clearly distinguished from Dr. Kalsakau's case of Application for declaration of his rights.

The Court proposes to deal with grounds 1 (c) (d) and (e) together. The Court agrees with the Counsel for the Appellants that there was misdirection in regard to grounds 1 (c) (d) & (e) in the Court below. There is certainly considerable force in Mr Hakwa's submission that the learned magistrate misdirected himself. In fact it was the Government of the Republic of Vanuatu that took or commenced proceedings against the Appellants. It was his worship's Court that made eviction orders and not the Government. Mr Saksak argued that that portion of the learned magistrates judgement carries a different interpretation. On page 8 of his worship's judgement the phrase "eviction order made by the Government" appears twice. To the Court there would not be any better interpretation than to give it the literal meaning to mean that the eviction orders was made by the Government. Another possible interpretation would be that his worship was refering to a statutory order or orders and it would carry a totally different perspective than what these proceedings were instituted for in the Court below. For this purpose I shall refer to section 12 of the Interpretation Act Cap 132. The section says

> "Where an Act of Parliament confers on the President, a Minister or any other authority a power to make or a power excerciseable by making proclamations, rules, regulations, by-laws or statutory orders, any document by which that power is excercised shall be known as a statutory order and the provisions of this Act shall not apply thereto"

Section 13 of the same Act provides that every statutory order shall be published in the Gazette and are to be judicially noticed. On perusal of his worship's judgement and all the transcript of appeal, I find no such orders made by the Government. If there was, there was no need to institute proceedings against the Appellants in the Court below nor in this Court.

Mr Hakwa in argueing grounds 1 (d) submitted that the appellants have not been dismissed as there were no admissible evidence for his worship to come to that conclusion. He cited Civil Case No. 94 of 1994 as authority for this proposition and that if there was any dismissal at all, the Public Service Commission failed to comply with the provisions of the Public Service Act Cap 129, the Staff Manual which action was contrary to the Constitution and the rules of natural justice. I agree entirely with Mr Hakwa on this part of his submission and say that there was no admissible evidence whatsoever to support the view that the appellants had been dismissed.

In any even in both these appeals and in my judgement in Attorney General -V- Johna Ala and 2 ors Civil Cases Nos. 66, 78 and 99/94, we did not need to concern ourselves with the question of whether or not, the defendants in the Court below had been terminated. That question was not at all in issue and it is my opinion now that the appropriate question the Courts below should have directed to their attention was did the Defendants in the Courts below owed rental arears to the Government. If they were then satisfied they could then make eviction orders accordingly. I also agree with the Counsel for the appellants that the Court below was not "bound to comply with the decision of the cases of The Attorney General -V- Johna Ala and others" since his worship's Court was sitting as a Magistrates Court so as myself in the Johna Ala and others cases since I myself sat as a Magistrate Court. It was not proper in law for his worship to apply the principal in Johna Ala's case because to his worship that judgement was only persuasive and not binding.

Mr Saksak argued in submission that Johna Ala's case was decided by the Senior Magistrate Court and thus that decision should be binding on same Court. It is my opinion that the Court below could follow it if it wanted to but it was not binding on his worship. This would be contrary to the principle of "stare decisis". A decision of the Supreme Court can bind the Magistrates' Court. A decision of a Court of Appeal constituted under Article 50 of the Vanuatu Constitution and section 17 of the Courts Act Cap 122., binds the Supreme Court.

To eleborate further on the issue of precedence, Section 1 (1) of the Courts Act says,

> "There are hereby constituted throughout the Republic of Vanuatu Magistrates Courts subordinate to the Supreme Court and to be presided over by persons appointed under the provisions of this Part to be magistrates and such Courts may excercise such jurisdiction as is provided by this Act or by any other law".

Section 5 (1) (2) of the same Act provideds and I quote :-

> "5 (1) Any person with suitable training or experience may be appointed to be a Senior Magistrate to hold a Magistrates Court and to excercise all of the jurisdiction of a Magistrates Court and when such persons so appointed shall have and may excercise all the powers and jurisdiction confered upon Magistrates Court by this Part or by any other law"

Then subsection (2)

> "Any fit and proper person may be appointed to be a Magistrate to hold a Magistrate's Court and to excercise jurisdiction in criminal cases and matters over any offence for which the maximum punishment prescribed by law for such offence does not exceed imprisonment for a term of 3 months and in civil proceedings such cases or class of cases as the Minister shall by Order prescribed and such persons when so appointed shall have and may excercise the powers and jurisdiction confered upon Magistrates' Courts by this

> Part or by any other law to the extent authorized by the limits of jurisdiction aforesaid"

The above two provisos provide for seniority of magistrates and it is my opinion that they do not alter the status of Magistrates appointed under section 1 (1) or (2). They merely provide for the seniority of magistrates. Therefore I do not agree with part of the submission by the lawyer for the Respondent that my decision in Johna Ala's case can be binding on another Magistrates' Court.

Grounds 2(a) of these Appeals say "that the learned Magistrate made an error in law" by not applying the ratio decidendi set in Civil Case No. 94 of 1994. Having said that Dr. Kalsakau's case ought to be distinguished from the Appellants cases of application in the Court below for summary ejectment, I do not wish to go into this ground in any great length. What I would like to say is that the ratio decidendi in Dr. Kalsakau's case was central to the issue of whether or not Dr. Kalsakau's dismissal was done in accordance with the Constitution, the Public Service Act the Staff Manual and the rules of natural justice. It is my opinion that the Appellants cases were merely about summary ejectment and this distinction ought to be kept separate. The Court has already discussed in some length ground 1 (d) which deals with his worship holding that the Defendants had been dismissed from the Public Service. In fact to answer Grounds 2(b) I adopt the same line of discussion I have made about Grounds 1 (d) and apply it to Grounds 2 (b). I wish to add that any misdirection in law in errors in law. The only questions that his worship needed to ask himself are who owns the property in question. If he found proof that the Government is, then the next question was did the Appellants had any rents owing to the Government. If his worship's answer was, Yes, then he was bound to make summary ejectment orders. All Appellants admitted in their pleadings that the Government is the owner of those various premises. I therefore agree with the Counsel for the Appellants that there was an error in law in holding that the Court was merely to satisfy itself that the defendants had been dismissed.

In argueing paragraph 2 (c) of the grounds of appeal the Counsel for Appellants submitted to Court Article 53 sub-article (3). This is put in the following terms

> "When a question concerning the interpretation of the Constitution arises before a subordinate Court, and the Court considers that the question concerns a fundamental point of law, the Court shall submit the question to the Supreme Court for its determination".

Section 11(1) of the Courts Act Cap 122 portrays the same view. This section reads :-

> "A Magistrate may at his discretion reserve for the consideration of the Supreme Court on a case to be stated by him any questions of law which may arise in the trial in any criminal or civil proceedings. The Magistrate shall not deliver his judgement on the proceedings before him until he has received the opinion of the Supreme Court and the Supreme Court shall have power to determine every such question with a without hearing arguement".

Section 11 (1) of the Courts Act may be used at the descretion of the Maigstrate and that provision is applicable to both criminal and civil proceedings Article 53(3) specifically refers

to question regarding. Constitutional interpretation. The Constitution is the supreme law of this land specified by Article 2 of the Constitution. Thus any alledged infringement of fundamental rights guaranteed by the Constitution should only be interpreted by the High Court of this land. If the learned magistrate did not direct his attention to referal of the matters to the Supreme Court, I ask a question whose responsibility was it to ensure that these provisions quoted above were complied with. The Court notes from the transcript of the Court below that, all parties were represent by two learned Counsels - the same Counsels appear before me now appearing or before any Courts be it a Magistrate or Supreme Courts, have a duty to ensure that the Court is guided to a safe conclusion. To this Court his worship had no discretion to decide if a referal was necessary. He was duty bound to refer these matters only if he saw that there was a Constitutional interpretation to be decided by the Supreme Court. However if the learned magistrate was on the premise that the cases of the appellants were merely summany ejectment proceeding, I think that his worship did not have to refer anything to the Supreme Court. It is my respectful opinion that the learned Magistrate came to that view. He alludes to this proposition on page 6 of his judgement where he says on the first 3 sentences on the first paragraph :-

> "Again this same principle applies to the rest of the Civil Servants who have received their letters dated 21st March 1994, that they are still under suspension and they are still considered Public Servants ....."

Mr Saksak for the Respondent submitted that it was not open for his worship to consider Constitution questions since he did not nor any magistrate's Court has the power th deliberate on question relative to Constitutional interpretation : Ground 2(c) of the appeals do not say that the learned magistrate should have assumed the role of the Supreme Court and interprete the Constitution by himself. Instead it says that referal of Constitutional interpretation was needful to consider if the appellants had been properly terminated or not. That view is put by the learned Counsel for the Appellants since they argue that housing is part and parcel of terms and conditions of employment offered to the Appellants. I must say this with respect again to the two Counsels charged with carriage of these matters, right from the Court below that it was also part of their duty to ensure that the statutory provisions for referal to the Supreme were cited to the attention of the learned Magistrate.

I must also refere to Article 6(1) of the Constitution - this is also put in the following language

> "Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may independtly of any other possible legal remedy, apply to the Supreme Court to enforce that right"

This proviso is reinforced by Article 53 (1) - once more put in the following terms

> "Anyone who considers that a provision of the Constitution has been infringed in relation to him may without prejudice to any other legal, remedy available to him, apply to the Supreme Court for redress"

So that inspite of the proceedings taken out by the Respondent for summary ejectment of the appellants it was their right if they chosed to could have applied to the Supreme Court. I must also add here that section 218 (1) of the Criminal Procedure Code Cap 136 provides

that any application for declarations under Articles 6, 53(1), 53(3) and 54 of the Constitution shall be made by way of petition and they are valid no matter how informally such petition is made. This was the kind of right that was open to the appellants inspite of the fact that they were being sued for summany ejectment.

With respect to Ground 3 - I think that I have appropriately addressed that issue in dealing with grounds 1 (d) and 2 (b) so I do not wish to add anything further.

In argueing ground 4, the Counsel for the Appellants argued that the judgement of the learned Magistrate was and is against the weight of the evidence Mr Saksak on the other hand submitted that, his worship came to a right conclusion and that all the grounds of these appeals are not sufficient to support the appeals and thus these appeals should be dismissal. I simply answer this ground this way. If the appellants cases were for wrongful dismissed -Yes- there would not have been sufficient evidence for his worship to have come to such conclusions on the basis of the ratio decendi set in Civil Case No. 94 of 1994. However the cases of appellants in the Court below were summary ejectment proceedings. Therefore I find that the learned Magistrate came to a right conclusion in ordering the Appellants to be evicted from the various Government premises.

In summary, I answer the grounds of appeals this way.

Ground 1 (a) Yes - it was an action for repossession of various Government premises.

(b) Yes - the action is clearly distinguished from Dr. John Kalsakau's case.

(c) No - there were no eviction orders made by the Government

(d) No - there was no admissible evidence for the learned Magistrate to say that the defendants had been dismissed from the Public Service

(e) Yes - Dr. Kalsakau's case did not concern summary ejectment.

(f) No - the learned Magistrate was not bound to comply with the decision in Johna Ala's case since the Senior Magistrate sitting constituted the same Court as his worship's and thus Dr. Kalsakau's case was only persuasive but not binding on him.

Ground 2 (a) No - there was no error in law since his worship had distinguished between the matters before him and Dr. Kalsakau's case speciffically mentioned on the second paragraph of page 8 of the learned magistrate's judgement that Dr. John Kalsakau's case was not an housing case. The cases that were before him were summary ejectment proceedings. Infact there is no basis for this ground too since his worship says at the top of page 6 of his judgement that the then defendants were still on suspension

(b) Yes - that was an error in law - the Court below need not bother itself with the question of whether the appellants had been properly terminated or not. All that the learned Magistrate needed to do was to satisfy himself if rents had become owing to the Respondent.

(c) Article 53(3) of the Constitution of Vanuatu is mandatory as compared to section 11(1) of the Courts Act Cap 122 had the learned magistrate felt that housing is tied together with other terms and conditions offered to the appellants, he was obliged to refer the issue of whether the appellants had been properly terminated or not. As it was, his worship kept the two issues separate - he says at the first paragraph of page 6 of his judgement that up until then, the appellants were still an suspension. It was also part of the duty of the Counsels charged with carriage of these matters in the Court below to quote and cite relevant statute and authorities to the Court below or even this Court to ensure the Court arrived at a safe conclusion.

Grounds 3 : No - there was no admissible evidence for his worship to say that the defendants had been dismissed from their employment.

Grounds 4 : Yes - there was sufficient evidence to support his worship's findings only in relation to summary ejectment orders.

The appeals on eviction orders had been coated with the issue of whether or not these appellants had been lawfully terminated. At page 6 of his worship's judgement, he said this

> "Again this same principle (refering to Dr. John Kalsakau's case) applies to the rest of the Civil Servants who received their letters dated the 21st March 1994, that they are still under suspension and they are still considered Public Servants.

When he mentioned "the rest of the Civil Servants" he could only have meant the whole body of persons who were given termination letters on the 21st March 1994 on which these appellants are included. This leaves me nothing to say on the purported termination of the appellants.

Having said what I have said and having considered all the circumstances attached to the cause of the Appellants. I make the following orders :

1. Grounds 1 (a) and (b) and (e), Grounds 2 (b) and (c) Grounds 4 are dismissed with costs.

2. Grounds 1 (c) (d) and (f), Grounds 2 (b) and Grounds 3 of these Appeals are allowed.

3. The Writs of Possession be effected forthwith.

Dated at PORT VILA this 21st day of June 1995.

REPUBLIC OF VANUATU COUR SUPREME COURT LEX LEX REPUBLIQUE DE VANUATU

LENALIA
Acting Judge