

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

Civil Case No. 16 of 2013

**BETWEEN: IAN STURTEVANT**  
Claimant

**AND: WINDWARD HOLDING LIMITED**  
First Defendant

**AND: PETER SHARP**  
Second Defendant

**AND: LAW PARTNERS**  
Third Defendant

**Coram: Justice Saksak**  
**Date of Hearing: 19<sup>th</sup> April 2013**

**Counsel: Miss Evelyn Robert for the Defendants/Applicants**  
**Mr Eric Siba for the Claimant/ Respondent – No appearance**

**JUDGMENT**

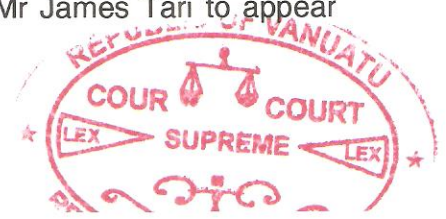
1. This judgment provides reasons for the orders issued 19<sup>th</sup> April 2013. The Orders are attached as an integral part of this judgment.
2. By way of background, the claimant filed an urgent application for interlocutory order on 3<sup>rd</sup> April 2013. Also on the same date Mr Siba filed :-
  - (i) A notice of beginning to act;
  - (ii) A sworn statement as to urgency;
  - (iii) A sworn statement in support of the application; and
  - (iv) A undertaking as to damages.

These documents were filed at 3 O'clock p.m.

3. Being satisfied the matter was urgent, time was abridged and an ex parte hearing was convened at 4.30 pm on 3<sup>rd</sup> April 2013. The following orders were issued:-



- "1. The vessel MV Santo Queen be hereby restrained from sailing or leaving Luganville Port, inclusive of any other ports in Vanuatu until further order of the Court.
  2. The Police be hereby authorised to arrest and detain the agents, representatives and servants of the First, Second and Third Defendants who act in breach of this order.
  3. The applicant be required to file and serve a Supreme Court claim within 14 days from the date hereof.
  4. Liberty to the Defendant to apply 0-48 hours notice."
4. The vessel was detained pursuant to that order.
5. On 11<sup>th</sup> April 2013 at 10.15 hours the defendants filed their application to set aside the order of 3<sup>rd</sup> April 2013. They filed also a sworn statement in support of the application, a response and a notice of beginning to act.
6. On 18<sup>th</sup> April 2013 the Court issued a notice of hearing of the defendants' application to all counsel returnable for 2.30pm on Friday 19<sup>th</sup> April 2013.
7. On the 19<sup>th</sup> April 2013 only counsel for the defendants, Miss Robert appeared for the hearing. Mr Siba did not appear but did inform the Court clerk that he was in Santo and requested that the hearing be adjourned to Monday 22<sup>nd</sup> April 2013. Miss Robert objected to the request for adjournment and pressed the Court for a hearing. Counsel informed the Court that Mr Siba had been served with the application together with other documents.
8. I refused Mr Siba's request for an adjournment for the following reasons:-
- (i) The purported request was verbal through a clerk of the Court which is not acceptable practice.
  - (ii) Mr Siba practises with James Tari & Associates and he could easily have arranged for his associate Mr James Tari to appear for the hearing.



- (iii) Even if Mr Siba was present for the hearing it would not have made any difference.

9. The Court therefore proceeded to hear Miss Robert in relation to her written submissions. I do not have to deal with every issue raised. The Court does not necessarily agree with every argument or submission made by counsel. I propose to deal with the matter instead by asking the following:-

(i) Was the Order of 3<sup>rd</sup> April 2013 properly issued? The answer is "yes". The basis of the order was clearly stated as Rules 7.6 and 7.7. It is not an application for a mareva order under Rule 7.8 therefore the Court did not need to have regard to those requirements in Rule 7.8.

(ii) Why should the Order not be maintained? The reasons the order should not be maintained are:-

(a) The claimant failed to comply with the order at paragraph 3. The claimant has not filed and served any Supreme Court Claim to be the basis on which to hang his application. Rule 7.5 (4) was the basis of the Court making that order.

(b) The order at paragraph 1 restrained the vessel Santo Queen from sailing or leaving Vanuatu. However the claimant has not named the ship as a party.

(c) The claimant's application was therefore an abuse of process under these circumstances.

10. Those are the only three basic reasons why the orders of 3<sup>rd</sup> April 2013 should be vacated. Accordingly the orders are set aside as ordered.

**DATED at Port Vila this 22<sup>nd</sup> day of April 2013**

**BY THE COURT**

  
**OLIVER. SAKSAK**

**Judge**

