

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

(Criminal Jurisdiction)

CRIMINAL CASE No.19A of 2006

PUBLIC PROSECUTOR -v-

- (1) ANNIE NAMURI
- (2) NILON SKEPA
- (3) FRED SEULE
- (4) DICK MANALANG
- (5) PETER BUMSENG
- (6) EDWARD BULE
- (7) WILLIE OVA
- (8) KALSAL DAVID
- (9) GRAHAM TASI
- (10) PIERRE WILLY
- (11) JOEL BAKU
- (12) JOHN BEN
- (13) DICKSON BANTUNT
- (14) JOHN TASO
- (15) HENRY KANAS

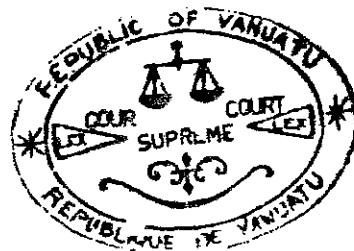
Coram: Chief Justice Vincent Lunabek

Counsel: Ms Kayleen Tavoia, the Public Prosecutor
Mrs Heather Lini Leo for the Defendants

JUDGMENT

Before me is a question of law raised by the defence counsel about the charge of Intimidation and/or Annoyance, contrary to Section 37(d) of the Trade Disputes Act [CAP.162] as charged against the Defendants by the Public Prosecutor of the Republic. Although, the question is not specifically framed by Mrs Heather Lini Leo, Counsel for the Defendants, I understand it to be:-

Can the Public Prosecutor charge the Defendants with the offence of Intimidation or Annoyance, contrary to Section 37 of the Trade Disputes Act [CAP.162] without the consent of the Attorney-General as required under sub-section (4) of Section 34 of the Trade Disputes Act?



The relevant provisions of Sections 34 and 37 of the Trade Disputes Act [CAP.162] are set out below:

"PART V

PROVISIONS WITH RESPECT TO STRIKES, LOCK-OUTS, ETC.

***MINISTER MAY ORDER INDUSTRIAL ACTION TO BE DISCONTINUED OR DEFERRED**

34. (1) *Where it appears to the Minister-*

- (a) *that in contemplation or furtherance of a trade dispute, industrial action, consisting in a strike, or irregular industrial action short of a strike, or a lock-out, has begun or is likely to begin; and*
- (b) *that the condition stated in subsection (2) is fulfilled; and*
- (c) *that it would-*
 - (i) *be conducive to a settlement of the dispute by conciliation or arbitration under this Act; or*
 - (ii) *assist in the exercise of its functions by a Commission of Inquiry set up in pursuance of section 38;*

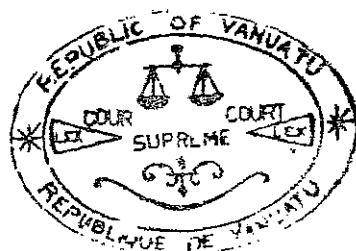
if the industrial action were discontinued or deferred;

the Minister may make an Order directing that during the period for which the Order remains in force, no person or a member of a class of persons specified in the Order shall-

- (i) *call, organize, procure or finance a strike, or any irregular industrial action, or threaten to do so;*
- (ii) *institute, carry on, organize, procure or finance a lock-out or threaten to do so.*

(2) *The conditions referred to in subsection (1)(b) is that the industrial action in question has caused or would cause an interruption in the supply of goods or in the provision of services of such a nature or on such a scale, as to be likely-*

- (a) *to be gravely injurious to the national economy, to imperil national security or to create a serious risk of public disorder; or*
- (b) *to endanger the lives of a substantial number of persons, or expose a substantial number of persons to serious risk of disease or personal injury.*



(3) *An Order under this section shall specify-*

- (a) *the industry, undertaking (or a part thereof), and the description of workers in respect of which the Order is to have effect, or all or any of these matters;*
- (b) *the persons or descriptions of persons who are to be bound by the Order;*
- (c) *the date on which the Order is to take effect and the period, not exceeding 60 days, for which the Order, unless revoked earlier, shall remain in force.*

(4) *Any person contravening or failing to comply with any of the directions contained in an Order under this section shall be guilty of an offence:*

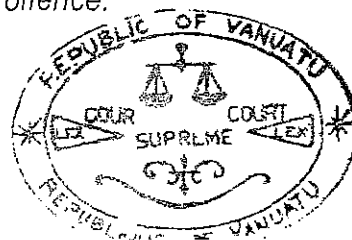
Provided that no prosecution in respect of such offence shall be instituted except by, or at the instance of, or with the written consent of the Attorney General.

(5) *The immunity against liability in tort conferred on a registered trade union or any other person by, in pursuance of, section 18 or 19 of the Trade Unions Act, Cap. 161 shall not apply with respect to any act which constitutes an offence under this section."*

"INTIMIDATION OR ANNOYANCE

37. *Every person who, with a view to compelling any other person to do or to abstain from doing any act which such other person has a right to do or abstain from doing, wrongfully and without legal authority-*

- (a) *uses violence to or intimidates such other person or his wife or children, or damages his property; or*
- (b) *persistently follows such other person about from place to place; or*
- (c) *hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or*
- (d) *watches or besets the house or other place where such person resides or works or carries on business or happens to be or the approach to such house or place; or*
- (e) *follows such other person in disorderly manner in or through any street or road, shall be guilty of an offence.*



Penalty: a fine not exceeding VT100,000 and imprisonment for a term of not exceeding 3 years."

Briefly, the Defendants are members of Trade Unions. In the early part of this year 2006, the Defendants applied for a demonstration. Their application was refused and revoked by the Responsible Minister of the Government. In revoking the application, the Minister issued an Order under Section 34(1) of the Trade Disputes Act [CAP.162]. The Ministerial Order contains directions that the Union Members and the Republic of Vanuatu must abide by.

On 23 February 2006, the Defendants were picketing at the premises of their work places. During the picketing, incidents occurred leading up to the laying of the charge of Intimidation or Annoyance against the Defendants by the Public Prosecutor under Section 37 of the Trade Disputes Act [CAP.162].

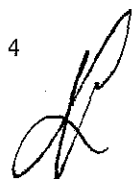
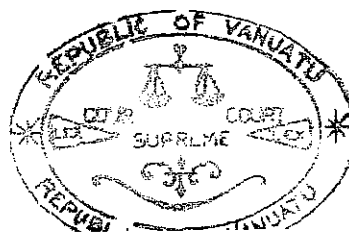
The defence submits that once the Minister responsible issued an Order under Section 34 of the Trade Disputes Act [CAP.162], then any action that is done in furtherance of Trade Disputes which amounting to an offence under any Act can only be prosecuted with the written consent of the Attorney General.

The prosecution submits that in this case, although the Minister issued an Order, the Defendants are not charged for breaching that Order. If that was the prosecution's intention, then, it would have been a prerequisite for the Public Prosecutor to obtain the written consent of the Attorney General in accordance with Section 34(1) of the Trade Disputes Act.

The prosecution submits that the Defendants were charged under Section 37(d) of the Trade Disputes Act by acting in a manner that they intimidated the employees of their former employers.

Section 34(4) of the Act is the relevant provision for this exercise. It reads:

"(4) Any person contravening or failing to comply with any of the directions contained in an Order under this section shall be guilty of an offence:



Provided that no prosecution in respect of such offence shall be instituted except by, or at the instance of, or with the written consent of the Attorney General."

By perusing the provision of Section 34 of the Trade Disputes, the words are clear. There is no ambiguity and there is no need for interpretation. Section 34(1) of the Act provides for the Minister to order Industrial Action to be discontinued or deferred. The Minister may so order when it appears to him/her that in contemplation or furtherance of a trade dispute, industrial action, consisting in a strike, or irregular industrial action short of a strike, or a lock-out, has begun or is likely to begin; and Section 34(2) states that the industrial action in question has caused or would cause an interruption in the supply of goods or in the provision of services of such a nature or on such a scale, to be likely-

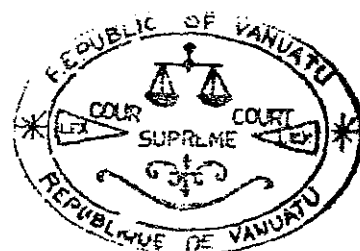
- To be gravely injurious to the national economy, to imperil national security or to create a serious risk of public disorder; or
 - To endanger the lives of a substantial number of person, or expose a substantial number of person to serious risk of disease or personal injury
- under s.34(3), the Minister may make an order specifying-

The industry, undertaking (or a part thereof), and the description of workers in respect of which the order is to have effect, or all or any of these matters; the persons or descriptions of persons who are to be bound by the order; the date on which the Order is to take effect and the period, not exceeding 60 days, for which the Order, unless revoked earlier, shall remain in force.

Subsection (4) of Section 34 of the Act is clear and there is no ambiguity about the meaning. Once the Minister made the Order subsection (4) of the Section 34 is very specific. It reads:

"Any person contravening or failing to comply with any of the directions contained in an Order under this section shall be guilty of an offence:

Provided that no prosecution in respect of such offence shall be instituted except by, or at the instance of, or with the written consent of the Attorney General."



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Subsection 4 of Section 34 of the Act sets up a mechanism for prosecuting any person who contravenes or fails to comply with an Order made by the Minister (which means under this section 34. It is a special and separate prosecution mechanism within Section 34 of the Trade Disputes. The peculiarity of such a prosecution in respect of such an offence under Section 34 shall not be instituted except by, or at the instance of, or with the written consent of the Attorney General.

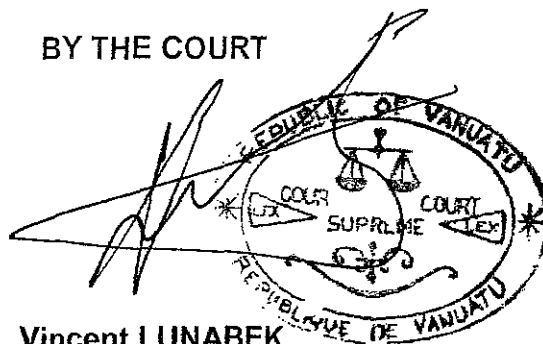
However, the provision of Section 37 of the Trade Disputes Act [CAP.162] is part of the general prosecutorial mechanism within the criminal law.

Section 37 has also a separate and specific provision for the penalties to be imposed apart from the fact that the offence of Intimidation or Annoyance are akin to normal criminal offences under the criminal law and the Public Prosecutor has the overall responsibility to prosecute.

My answer to the question posed is in the affirmative: the Public Prosecutor can prosecute the Defendants under Section 37 of the Trade Disputes Act without the written consent of the Attorney General.

Dated at Port-Vila this 22nd day of June 2006

BY THE COURT



Vincent LUNABEK
Chief Justice