

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

CIVIL CASE No.177 of 2002

State Law Office BETWEEN:	GUY M. A. BENARD
AG 15/24/02 7 FEB 2003	<u>Plaintiff</u>
AND:	THE GOVERNMENT OF THE REPUBLIC OF VANUATU
	<u>Defendant</u>

Mr. Hillary Toa for the plaintiff

Mr. Michael Edward and Ms Viran Molisa on behalf of the Attorney General or the respondent

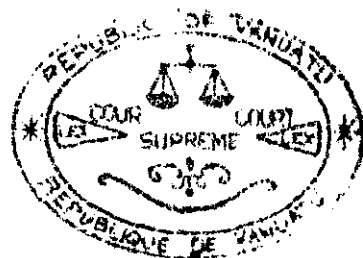
**RULING ON ORAL APPLICATION  
TO STAY THE PROCEEDING**

\* Before me the plaintiff's counsel applies orally today 25 February 2003, to have the proceedings in Civil Case No.177 of 2002 stayed pending the outcome of an appeal lodged against the decision of this Court of 6 February 2003 striking Mr. Benard's name as a party in the above case.

I expect the plaintiff's counsel to satisfy the Court with the following test:

Is the plaintiff prejudiced if the Court continues to hear and determine the substance of this case and the fact that the plaintiff is prevented from putting his appeal before the Court of Appeal at this stage will not be able to recover in the event, the Court of Appeal overturn the decision of this Court on the point at issue?

I have heard, listened and considered the submissions of both counsels and I refuse the plaintiff's application to grant a stay as requested. The short reasons are set out below. It is common ground that the residency permit of the plaintiff is intrinsically linked with the approval of the Certificate of Blue Wave Limited. Its revocation may affect the plaintiff. However, there were orders issued by this



Court preventing the defendants to remove the plaintiff until final determination of the substantive claim.

If the plaintiff wins its case, Mr. Guy Benard will recover his residency permit. If the plaintiff loses its case, Blue Wave Limited has a right to appeal and if the Court of Appeal overturns the decision of this Court in the substantive cause, then, because the residency permit of Guy Benard is very much dependent upon the granting of the Approval Certificate of Blue Wave Limited, he will regain it thereafter.

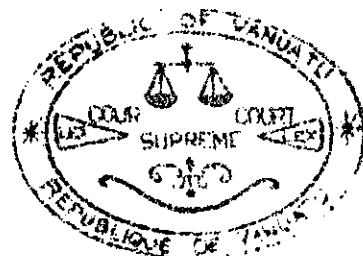
There is no prejudice on Mr. Guy Benard. If there is one, it is not critical or fatal on this Court determining the substantive issue. On the contrary, the determination of the substantive issue will lessen the costs for all parties (as orders for costs against Mr. Guy Benard are not yet paid and now due).

On a final point, although, the plaintiff's counsel insists that Mr. Guy Benard, has been prejudiced, such a prejudice has not been clearly identified and placed before me for adequate consideration.

On balance, the interests of justice requires that the application for stay must be refused and it is so ordered. The defendants are awarded costs and determined at Vatu 15,000.

**The Court makes the following Orders and Directions:**

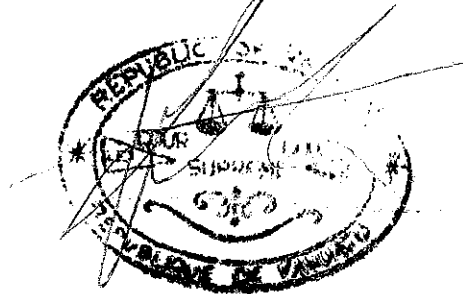
1. THAT the Oral Application for stay by Mr. Hillary Toa, counsel for the plaintiff, (Blue Wave Limited), and acting also on behalf of Mr. Guy Benard, is refused.
2. THAT the costs are awarded for the defendants against Mr. Guy Benard. They are determined at Vatu 15,000 and shall be paid by 18 March 2003.



3. THAT the plaintiff/appellant shall by counsel file and serve all sworn statements intended to rely upon by 6 March 2003.
4. THAT the defendants by counsel shall file and serve sworn statements in reply by 13 March 2003.
5. THAT the costs in the main cause (appeal) are in the cause.

**DATED at PORT-VILA, this 25<sup>th</sup> DAY of FEBRUARY 2003**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**