

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Judicial Review Case No. 5 of 2012

BETWEEN: SANMA LOCAL GOVERNMENT COUNCIL
Claimant

AND: GEORGE WELLS as MINISTER OF INTERNAL AFFAIRS
First Defendant

AND: ATTORNEY GENERAL
Second Defendant

Judicial Review Case No. 6 of 2012

BETWEEN: MALAMPA PROVINCIAL COUNCIL
Claimant

AND: GEORGE WELLS as MINISTER OF INTERNAL AFFAIRS
First Defendant

AND: ATTORNEY GENERAL
Second Defendant

Judicial Review Case No. 7 of 2012

BETWEEN: PENAMA LOCAL GOVERNMENT COUNCIL
Claimant

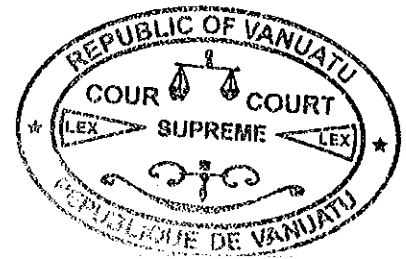
AND: GEORGE WELLS as MINISTER OF INTERNAL AFFAIRS
First Defendant

AND: ATTORNEY GENERAL
Second Defendant

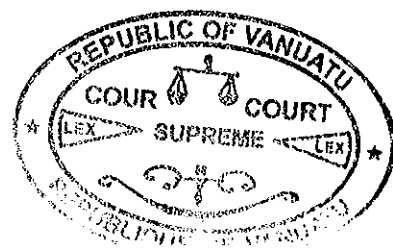
Hearing: 5 April 2012
Before: Justice Robert Spear
In attendance: Nigel Morrison for Sanma and Penama LGCs
Felix Laumae for Malampa LGC

~~Viran M. Trief for the Minister of Internal Affairs and the Attorney General~~

TRIAL RULING 1
Spear J (5 April 2012)



1. A preliminary issue has just been raised in respect of these proceedings. It arises from the filed evidence of Mr Luke Shem.
2. The point initially raised was whether any of the 3 LGCs had standing to bring a claim for judicial review in respect of the Minister's decision to suspend it. Ms Trief's argument is that the 3 LGCs were, at the time this proceeding was commenced, effectively under the management and control of the public servants appointed respectively to exercise the powers of the LGCs that had been suspended by the Minister pursuant to s. 18 L of the Decentralization Act.
3. Mr Morrison and Mr Laumae argue that the 3 LGCs are statutory bodies able to be sued and be sued and that this is exactly what has occurred here.
4. Ms Trief's argument is that it is a question of standing (to bring the claims) but I do not accept that argument. The LGCs most certainly have standing to challenge a decision by the Minister that affects them. The real issue here, however, is whether Mr Morrison and Mr Laumae have been properly engaged to represent the 3 LGCs.
5. The evidence from Mr Shem is that the LGCs have operated through the counselors to instruct Mr Morrison (additionally Mr Sugden in respect of Panama LGC) and Mr Laumae to bring these claims but those counselors have no lawful ability to commit the LGCs to such claims. There is no challenge to this evidence.
6. Mr Morrison and Mr Laumae, however, argue that what is challenged here is the validity of the Minister's decision to suspend each of the LGCs. If the outcome of this proceeding is that the Minister was wrong to suspend the councils and that his actions were unlawful and the decisions must be quashed, then it follows that Mr Morrison and Mr Laumae were appropriately engaged and instructed by the 3 LGCs.
7. In the event, however, that the outcome of this case is that the Minister was acting lawfully then that raises a question as whether either Mr Morrison or Mr Laumae were properly engaged.
8. I can see no way through this. The action could easily be reshaped so that the claimants became the individual counselors but all that would happen is that a month or so would go by without this matter being resolved as to the substantive and principal issue relating to the validity of the Minister's action.
9. Given the importance of this proceeding, and the significant public interest in the outcome of it which has justified the urgency that has been taken to bring it to a hearing, I consider that the matter should proceed on the basis that both Mr Morrison and Mr Laumae have been engaged by the relevant LGCs. Mr Morrison and Mr Laumae appeared today and announced that they represent the LGCs and, despite Mr Shem's evidence, in all these circumstances, I will not go behind counsels' announcement.



10. If, at the end of the day, the Minister's decision is not quashed or declared to be invalid then that may create some difficulties for Mr Morrison and Mr Laumae but I do not enter further into these issues at this stage.

BY THE COURT

