

BETWEEN: HIS EXCELLENCY IOLU JOHNSON ABBIL
KANIAPNIN, The President of the Republic of
Vanuatu
Applicant

AND: HON. DUSTAN HILTON, The Speaker of
Parliament, Port-Vila
Respondent

Coram: Chief Justice Lunabek

*Counsel: Mr Nalyal for the Applicant
Mr Frederick Gilu for the Respondent*

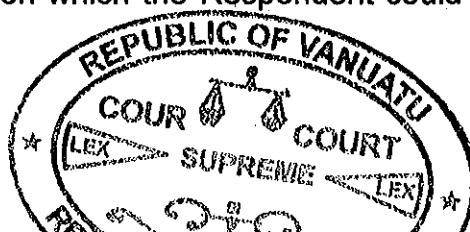
JUDGMENT

This is a Constitutional Referral by the President of the Republic of Vanuatu. In his Referral dated 22 September 2011, His Excellency, Iolu Johnson Abbil, the President of the Republic of Vanuatu, refers sections 5(4), 6(e), 11 and 15(6) of the Company and Trust Services Providers Act No.8 of 2010 to the Supreme Court because he considers that they are inconsistent with Articles 73, 74 and 75 of the Constitution of Vanuatu in that:

- (a) they seek to remove ownership of customary land from indigenous custom owners and their descendants;
- (b) they seek to remove the right of a group of owners to make decisions in respect of their land, to one entity;
- (c) they seek to remove ownership rights to land by natural persons to companies or corporate entities.

A number of conferences were conducted by the Court between Counsel for the Applicant and Counsel for the Respondent.

The Court requires Mr Nalyal, counsel for the President to identify a constitutional question for Court determination and upon which the Respondent could respond



on the constitutional validity of the provisions of the Bill for Company and Trust Services Providers Act No. of 2010 as alleged in the Referral.

Articles 73, 74 and 75 are contained in Chapter 12 of the Constitution. Relevantly, they provide:

"CHAPTER 12 – LAND

73. Land belongs to custom owners

All land in the Republic of Vanuatu belongs to the indigenous custom owners and their descendants.

74. Basis of ownership and use

The Rules of custom shall form the basis of ownership and use of land in the Republic of Vanuatu.

75. Perpetual ownership

Only indigenous citizens of the Republic of Vanuatu who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land."

In the light of the above, I set out below the sections of the Bill for Company and Trust Services Providers Act No. of 2010 which are alleged to be inconsistent with Articles 73, 74 and 75 of the Constitution:

- Section 5(4) provides:

"5. Company Services providers and Trust Services providers to be licenced:

(1) ...

...

(4) *A person must not administer specific customary land on behalf of the customary owners of that land unless the person holds a Special Trust Licence authorising the person to administer that land.*

..."

- Section 6(e) provides:

"6. Classes of Licence

The Commission may issue the following classes of licence to an applicant:

(a) ...

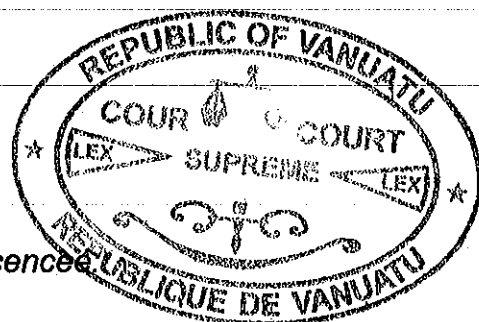
...

(e) *a Special Trust Licence."*

- Section 11 provides:

"11. Description of a Special Trust Licence

(1)A *Special Trust Licence authorises the licensee*



- (a) to administer specific customary land on behalf of the customary land owners; and
 - (b) for this purpose, to provide the services authorised by a CTSP licence.
- (2) A Special Trust Licence does not authorise the holder of the licence to offer company or trust services other than in connection with the administration of the customary land."

- Section 15(6) provides:

"15. Commission to issue or refuse a licence

- (1) The Commission must, within 3 months after receiving the licence application and additional information and documents:
 - (a) approve the application and issue a licence, subject to the conditions (if any) that may be necessary for the proper implementation and enforcement of this Act; or
 - (b) refuse the application.
- (2) ...
- ...
- (6) The Commission must consult the National Council of Chief before a Special Trust Licence to an applicant."

By perusing the provisions of the Bill for Company and Trust Services Providers Act No.8 of 2010, it is noted that the Proposed Act is to provide for the licencing and supervision of company and trust services providers and for related purposes.

The purpose of the Proposed Act (Bill) is contained in Part I of the said Bill which says:

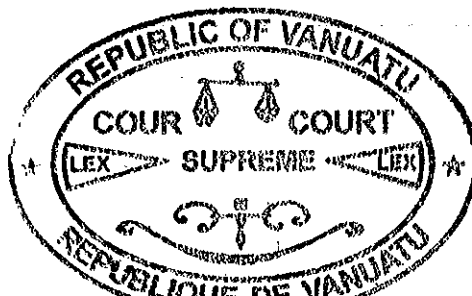
"PART 1 PRELIMINARY

1. Purpose of this Act

The purpose of this Act is to:

- (a) protect users of company and trust services; and
- (b) regulate the providers of company and trust services by establishing a licence system;
- (c) set out the legal obligations of licence holders; and
- (d) provide for the Commission to supervise these services providers; and
- (e) protect the reputation of Vanuatu as a finance centre."

After a number of conferences held by the Court between counsel for the both parties, Counsel for the President accepts that it is difficult for him to identify a constitutional question for the Court to determine and upon which the Respondent could respond on the constitutional validity of the provisions of the Bill for Company and Trust Services Providers Act No.8 of 2010.



On 23 May 2012, Mr Nalyal, on behalf of the President conceded that ss. 5(4); 6(e); 11 and 15(6) of the Company and Trust Services Providers Act No. of 2010 are all constitutional.

The Court is satisfied that the referral does not identify any provision of the said Bill which is inconsistent with the Constitution.

ORDER

1. The Constitutional Case No.11 of 2011 challenging the constitutional validity of the provisions of Company and Trust Services Providers Act No.8 of 2010 is misconceived. It is therefore struck out.
2. The President of the Republic is invited to assent to the Bill for Company and Trust Services Providers Act No.8 of 2010.
3. There is no order as to costs.

DATED at Port-Vila this 23rd day of May 2012

BY THE COURT



**Vincent LUNABEK
Chief Justice**

