

06/08

State Law Office Received	<b>BETWEEN:</b>	<b>THE GOVERNMENT OF THE REPUBLIC OF VANUATU</b>
		Appellant
15 JUL 2002	<b>AND:</b>	<b>ZEBEDEE TANGA</b>
		First Respondent
	<b>AND:</b>	<b>JOHN PAKOA TARIMAS</b>
		Second Respondent

## **JUDGMENT**

This is an interlocutory appeal filed by Mr. George Nakou of counsel on behalf of the Appellant Government. The matter proceeds on the basis of a notice of appeal filed on 22<sup>nd</sup> May 2002. The grounds are as set out in the notice of appeal.

On 30<sup>th</sup> April 2002, His Worship Kewei made an order in the Magistrate's Court to the effect that:-

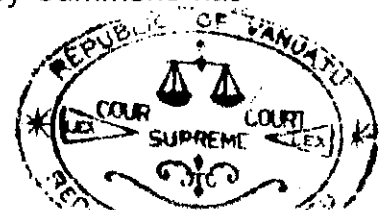
The second defendant's application to strike out the second defendant from the main action was refused on the ground that this matter be tried together, that is no separate pre-trial, apart from the main one. Two options to decide on the issue of vicarious liability goes to the substance of the case and therefore, this case must be decided on the merit of the case. Therefore a trial date be fixed. Costs in the cause. The appeal is dismissed. The reasons are set out below. There is no application for leave to appeal. The appeal is made against that decision of 30<sup>th</sup> April 2002 of the learned Magistrate. This alone can dispose of the appeal. It is an interlocutory appeal type.

The appeal is dismissed. The reasons are reproduced below.

There is no application for leave to appeal by the Appellant. This reason alone can dispose of the interlocutory appeal. Furthermore, the grounds of appeal are all baseless.

First, the appellant contended that the Learned Magistrate when refusing the Appellant's application to strike out the First Defendant (Government) as a party in the Magistrate's Court Civil Case No. 99 of 2001 did not provide opportunity to the First Defendant/Government to present his application (Summons).

This ground is rejected. The record, in the Magistrate's Court file show that the question as to whether the First Defendant to proceed by Summons has



been debated between the two counsels (Nakou/Hilary) on behalf of their respective clients. This ground had no basis. In any event, Counsel for the Appellant will have to present his case more fully in the substantive trial of the action as intended by the learned Magistrate.

Second, it is contended that the Learned Magistrate in refusing the First Defendant's application fail to take into account of what were in the Affidavits in support of the Summons.

This ground is rejected on the basis that if the Magistrate decided as he did that counsel for the First Defendant should not proceed as he intended to do by a "short cut" way, then, the Magistrate is entitled to do that. There is no need for the Learned Magistrate to consider what was in the affidavit. The First Defendant will have an opportunity to put these matters in the trial of the main action.

Third, it is said that there is no cause of action against the First Defendant in the face of the pleadings.

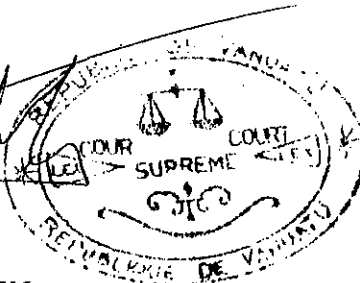
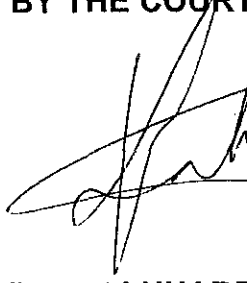
This ground is rejected also. The First Defendant is the employer of the Second Defendant. The Learned Magistrate made a decision which is correct for the purpose of substantial justice to be obtained at the end of the trial. In the end if there is an issue as to vicarious liability that is a matter between the First Defendant (Employer) and the Second Defendant (Employee) after that the Plaintiff had put his case against the First and Second Defendants.

## **Decision**

1. The appeal is dismissed.
2. The costs of the appeal are reserved and be determined with the substantive claim pending before the Magistrate's Court.
3. The Magistrate's Court shall proceed to hear the substantive claim.

**Dated Port Vila, this 23<sup>rd</sup> day of July 2002.**

**BY THE COURT**

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text "COURT SUPREME" is written across the center, with "LE" on the left and "COURT" on the right. The outer ring of the seal contains the text "REPUBLIC OF VANUATU" at the bottom and "VANUATU" at the top.

**Vincent LUNABEK**  
**Chief Justice**