

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

Civil Case No.101 of 2011

BETWEEN: UNION ELECTRIQUE DU VANUATU
LIMITED T/AS UNELCO SUEZ
Claimant

AND: THE REPUBLIC OF VANUATU
First Defendant

AND: VANUATU UTILITIES AND
INFRASTRUCTURE LIMITED
Second Defendant

Coram: *Justice D. V. Fatiaki*

Counsels: *Messrs. T. North SC, H. Heuzenroedor and M. J. Hurley for the Claimant
Mrs. V. Trief and Mr. H. Tabi for the First Defendant
Mr. D. Thornburgh for the Second Defendant*

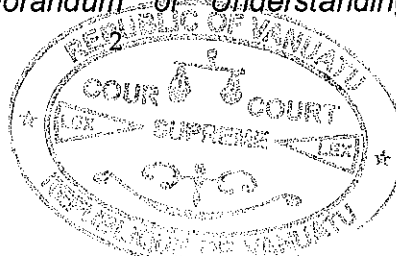
Date of Decision: *16 October 2014*

JUDGMENT

1. This file was originally handled by Spear J. who refused the claimant ("UNELCO")'s application for an extension of time to file its application for judicial review on 15 February 2012. The matter was successfully appealed to the Court of Appeal (see: UNELCO v. Republic of Vanuatu [2012] VUCA 2) which directed on 4 May 2012 that the matter be returned to a judge of the Supreme Court to manage the case to trial.
2. The claim was amended after the matter was returned from the Court of Appeal and there have been several interlocutory applications from the parties dealing mainly with discovery of documents including non-compliance with Court orders.
3. On 31 October 2013 the claim was listed for trial on 17 – 28 February 2014. The Court also gave several pre-trial directions with a view to obtaining from the mass of lever arch materials, an agreed Trial Book containing all the documents which the parties would be relying on during the trial.
4. In its amended judicial review UNELCO sought the following relief:

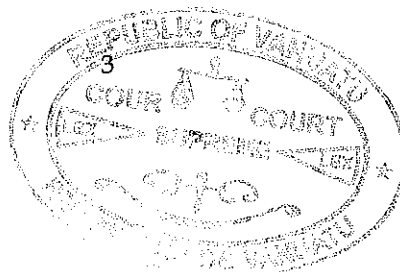


- (a) *An order to quash the purported decisions to grant the Operation and Management (O & M) agreement and the option for a 20 years concession to the second defendant;*
- (b) *A mandatory order directed to the First Defendant, that it take all necessary steps to provide a tender in accordance with the Act and Regulations for the Concession;*
- (c) *Costs;*
- (d) *Such further and/or other orders as this Honourable Court deems fit."*
5. In the amended claim UNELCO identifies numerous breaches of the provisions of the **Government Contract and Tenders Act [CAP. 245]** ("*the GCT Act*") including, **sections 3 (3); 4; 7; 8; 9; 10; 11 & 12 and Regulations 2; 3; 4; 5; 6; 7 & 8** made under the Act.
6. On the first day of the trial 17 February 2014 State counsel sought more time to prepare its case and the vacation of the trial dates. Though the second defendant ("*VUI*") had no similar application it supported the adjournment of the trial. The application was refused and UNELCO opened its case for the remainder of the day.
7. The following morning 18 February 2014 began with UNELCO's counsel informing the Court that he had received some correspondence from the first defendant ("*The Republic*") that needed to be considered and which might considerably reduce the length of the trial. A short adjournment was granted and, on resumption, counsel for UNELCO informed the Court that as between UNELCO and the Republic they had consent orders to submit for the court's consideration.
8. The relevant consent orders in its material parts reads as follows:
- "1. *I declare that the decision on 17 November 2010 comprised in the Memorandum of Understanding dated 19 November 2010, the subject of the within claim, pursuant to section 7 of the Government Contracts and Tenders Act is void and of no effect, and will not be binding on the State or the government;*
2. *I declare that the decision comprised in the letter from the Prime Minister dated 14 December 2010, the subject of the within claim, pursuant to section 7 of the Government Contracts and Tenders Act is void and of no effect, and will not be binding on the State or the government;*
3. *I make a quashing order directed to the Council of Ministers, quashing the Memorandum of Understanding dated 19*

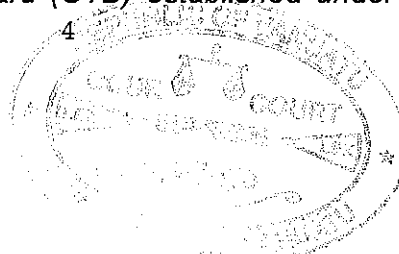


November 2010, the subject of the within claim (and the decision comprised therein);

4. I quash the decision to award an Operating and Maintenance Agreement, together with an option for a twenty year concession, for the supply of electricity to Luganville and related areas on the island of Espiritu Santo, comprised in the letter dated 14 December 2010, the subject of the within claim;
5. I make a mandatory order that the Minister of Climate Change Adaptation, Geohazards, Meteorology and Energy, commence, and take all steps to pursue in a timely manner and to effect, a retender in accordance with the Government Contracts and Tenders Act, of the grant of a 20 year concession for the supply of electricity to Luganville and related areas on the island of Espiritu Santo (hereinafter **Luganville Concession**);
6. I make a mandatory order that the members of the Tenders Board independently established pursuant to sections 9 and 10 of the Government Contracts and Tenders Act (**Tenders Board**), do receive, assess, and make a recommendation in pursuance of the Government Contracts and Tenders Act, of the tenders received for the Luganville Concession, free from any influence as required by section 15 of the Government Contracts and Tenders Act, which for the avoidance of doubt, precludes any influence from the Utilities Regulatory Authority or its officers, the Principal Energy Officer, or outside consultants (other than as coopted for a proper purpose under section 10(7) of the Government Contracts and Tenders Act);
7. In the event that the Tenders Board cannot make a recommendation, or its recommendation is declined by the Council, I make a mandatory order that the members of the Tenders Board, do recommence the tender process pursuant to section 12(1) of the Government Contracts and Tenders Act, and for the avoidance of doubt, such recommencement may occur more than one time;
8. As between the Claimant and First Defendant, there be no order as to costs."
9. If I may say so the consent orders go some way further than the reliefs sought in the amended claim and on the face of **Orders (1) to (4)** directly, adversely, and substantially affects VUI's interests. In the circumstances VUI was given time to make submissions on the following five (5) issues or questions jointly agreed with the parties:



- (1) Whether the court should exercise its discretion to grant the consent orders;
 - (2) Whether evidence of conduct of the claimant and the first defendant, through acquiescence and waiver affects the exercise of the courts discretion to grant the relief sought;
 - (3) Whether the evidence of the second defendant should be heard before the exercise of the courts discretion to grant the consent orders and if so, what viva voce evidence in particular is relevant;
 - (4) Whether the consent orders are lawful, intelligible or capable of enforcement or should be made at all;
 - (5) Whether the second defendant has the right to continue its defence beyond settlement of the claim between the claimant and the first defendant.
10. Having said that, I note the case of UNELCO v. Municipality of Port Vila [2003] VUSC 138 which also involved an application for judicial review challenging Bye-laws passed by the defendant Municipality which adversely impacted on the claimant's concession contracts for the supply of water and electricity. In that case the Supreme Court sanctioned a consent order which comprised six (6) declarations supported by six (6) injunctions. The court also delivered a judgment setting out its reasons for approving the consent orders which was agreed by the two (2) parties in that case.
11. In the absence of an agreed chronology I gratefully adopt the non-contentions background outlined in the Court of Appeal's judgment (supra) at **paragraphs 5 to 22**:
5. *As we understand the arguments of counsel before this Court, the following background is not contentious and was before the Supreme Court.*
 6. *Unelco had held the Luganville Concessions to supply electricity for the past 20 years. Its Concession was due to expire on 31st December 2010.*
 7. *In February 2008, Unelco was informed by the Ministry of Lands that the further management of supply of electricity in Luganville from 1st January 2011 would be the subject of an open tendering process.*
 8. *In February 2010, the Acting Director General of the Ministry of Lands initiated steps leading to the tendering process through the Central Tenders Board (CTB) established under Part 4 of*

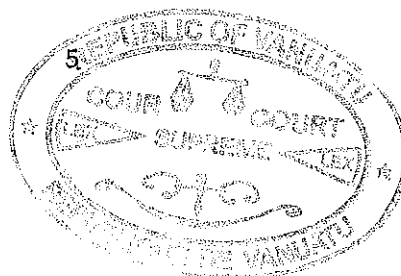


the Government Contracts and Tenders Act [CAP.245] (the GCT Act). Undoubtedly the proposed concession would be a Government Contract so as to attract the application of that Act.

9. The CTB approved a two stage tendering process. A number of entities including Unelco and Pernix became pre-qualified to participate in the tender under the first stage.
10. This appeal has been argued on the basis that in the pre-qualification process the pre-qualified bidders agreed to be bound by Tender Rules which form part of the Final Procurement Plan prepared by consultants for the Government of Vanuatu.
11. On 28th May 2010 the CTB approved the Request For Proposal Document: Concession for the Supply of Electricity to Luganville (the RPF) which was then issued to the pre-qualified bidders.
12. Tenders in the form prescribed in the Tender Rules were to be lodged with the CTB by "bid due date", being on 31st August 2010. At that time the CTB met to open Tender Bids. Only one Tender submission had been received, that being from Unelco. It was determined to be a non conforming bid. However the CTB advised the representative of Unelco then present that the Unelco proposal would be evaluated in detail and the Ministry of Lands would inform Unelco about its submission in due course.
13. On 29th September 2011 the Director-General of the Ministry of Lands wrote to Unelco informing it that no complying bid had been received. The Government was currently considering its options and would inform Unelco of its decision in due course.
14. On 4th October 2010 the CTB met and gave approval for the Minister of Lands to use a selective tender process. Regulations made under the GCT Act require every Minister concerned with or responsible for arranging or calling tenders for Government Contracts to follow the procedures laid down in the Regulations. Regulation 3 relates to Tenders; it relevantly provides:

"3. Tenders

- (1) Tenders must be called for all Government Contracts.
- (2) All tenders must be called by open and competitive bidding except where another process is approved by the Tenders Board under subregulation (3).

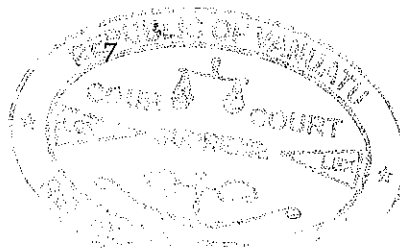


- (3) *The Tenders Board may approve another tender process for projects where a straight open and competitive tender process may not provide the best result in the opinion of the Tenders Board.*
- (4) *Any other tender processes may include:*
- (a) *two stage tendering (e.g. request for information followed by selected request for proposals); and*
 - (b) *selective tendering (e.g. where it is known that limited skills are available to perform the work required; and*
 - (c) *period contracts for repetitive purchases."*
15. *Selective tendering is a process provided for in paragraphs 3 and 4(b) of Regulation 3. It will be necessary later to consider the terms of the actual decision of the CTB made on 4th October 2010.*
16. *Unelco was not informed at that stage that the CTB had resolved to approve a selective tendering process.*
17. *On 1st November 2010 CTB met again and approved the appointment of Pernix to operate and manage the Luganville electricity generation and supply and also approved a draft Memorandum of Understanding (MOU) between the Government and Pernix. That draft MOU was marked Draft 1. The CTB was to prepare a paper for the Council of Ministers. Again, it will be necessary later to refer in more detail to this CTB decision.*
18. *On 18 November 2010, Unelco was advised by a letter from the Ministry of Lands that on 17th November 2010 the Council of Ministers had awarded the Luganville Concession to Pernix for a period of 8 months from 1st January 2011. The letter went on to say arrangements as to the transfer of responsibilities would be organised in accordance with the Unelco Concession Contract. That letter was the first communication received by Unelco from the Government about the future concession following the letter of 27th September 2010 saying that the Government was considering its options. In the meantime, by letter dated 13th October 2010 the Director-General of the Ministry of Lands had requested access to the Luganville facilities, but the letter did not indicate that a purpose of access was to allow representatives of Pernix to inspect the facilities.*



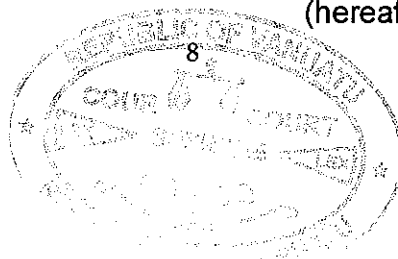
During that access Pernix representatives attended as part of their own due diligence.

19. *The decision of the CTB and the Council of Ministers so far identified in this background were the decisions of which Unelco had knowledge when it lodged its application for an extension of time with the Court on 24th May 2011. The letter from the Ministry of Lands to Unelco on 18th November 2010 did not identify that a MOU was the basis of the arrangement between the Government and Pernix. We were told from the bar table that Unelco did not ascertain the terms of the MOU until about late April 2011. Documents before the Court do not indicate when or in what circumstances Unelco received that information. The MOU then received by Unelco was marked Draft 3 – Final.*
 20. *After Unelco had filed its application at Court it learned that there had been an event on 14th December 2010 which Unelco now characterises as another relevant decision by the Government which introduced the second respondent, Vanuatu Infrastructure and Utilities Limited (VUI) as the named concession holder. Unelco gained this knowledge on 16th September 2011: see below.*
 21. *To complete the background, in December 2010 Unelco as it was obliged to by its contractual arrangements with Government arranged to hand-over possession of the electricity infrastructure relating to the Luganville Concession including expending substantial time corresponding with arms of Government concerning issues such as the valuation of assets and compensation and other hand-over issues.*
 22. *On 1st January 2011 VUI, a wholly owned local subsidiary of Pernix commenced to operate and manage the Luganville Concession. (The Tender Rules required that the Concession be operated by a single legal entity registered in Vanuatu.)”*
12. For completeness, the Court of Appeal in granting UNELCO's appeal and in extending time for it to seek a judicial review, also identified several triable issues in the claim including:
- (1) whether the CTB was required in terms of Section 12 (1) of the GCT Act to recommence the tender process;
 - (2) whether the CTB ever approved MOU Draft 3;
 - (3) whether the Prime Minister was lawfully authorized to sign MOU Draft 3 with Pernix;



- (4) whether there had been a ratification or novation under Clause 9 of MOU Draft 3;
 - (5) the applicability, meaning and effect of Clause 27.2 of Section C of the Tender Rules; and finally,
 - (6) whether there had been "*undue delay*" on UNELCO's part which might entitle the Court to deny relief on discretionary grounds.
13. VUI in its further amended defence inter alia denies the applicability of the GCT Act. Noticeable by its absence however, VUI did not seek affirmative orders in its favour nor did it seek to amend its pleadings in the face of the proffered consent orders and underlying factual admissions made by the Republic. Instead, defence counsel has put the Republic on notice of a claim that VUI would be making against it for damages for negligent misstatements and misrepresentation.
14. During the course of managing the case to trial this Court gave numerous directions and orders mainly dealing with disclosures required of the parties which included an opposed application by VUI on 13 November 2012 for the claimant to disclose the following documents:
- (i) *Handwritten notes of George Vasaris & Co. Mark Hurley & Timothy North SC as taken in and incidental to the interviews with, Robert Simelum, Michael Busai and Joe Ligo;*
 - (ii) *Digital, tape or sound recordings as recorded by George Vasaris & Co. Mark Hurley & Timothy North SC as taken in and incidental to the interviews with, Robert Simelum, Michael Busai and Joe Ligo;*
 - (iii) *Any correspondent, including emails passing between George Vasaris & Co. Mark Hurley, Timothy North QC and State Law & Robert Simelum, Michael Busai and Joe Ligo of and incidental to the arranging of the interviews, post interviews and requests to execute the sworn statements as prepared by George Vasaris & Co. Mark Hurley and or Timothy North QC with Robert Simelum, Michael Busai and Joe Ligo;*
 - (iv) *Any draft copies of the sworn statements of Robert Simelum, Michael Busai and Joe Ligo as prepared by George Vasaris & Co. Mark Hurley & Timothy North SC as taken in and incidental to the interviews with Robert Simelum, Michael Busai and Joe Ligo;*
 - (v) *Copies of all correspondence including emails between the claimant to Robert Simelum, Michael Busai and Joe Ligo directly or in reply."*

(hereafter '*the materials sought*')



15. The claimant's opposition to the disclosure application may be conveniently summarized as follows:
- (a) There was no undertaking given by the claimant to provide copies of the materials sought;
 - (b) The materials sought are subject to "*litigation privilege*" which has not been waived;
 - (c) Disclosure of the materials sought is not necessary to decide the matter fairly; and
 - (d) The disadvantages of disclosure significantly outweighs any likely benefits;
16. The Court received comprehensive written submissions and lists of authorities from the parties at the time and after hearing further oral submissions from counsels the Court reserved its ruling. On the first day of the trial in this case the Court was reminded of the outstanding ruling and the Court delivered an oral decision dismissing VUI's application for reasons to be provided in this final judgment.
17. I now provide brief reasons for the decision. After considering the competing submissions and sworn statements in the application I am satisfied that the materials sought are covered by "*litigation privilege*" in so far as they are materials comprised within steps properly taken by UNELCO's legal representatives with the dominant purpose of conducting or advising UNELCO on actual litigation being undertaken by it and furthermore that such privilege has not been waived.
18. The application has also been somewhat overtaken, in my view, by the proposed consent orders and necessary factual admissions between the principal protagonists, namely, UNELCO and the Republic.
19. I turn next to consider the issues identified in **para. 9** (above). Before doing so however, I record that it is common ground and accepted by the parties that notwithstanding the terms of the consent orders reached by UNELCO and the Republic, the court retains an unfettered discretion in the matter.
20. In this regard beyond the provisions of **Rule 17.9** of the **Civil Procedure Rules** which is prefaced by the statement "*after hearing a claim ...*", I have considered the judgments of the Federal Court and the High Court of Australia in the following cases:
- (1) Thompson Australia Holdings Pty Ltd. v. Trade Practices Commission [1981] 148 CLR 150;

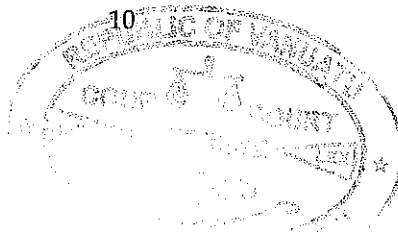


- (2) Australian Competition & Consumer Commission v. Real Estate Institute of Western Australia [1999] FCA 18 (*"the REIWA"* case);
- (3) Kovalev v. Minister of Immigration & Multicultural Affairs [1999] FCA 557;
- (4) Australian Competition and Consumer Commission v. Woolworths (South Australia Pty Ltd (t/as Mac's Liquor) and Others [2003] 198 ALR 417;
- (5) In the Matter of Richstar Pty Ltd. [2007] FCA 1395;

21. From these judgments I extract the following useful guidance:

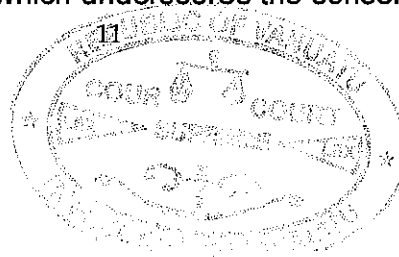
- (a) *"... the Court is entitled to treat the defendant's consent as involving an admission of all facts necessary or appropriate to the granting of the relief sought;"* see: the majority judgment in (1) above at para. 26;
- (b) *"It is in the public interest that, in considering agreements between parties requiring order of the Court, the Court does not act as a mere rubber stamp. What is proposed must always be scrutinized to determine whether ... consent orders are appropriate."* per French J. in (2) above at para. 3;
- (c) *"... it is important therefore that the Court itself addresses and is satisfied of the basis upon which the order is to be made and in particular where the order sets aside the decision of an official decision-maker ..."* per French J in (3) above at para. 11;
- (d) *"It is a general principle of judicial restraint in the scrutiny of proposed settlements, particularly in the case of settlements between parties legally represented and able to understand and evaluate the desirability of agreeing to a settlement, that the Court will not refuse to give effect to the terms of settlement which may be made within the court's jurisdiction and are otherwise unobjectionable";* per Mansfield J in (4) above at para. 21;
- (e) *"The requirement that the order be "appropriate" does not mean that the court will refuse to make it simply because it thinks a different order would be preferable ... An appropriate order is one which lies within the range of orders that could reasonably be made on the materials before the Court"* per French J in (5) above at para. 4;

22. I do not doubt that, normally, a defendant would be permitted to advance any defence he may have against a claim that he opposes, but, where the defendant seeks no positive orders or remedies other than the dismissal of



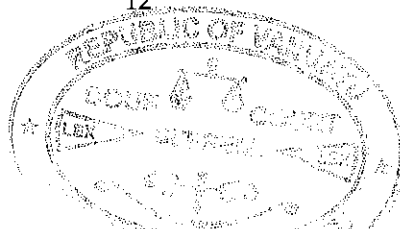
the claim or the denial of discretionary relief and where the primary defendant concedes the claim and consents to judgment being entered against it, the utility of allowing a secondary defendant, nevertheless, to continue to challenge the grant of relief is doubtful at best and likely to confuse and prolong proceedings unnecessarily.

23. Although the court undoubtedly has a discretion whether or not to sanction the consent orders, where contravention of the provisions of a relevant and applicable Act is conceded by the party who is charged with implementing the Act in the public interest, strong and compelling reasons would need to be established before the Court would refuse to exercise its discretion and grant relief, especially, where the Act itself provides that a contract entered into in breach of its terms: "*will be void, of no effect, and will not be binding on the state or the government*" (see: Section 7).
24. Putting it another way, if the ultimate effect of the consent orders and the underlying factual and legal admissions and concessions that supports the orders, is that the contract entered into between the Republic and VUI is by law, void and not binding on the Republic, then the refusal of the Court to sanction the consent orders will not change what the legislature has already decreed will befall such a contract or overturn the admissions and concessions already made by the Republic.
25. If I may say so it would be exceptional for the Court not to exercise its discretion to quash a decision found to be unlawful and there must be extremely strong public policy reasons for refusing a remedy if a claimant has made a good case and has done nothing to disentitle such claimant from a remedy.
26. As was said by the Privy Council in Phipps v. Royal Australasian College of Surgeons [2000] 2NZR 513 at 521:
- "When a decision is flawed by serious procedural irregularity, the person prejudiced is normally entitled to have the matter considered afresh. Justice requires that the decision should be set aside and reconsidered unless, in the particular case, there is good reason why that should not be so".*
27. Needless to say if the Court were to decline to exercise its discretion and thereby require UNELCO to prove its claim, both the factual and legal position is unlikely to materially change in the likely event that the Republic maintains its concessions and signed admissions of identified breaches of the provisions of the GCT Act and/or calls no witnesses in its defence OR is it a case that the Republic would be obliged to amend or re-plead its case to reflect its concessions and admissions before any evidence is led.
28. I would highlight in this latter regard the following underlying admissions made by the Republic and which underscores the consent orders:



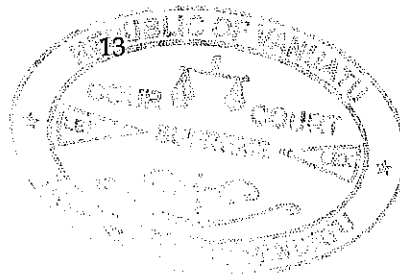
- An open tendering process for the award of Government Contracts was required by the GCT Act and Regulations;
- At all material times from 2006, the GCT Act and Regulations mandated the method by which Government Contracts would be entered into;
- At all material times the Minister would first be required to undertake the matters identified in Sections 3 (3) and 8 of the GCT Act as conditions precedent, and only then would be entitled to enter into the Government contract;
- At all material times by reason of Section 8 of the GCT Act, the Minister "*must*" as a condition precedent "*comply with ... the tendering process in accordance with this Act or any regulations made under this or any other Act*";
- At all material times no Council (of Ministers) minute approving the Government Contract could be lawfully supplied for the purposes of Section 3 (3) (h) of the GCT Act unless the Council had lawfully accepted a tender pursuant to Section 12 of the GCT Act;
- At all material times the Council was prohibited from accepting a tender unless it had been through the tender process in accordance with the GCT Act including the tabling of a recommendation by the Tender Board (without amendment) and the adopting of the same by virtue of Section 12 of the GCT Act;
- At all material times the Tender Board was required by Section 10 of the GCT Act to be and to act as an independent body free from interference or influence;
- At all material times, the O&M Agreement with 20 year concession was a "*Government Contract*" within the meaning of Section 2A of the GCT Act;
- The purported assignment could not provide to VUI any rights or entitlements other than those held by Pernix Inc. at the the time of entry into the MOU Draft 3;
- On 31 August 2011 the Republic through the Minister of Finance and Economic Management refused to grant any Concession pending the outcome of the Court's determination in this proceeding.

29. In light of the foregoing, I do not accept that the Republic is required or obliged to forgo and ignore its concessions and admissions that supports



the consent orders and, nevertheless continue as if they had never been made or given. To do otherwise would place the Republic in a wholly unenviable predicament inconsistent with its duty to behave as a "*model litigant*" in its pursuit of the public interest.

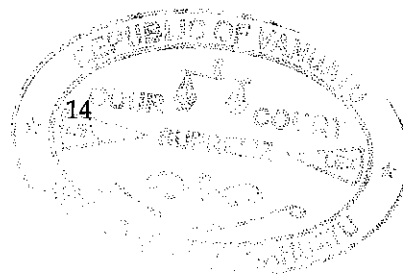
30. By the same token, even if the court agreed that VUI should be entitled to lead its evidence in the case, how does that affect the claimant and the first defendant in the event that they are content to rely on the factual concessions and admissions reached between them? Would they be obliged to cross-examine VUI's witnesses and to what end and for what purpose?
31. It may also be noted that the parties, since the Court of Appeal decision, have filed all of the evidence that they are relying on for the trial and therefore the evidence and position of VUI would have been known to the Republic when it agreed to the consent orders with its eyes wide open. Plainly it does not agree with or support the position taken by VUI.
32. This court in my view, is also constrained from receiving and considering submissions and evidence which seeks to challenge and/or undermine the necessary factual and legal basis and concessions on which the consent orders are predicated. This very real limitation as to the nature and type of evidence that VUI may lead and which the court can consider is a serious impediment to allowing the case to continue to a full hearing of VUI's evidence which would be largely peripheral, of marginal relevance and unlikely to seriously affect the consent orders or alter the admitted facts that supports them.
33. Be that as it may, having considered the provisions of the GCT Act and the competing submissions, I am firmly of the view that the GCT Act applies in this case. My reasons for saying so may be briefly summarized:
 - (a) The O&M agreement with 20 years concession attached was by its intention and effect "... *a contract or arrangement for the supply of (electricity) services ... in consideration of the payment out of public monies.*";
 - (b) The O&M agreement with 20 years concession attached disposed of an "*asset of the Government*" namely the exclusive right to supply electricity on the island of Santo;
 - (c) The "*consideration*" for the O&M agreement with 20 years concession attached far exceeds the statutory minimum of VT5,000,000;
 - (d) Inherent in the consent orders is a clear concession or admission on the Republic's part, that the GCT Act applies and was breached in the entering into with Pernix (VUI's parent company) of the O&M agreement with 20 year concession attached; and



(e) The Court of Appeal judgment (op. cit) records at **para. 33**:

"the judge noted a concession made by VUI that it was at least arguable that the Government may not have followed all the requirements of the GCT Act (Before this Court it was agreed that the Government had made a similar concession, although the judgment notes otherwise)";

34. Such a concession or admission is, in my view, binding on VUI and should only be withdrawn by consent or with leave of the Court, neither of which was sought or granted [see: CBA v. Xiong and Others [2010] NSWSC 1518 especially at paras. 30, 31 and 39 and the judgment of the Court of Appeal in TCG Properties Limited v. WBC [2010] VUCA 31 at para 15].
35. Additionally **Section 3(h)** of the GCT Act expressly requires as a condition precedent to entering a Government Contract, "... a Council minute approving the contract". Having considered the evidence and submissions in this particular regard, I am satisfied that no such Council of Ministers "minute" exists or ever existed at the relevant time when the O & M agreement with 20 year concession attached was entered into between the Republic and VUI's parent company.
36. For the foregoing reasons I would exercise my discretion in favour of the claimant and upon consideration of the terms of the submitted consent orders, I make the following orders:
- (1) **Declare** that the Memorandum of Understanding (MOU) dated 19 November 2010 between the Republic and VUI is void and of no effect;
 - (2) **Declare** the letter of the Prime Minister dated 14 December 2010 is void and of no effect;
 - (3) **Quash** the award to VUI of an Operating and Maintenance Agreement with an option for a twenty year concession for the supply of electricity to Luganville;
 - (4) I make no order as to costs as between UNELCO and the Republic.
37. Finally, to avoid any possibility of disruption to the supply of electricity to Luganville in Santo, I grant a stay of the above orders for a period of **30 days** from the date hereof subject to:-
- (a) VUI filing an appeal to the Court of Appeal within 21 days of the date hereof; **and**



- (b) VUI seeking an extension of this temporary stay order in the Court of Appeal before the expiration of the order.

DATED at Port Vila, this 16th day of October, 2014.

BY THE COURT


D. V. FATIAKI
Judge.

