

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

Civil Case No. 72 /2012

**BETWEEN:** THE UNION OF MODERATE PATIS  
COMMITTEE (INC)  
*Claimant*

**AND:** CHARLOT SALWAI  
STEVEN KALSAKAU  
RAPHAEL WORWOR  
EMILIANO BULETARE  
*Defendants*

*Hearing:* 17 July 2012

*Before:* Justice Spear

*Attendances:* Colin Leo for the Claimant  
Felix Laumae for the Defendants

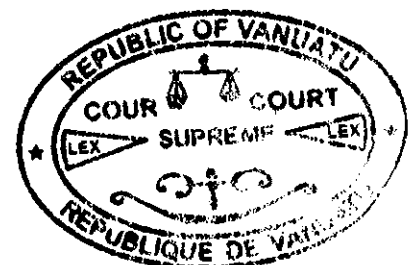
*Judgment:* 20 July 2012

---

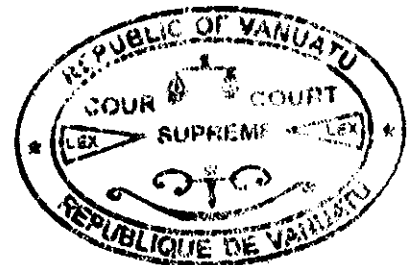
**JUDGMENT**

(Application by Claimant for an Interlocutory Injunction)

---



1. The claimant (UMP) applies for an interlocutory injunction to issue against the four Defendants restraining each of them generally from conduct that might suggest to the public that he is either affiliated to or associated in some way with UMP. The application was presented as an "Amended Urgent Ex Parte application". However, it has proceeded with full involvement by the defendants and in all respects on a conventional inter partes basis.
2. The Amended Claim seeks much the same restraint but by way of a permanent order.
3. The application for the interlocutory injunction seeks the following orders:-
  - a *The Defendants herein referred to as Charlot Salwai, Steven Kalsakau, Raphael Worwor and Emiliano Buletare be and are hereby restrained from using, in whatsoever manner for politic, religious, social and/ or economic reasons, the name, Union of Moderate Patis (UMP).*
  - b *The defendants herein referred to as Charlot Salwai, Steven Kalsakau, Raphael Worwor and Emiliano Buletare, together with their servants, Agents, Associates, Supporters and workman be and herby restrained from using in whatsoever manner for political. Religious, social and/ or economic reason the name, Union of Moderate Patis (UMP).*
  - c *That the certificate of the Incorporate of the Charitable Association Certifying the name Union of Moderate Patis for change (UMPC) so far as it relates to the name, Union of Moderate Patis (UMP), be declared invalid and unlawful in its entire nature.*
  - d *The Defendants, together with their Agents, Servants, Associates, Supporters and Workmen be and hereby restrained from using the Claimant's (UMP) yellow colour, UMP'S symbol of an "open hand" and its slogan "UTE UTE HOO" and/ or any other properties of UMP.*
  - e *Cost on indemnity basis to be borne by the Defendants and the Defendants Lawyer.*
  - f *Such further orders as the Court may deem fit.*
4. Some slight explanation is required in relation to the major players in this case:
  - a *UMP is the abbreviation of the Union of Moderate Patis which incorporated as a charitable association earlier this year as The Union of Moderate Patis Committee (Inc.). The three names can be treated interchangeably as a reference to the one entity;*



- b *UMPC* is the abbreviation of the *Union of Moderate Parties for Change* which also incorporated as a charitable association earlier this year as *The Union of Moderate Parties For Change (UMPC) Committee (Inc.)*. Again, the three names can be treated interchangeably as a reference to the one entity;
- c The names of individuals are used without reference to any chiefly title. No disrespect is meant.

5. The evidence presented by the parties was by way of sworn statements:-

a Claimant

- |                  |             |
|------------------|-------------|
| i. Steven Sau    | 11 May 2012 |
| ii. Jack Mariaho | 6 June 2012 |
| iii. Kalfau Moli | 7 June 2012 |
| iv. Serge Vohor  | 8 June 2012 |

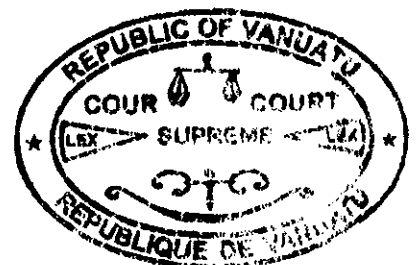
b Defendants

- |                        |              |
|------------------------|--------------|
| i. Charlot Salwai      | 28 June 2012 |
| ii. Emiliano Buletare  | 4 July 2012  |
| iii. Charley Nako      | 5 July 2012  |
| iv. Paul Telukluk      | 9 July 2012  |
| v. Jeff Joel Patunvanu | 9 July 2012  |
| vi. Charley Nako (2)   | 9 July 2012  |
| vii. Yoan Kalsakau     | 13 July 2012 |
| viii. Cyriaque Melep   | 13 July 2012 |

c Claimant (reply)

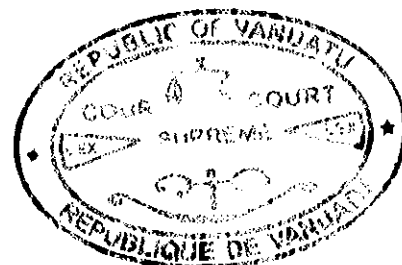
- |                      |              |
|----------------------|--------------|
| i. Serge Vohor (2)   | 5 July 2012  |
| ii. Lenom Huri       | 5 July 2012  |
| iii. Serge Vohor (3) | 16 July 2012 |

6. *UMP* is a national political party of long standing. The dispute arising by this case as to who is entitled to use the abbreviation *UMP* or the full name *Union of Moderate Patis* (or



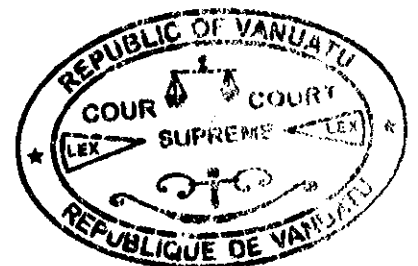
*Parties*) is one that needs to be resolved swiftly given the forthcoming national elections on 30 October 2012.

7. The first three named defendants, Charlot Salwai, Steven Kalsakau and Raphael Worwor are all current members of parliament who entered parliament under the *UMP* banner. They now propose to stand for parliament again but under the *UMPC* banner.
8. The fourth named defendant Emiliano Buletare was previously a member of parliament under the *UMP* banner. He explains that he is the first political adviser (or first secretary) to Charlot Salwai who currently holds office as Minister of Justice and Community Service.
9. *UMP* and *UMPC* each claim that it is entitled to the use of the name *The Union of Moderate Parties* (or similar words) and the abbreviation *UMP* (or similar letters) either as they appear or within the expansion *The Union of Moderate Parties for Change* and *UMPC*.
10. It must not be lost sight of that the application seeks an injunction not against *UMPC* but against the four Defendants. *UMPC* is not a party to this proceeding. To an extent, the issues raised by this application require a consideration of the history of *UMP* and *UMPC*. Indeed, the majority of the evidence relates to that history. The evidence of Charley Nako, in particular, declares that he is the current Vice President of the Union of Moderate Parties for Change (*UMPC*) and, in his evidence, he deals extensively with the early history of *UMP* and recent matters. This sworn statement appears to have been prepared for Vincent Bulekone having regard to both the title to the sworn statement and its paragraph 12. Vincent Bulekone is understood by the evidence to be the President of *UMPC*. Nothing really turns on Charley Nako having been inserted as the person making that sworn statement as he is clearly someone with knowledge of the matters deposed to by him.
11. The attention required to be given to the dispute as to the use of *UMP* or the expanded version either alone or within the *UMPC* abbreviation and expanded name will not be resolved by this decision particularly as it relates to an application for an interlocutory injunction and *UMPC* is not a party to this proceeding. However, it is necessary to



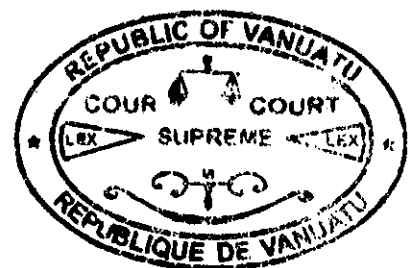
determine whether UMP has a reasonably arguable claim to the exclusive use of *UMP* and *Union of Moderate Partis* (or similar versions) in relation to each of the Defendants.

12. The four Defendants were members of UMP for many years and indeed served as members of the national executive of UMP until earlier this year. They were however expelled from UMP by resolution of the UMP national congress held over 28 February 2012 to 3 March 2012. There has been no challenge raised as to the legality of the expulsion in any of the four cases.
13. The history of UMP, by the evidence for the Claimant, starts at 1988 when Serge Vohor states he was elected President of UMP at the national congress held at the Man Ples area of Port Vila. Serge Vohor states that he has been the President of UMP since he was first elected to that position in 1988.
14. The evidence for the Defendants explains the very origins of both UMP and UMPC. Charley Nako states that, well prior to independence in 1980, and from about 1960, various custom movements were formed in different places with a view to obtaining independence from France and England. Ten of these small groups or movements met at Walla-Rano on Malekula in 1977 with a view to combining their resources and the decision was made to create a union of these small movements. They initially named the union as *Tan Union*. Following independence in 1980, *Tan Union* provided three members of the first parliament of Vanuatu.
15. Further consideration was then given by the constituent members of *Tan Union* to develop their collective political vision for the new nation of Vanuatu. To that end, there was a further meeting of the constituent members of *Tan Union* at Walla-Rano on Malekula in February 1982 when it was decided that the name of the organisation would change to "*UNION BLONG OL MODERET PATI (U.M.P)*". It is noted that Charley Nako was at that meeting in 1982. Charley Nako stated in his evidence that it was resolved at that time that the president of UMP would be elected from the presidents of the various member groups that made up UMP.
16. Charley Nako then articulated a complaint (and this is probably the nub of the issues between UMP and UMPC) that the current President of UMP (he is referring to Serge



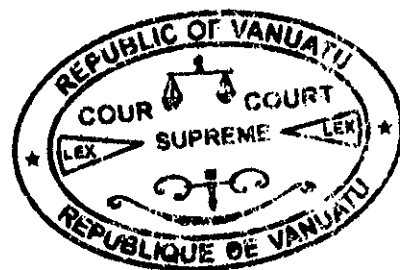
Vohor) had ignored the powers of the “*Council of Presidents*” and that, “*he has been ruling the union since 1986 outside the original arrangements of as the original founders of UMP*”.

17. The treatment of the history of UMP and UMPC by the Defendants differs significantly from that by the Claimant. While the history given by the evidence of the claimant starts effectively in 1988, the history given for the Defendants relates back to pre-independence days and moves through to 1988 when Serge Vohor was elected President of UMP. However, it then skips through to 2011. This observation has to recognise certain qualifications.
18. Jeff Patunvanu of the Nagriamel Movement confirms the evidence of Charley Nako that UMP was founded by the Nagriamel Movement along with other custom movements in Vanuatu. Mr Patunvanu stated that, in August 2007, the Nagriamel Movement resolved to withdraw its membership of UMP because of its dissatisfaction with the leadership of Serge Vohor.
19. Jeff Patunvanu states further that, in November 2011, the Nagriamel Movement together with the “*leaders of other custom movements that founded UMP, decided to reorganize our union ... under the name UMPC*”. This was “*formalised*” in early 2012 by the declaration of the Nagriamel Movement and other custom movements to, “*change their union’s .....name from UMP to Union of Moderate Patis for Change (UMPC)*”. This identifies the issue in contention between the Parties or more exactly between UMP and UMPC.
20. Mr Nakou also asserts that UMP is not and never was a political party like Vanuaku Party. He asserts that it is a union of various small custom movements who came together in 1982 to further their collective political version. While there may be structural and historical differences between UMP and say the Vanuaku Party (and the Court has no appreciation of what they might be) it is abundantly clear that UMP has always been a political party.
21. The essence of the evidence for the defendants is that by 2007 at least one of the original or founding member groups of UMP had become so disgruntled with the existing UMP



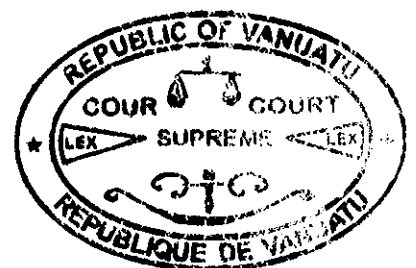
organisation that it left the union. Furthermore, that by November 2011, a number (if not all) of the founding members of UMP decided to take back control of UMP. They considered that they were entitled to do so simply by their assertion that they retained primary rights of ownership in UMP with the consequences already mentioned.

22. There is no challenge to the evidence that Serge Vohor was elected President of UMP in 1988 and that he was re-elected as President at each of the national congresses that followed.
23. There is also no challenge to the evidence that at the 20<sup>th</sup> national congress of UMP on the Island of Ifira in October 2003, UMP adopted a constitution described as its "Articles of Association". That Constitution is a carefully drafted and extensive document. It essentially establishes a regulatory framework within which UMP would govern its operation. The minutes of that national congress show that the Defendant Steven Kalsakau chaired that national congress.
24. Furthermore, the minutes of the 21<sup>st</sup> national congress of UMP in September 2006 confirm not only that Serge Vohor was re-elected President, but that: Charlot Salwai was elected Secretary General; Steven Kalsakau was elected Treasurer; Raphael Worwor was appointed to the national executive committee as the representative of the Malampa Province; and Emiliano Buletare signed the minutes as the "Rapporteur".
25. The 23<sup>rd</sup> National Congress of UMP in May 2010 at Pangi village at South Pentecost recorded the re-election of Serge Vohor as President and the election of: Charlot Salwai as Vice President; Steven Kalsakau as Vice Treasurer; Raphael Worwor again as the Malampa Province representative; and, Emiliano Buletare as the Secretary General.
26. The 24<sup>th</sup> National Congress of UMP took place at Eratap between 28 February 2012 and 1 March 2012. The minutes record that the national council then resolved to expel the four defendants from UMP. A further resolution was to the effect that the four defendants did not have the right to use the name *Union of Moderate Party (UMP)* but that of course begs the question as to who has the right to use the name.



27. Serge Vohor states that UMP was registered (incorporated) as a charitable organisation in or about 1997 but it was struck off the register at some later stage for non- payment of fees. However, at the 24<sup>th</sup> National Congress at Eratap (February/ March 2012), it was resolved to register UMP again as a charitable organisation and that was attended to. The certificate of incorporation records that "*the Union of Moderate Patis Committee (Inc.)* was incorporated on 8 March 2012 as a charitable association under the Charitable Associations (Incorporation) Act [CAP 140]. The constitution remained as adopted in 2003.
28. On 29 March 2012, UMPC sought to incorporate as a charitable association. However, the Registrar refused to register UMPC under the name *UMP for Change* because that name closely resembled UMP which, of course, was already incorporated
29. UMPC then appealed the Registrar's decision. The appeal was allowed and the Registrar was directed by the Minister concerned to incorporate UMPC in the name "*UMP for Change*". A certificate of incorporation was duly issued on 27 April 2012 confirming the incorporation of "*The Union of Moderate Parties for Change (UMPC) Committee Association (Inc.)*" as a charitable association.
30. In a separate proceeding (JR 10/12), UMP seeks a judicial review of the Minister's decision to allow the appeal and to require the Registrar to register UMPC as an incorporated charitable association.
31. Mr Laumae argues that this case does not turn on the question of which organisation was incorporated first - and that is accepted. Mr Laumae argues further that a careful consideration of the history of UMP demonstrates that it has always been a collective of its original members. One Vincent Bulekone appears to have been the prime mover of the formation of UMP in 1982. I note that Vincent Bulekone was expelled from UMP at the 9<sup>th</sup> national congress of UMP at Luganville in July 1989
32. Three submissions from Mr Laumae sum up this initial part of his case:

*"There is no evidence that Hon. Vohor is the founder of UMP as he only came to affiliate with UMP in or about 1988. He can not claim the right to the name UMP on the basis that he was continuously elected as President since 1988.*



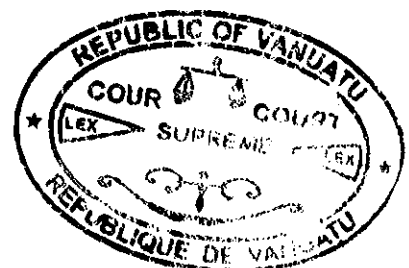


*It is an undisputed fact the UMP is owned by custom movements and moderate parties who founded the name in February 1982 at Walla-Rano. The name speaks for itself that it is a Union of small (Moderate) Parties. The Constitution of UMP annexed to sworn statement filed in support of the Defendants clearly states that UMP is founded by custom movements and small political parties.*

*Undisputed evidence that stands is that UMPC is incorporated by the founders and legal proprietors of UMP. It is wrong for Hon. Vohor to incorporate UMP this year on 8 March 2012 without consent and authority of the legal proprietors of the name who are the custom movements and small political parties that founded and formed UMP in 1982”.*

33. I do not accept those submissions. The reality is surely that the various custom movements, working together as UMP from February 1982, agreed in 2003 at the National congress of UMP to adopt a constitution to govern their organisation. The prime reason for the constitution would have been to provide stability to the structure of UMP for mutual benefit of the various constituent members. By accepting that constitution, the various constituent groups appear to have ceded any rights that they might have had to the use of the terms *UMP* or *Union of Moderate Patis* to the organisation operating under that constitution.
34. Accordingly, and recognising that UMPC is not formally a party to this proceeding at this time, I accept that the Claimant (UMP) has at least a reasonably arguable case that it alone has the right to use the names UMP, Union of Moderate Patis or similar versions. It is certainly appropriate to use the term “reasonably arguable case” when referring to UMPC but, of course, the application is against the four Defendants and not UMPC. Given that the four Defendants held office in UMP, and in particular under the 2003 constitution, they must be held to respect the primacy of UMP when regard is had to the use of the name(s) and other symbols of UMP.
35. The recognised starting point for the consideration by a court to an application for an interlocutory injunction as explained by the New Zealand Court of Appeal<sup>1</sup> is an evaluation as to whether there is a serious question to be tried and where the balance of convenience lies. However, that is not a rigid formula and, in the end, the court has to decide where the overall justice lies. The courts have been inclined to try to “maintain the status quo” until the substantive issue is resolved. However, that will not always be the

<sup>1</sup> *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA) per Cooke P at 142



just outcome particularly where the grant of an interlocutory injunction is likely to resolve the substantive issue.

36. It might be helpful to mention that if the founding members of UMP were dissatisfied with the direction that UMP was heading, their remedy was surely either to leave UMP or work for change within the 2003 constitution. It is difficult to see how they could unilaterally decide to turn the clock back to pre-2003 constitution times and endeavour take control of UMP.
37. Does this conclusion as to the existence of UMP having a reasonable arguable case against the Defendants require the issue of an injunction? In this respect, it is accepted that if an injunction is to issue, it could have a significant effect on the political fortunes of the first three named Defendants in the forthcoming elections. Equally, however, if an injunction does not issue then it could have a significant effect on the political fortunes of UMP and any candidates that it endorses in the forthcoming elections. This is why the evidence has had to be given such extensive assessment.
38. This court has previously recognised that a political party is entitled to enjoy the same protection in its name as a commercial organisation<sup>2</sup>. Lunabek J (as he then was) said this in *Vohor v Adeng*,

*"(The) use by one political party of the name of another for the purpose of appropriating the standing and goodwill which the other has built up constitutes a form of wrong known to the law as unfair competition, against which this Court will intervene to use the full power of the injunctive process."*

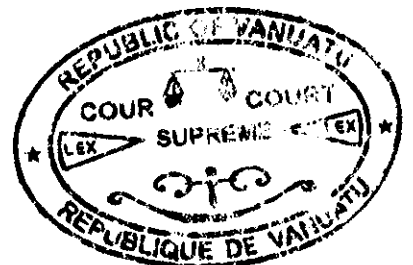
And then relating this to the Vanuatu context

*"Furthermore, I accept ... that, in the particular circumstances of Vanuatu, it is desirable, so as to avoid confusing, less sophisticated voters, that there should be clear distinctions between political parties otherwise, it will be practically impossible to hold democratic elections in this country."*

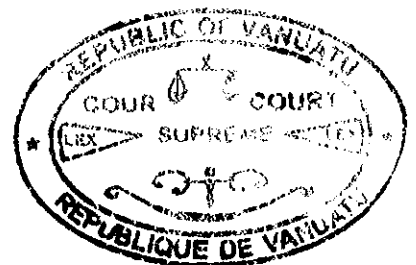
...  
*"If two factions of a party, or two separate parties, are both allowed to use the same name, elections in Vanuatu would become impossibly difficult to administer."*

*It can also be foreseen ... that in (a) Vanuatu context, were the courts to do nothing, civil disturbances could occur if a group of people have built up a political machine, a popular following, and some other groups, or faction within their own party, appropriating that name to their own use"*

<sup>2</sup> *Vohor v Adeng* [1996] VUSC 14; Civil Case 075 of 1996 (27 August 1996)



39. With the greatest of respect, I entirely agree with the wisdom of the Chief Justice. It can be noted that the case before his Lordship also dealt with UMP and the threat to it from some of its members who had broken away from the organisation. It has direct application to the case before me.
40. I consider that the Claimant has a strong case against each of the four Defendants that it has the right to the exclusive use of the name and symbols of UMP. Furthermore, particularly given that the first three named Defendants were elected to parliament under the UMP banner and their expulsion is of quite recent moment, to permit those Defendants to contest the next national election under the UMPC banner would surely have the deleterious effect on the electorate that the Chief Justice warned about back in 1996 in *Vohor v Adeng*. The similarity of UMP of UMPC and Union of Moderate Parties of Union of Moderate Parties for Change could only cause confusion.
41. Accordingly, for these reasons, I order that the Defendants and each of them are prohibited until further order from representing themselves as affiliated or associated in any way with UMP or UMPC in any of their respective forms. This extends to a prohibition against the use of any of the symbols of UMP being the symbol of an "open hand" and the slogan "Ute Ute Hoo".
42. I am not prepared to extend that to the use of the colour yellow as that is more of generally available use.
43. I specifically reject Mr Laumae's submission that an injunction in these terms will contravene the Defendants' constitutional rights. They are not prohibiting from belonging to any political party just from representing themselves in that manner.
44. The prohibition binds Emiliano Buletare at this time notwithstanding that it is understood that he is not standing for parliament. I reserve leave for Emiliano Buletare to apply for a review of the injunction in so far as it applies to him if he considers that he will be able to satisfy the court that his affiliation with UMPC will not have the potential effect that is the case with the other Defendants.



45. It does appear appropriate that the substantive claim should be determined with the involvement of UMPC. I leave it for the Claimant to apply for that body to be added accordingly.

46. The Claimant UMP is entitled to costs jointly and severally against the Defendants on a standard basis to be agreed or taxed.

BY THE COURT

