

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
2015**
(Civil Jurisdiction)

Civil Case No. 6 of

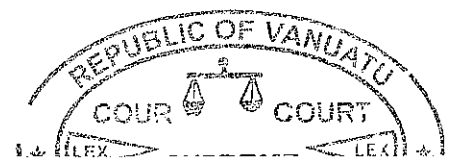
BETWEEN: JOB TITIRO
First Claimant
AND: ZACHEUS FILA
Second Claimant
AND: PETER VUTANGWA (AKA Peter Vuta)
First Defendant
AND: JOHN KWISE
Second Defendant
AND: RUBEN DUI
Third Defendant
AND: ALICK ARU
Fourth Defendant
AND: AMBAE SHIPPING CO-OPERATIVE SOCIETY
Ltd
Fifth Defendant

Date: 10th and 11th November 2016
Before: Chetwynd J
Counsel: Mr S Hakwa for the Claimants
Mr T. J. Botleng for the Defendants

JUDGMENT

1. The Claimants are the representatives of Local Party Committees ("LPC's") of the Peoples Action Party ("PAP") a political party. They are in fact representing PAP. The first four defendants were at one time members of the PAP. The First Defendant ("Mr Vuta") was also a Member of Parliament for the constituency of Ambae. Unfortunately in 2012 there was a major falling out of the parties in this litigation. Following a regional committee meeting PAP declined to put forward Mr Vuta as its official candidate for the 2012 election. He stood as an independent candidate and was re-elected. Mr Vuta says he still had the support of some (he says the majority) of the LPC's but following the election he and some of his supporters, including the Second, Third and Fourth Defendants were expelled from PAP.

2. It would seem that the purchase of an inter-island vessel, the MV Aganda, by Mr Vuta and the setting up of the Fifth Defendant caused the falling out. In the early 2000's an idea began to be formulated concerning the acquisition of a vessel which would be suitable for inter-island travel and trading. That is the first area of disagreement. PAPS say it was their idea but Mr Vuta says it was his. There is no doubt that at a PAP conference in August 2005 there were resolutions about the acquisition and operation of a coastal vessel. At its third conference in 2011 further resolutions were passed concerning the acquisition of a coastal vessel. As indicated, Mr Vuta is adamant he started canvassing the idea when



he was first seeking election in 2002 and it was, he says, one of the reasons he was successful in 2004.

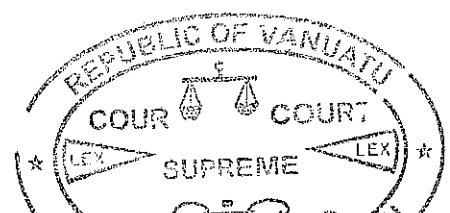
3. The Claimants say that in 2005 what they refer to as the Nabangahake resolution was passed by the members of PAP during the 2005 conference which proposed the use of Mr Vuta's Member of Parliament Allocation for the purchase of a suitable vessel. The LPC's are said to have further resolved the following year (2006) to open a bank account into which Mr Vuta's MP Allocation would be paid. In January 2011 the resolution passed by PAP members at their conference was to set up a limited company to own and operate the vessel yet to be acquired. The Company was to be called Island Connection Ltd. Over the next 12 months various documents relating to the formation of the company were circulated to the LPC's. However by the end of 2011 the company had still had not been registered and Mr Vuta appears to have become impatient at the lack of progress. There were meetings in early 2012 when deadlines were put forward. There were further delays with the company formation and Mr Vuta decided to act. He made arrangements to purchase the MV Aganda from an Australian company in Western Australia. The Fifth Defendant was set up to take on the role of owner and manager.

4. The relationship between the PAP and the First Defendant rapidly deteriorated from then on. PAP claimed ownership of the vessel. Through their Chairman it basically took over the vessel. Eventually the Police were involved and the crew employed by PAP was removed from the vessel and MV Aganda was then run by the Fifth Defendant. It seems that when these proceedings were commenced the MV Aganda had stopped running and has been moored at the wharf in Luganville since February 2015.

5. At various case management conferences I have requested detail from the Claimants' counsel about the basis of PAP's claim. Despite the requests it was still not apparent when this matter came for trial the basis on which the claim was being pursued. At a hearing in May 2016 the case was set down for trial. A minute published after the hearing indicated to the parties that the issue to be dealt with was ownership of MV Aganda. I made it clear that the Court would not be concerned with political affiliations or promises. The Claimants were told they would be required to prove to the requisite standard that they own or should own the MV Aganda. I also mentioned there were allegations of fraud, conversion and passing off but not one shred of evidence to support the allegations.

6. The matter came for trial and it was plain the Claimants had not prepared for the case. There was no bundle of documents provided to the Court. No agreed facts and no written submissions. The Defendants had filed some documents namely a chronology and some submissions about the issues. Mr Hakwa for the Claimants is an experienced lawyer and it astounded me that he thought the Court should conduct a trial without agreed bundles etc. The problem is that Mr Hakwa is or was the Chairman of PAP and if ever there was a case where the truth of the old adage that a lawyer who has himself for a client has a fool for a client, it was demonstrated it was in this case.

7. During the first afternoon I heard evidence from the named Claimants. Their various sworn statements were read into evidence and they were cross examined. There was no evidence adduced about payments made by them or PAP when the MV Aganda was purchased. There was no evidence of any binding legal agreements between PAP, the LPC's or even the named Claimants and the seller of the vessel or the First Defendant.



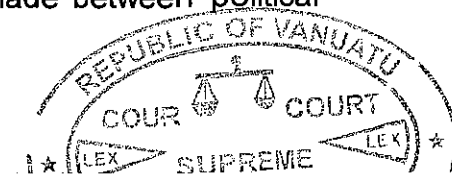
8. On the morning of the second day of trial the First Defendant was called. His various sworn statements were read into evidence and Mr Hakwa began to cross examine him. The line of questioning adopted by Mr Hakwa seemed to me to be pursuing a claim that the two resolutions passed at the 2005 and 2011 conferences were legally binding on the First Defendant. It was claimed that as the idea to acquire and operate a coastal vessel came from PAP they should own the vessel. It was said that as the First Defendant had agreed to open bank accounts and pay into them his MP's allocation that was evidence of a legally binding agreement that the vessel should be owned by PAP. There were a series of exchanges between myself and Mr Hakwa. I asked if there was any evidence supporting the proposal that PAP and not the MP controlled what should happen to allocation. I was told that there was none and that there would be submissions. I asked on what basis the allocation was paid to an MP. Mr Hakwa could not assist. He mentioned Standing Orders (of Parliament) and the Speaker but was unable to explain where the authority for the payment of MPs' allocations came from. I also asked Mr Hakwa if he was seriously suggesting that public funds should be given to a political party in order to allow that party to set up a commercial venture.

9. At that point Mr Hakwa said the commercial entity was not going to be run by PAP but by the LPC's. I asked what the distinction was.

10. Mr Hakwa then advanced the argument that the First Defendant was legally bound by a declaration he signed along with the two named Claimants (and the Second Defendant). There was further cross examination of Mr Vuta but no questions were put to him concerning any fraud, conversion or passing off. There were no questions put him about any other agreements. I asked Mr Hakwa if he intended to try and elicit any evidence from Mr Vuta and the other defendants about agreements or documents concerning the acquisition or ownership of the MV Aganda. He said he did not intend to do so. He was going to rely on the two resolutions and the declaration of ownership. He did refer to the operation of the Fifth Defendant. He submitted that it was improperly, even fraudulently operated. I reminded Mr Hakwa of my Minute of 16th May 2016 when I specifically said that it was not this Court's function. *"... to police or supervise co-operative societies. The legislation provides for that. In particular this Court cannot be asked to deal with any decision by the Registrar of Co-operative Societies. If the Claimants are unhappy with any decision of the Registrar then they should have asked for Judicial Review. Similarly, this Court cannot review any decision of the Licensing Authorities in respect of the ownership of MV Aganda"*.

11. In view of Mr Hakwa's responses I said I would consider the matter further over the luncheon adjournment.

12. When the Court sat in the afternoon I reminded the Claimants that they had to prove their case. The Claimants had to show that on the balance of probabilities they had acquired ownership of MV Aganda by operation of law. There had to be some legally enforceable agreement between either the Claimants and the seller or between the Claimants and the Defendants, in particular the First Defendant. I indicated that as far as I was concerned, but I would listen to further submissions and arguments, the Claimants had not come anywhere close to establishing a binding legal agreement which they or PAP were a party to. The suggestion that because PAP had initiated and approved the project was of no help to them. Quite frankly the question of who's idea it was first is irrelevant. There is no ownership of an idea such as that which found some expression in the party resolutions. This was not an "idea" which you could patent or claim to be your own exclusive property. There was a very real distinction to be made between political



promises and promises enforceable in law. Perhaps the former should be enforceable in law but neither politicians nor political parties were bound in law by promises they make to the electorate. Those promises are only enforceable through the ballot box.

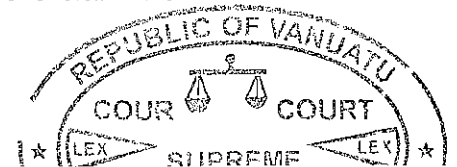
13. The two resolutions from 2005 and 2011 were no more than indications of intent. Mr Vuta openly acknowledges that he fully supported them. I believe at one stage he said he initiated the Nabangahake resolution. The resolutions were not legally binding agreements that Mr Vuta would use his MP allocations to acquire a coastal vessel to be owned and operated by PAP. Mr Hakwa was asked if that was the purport of the Claim. His answer was somewhat difficult to discern. He would say that the 6 LPC's were going to own and operate the vessel. If he was asked if that was in fact PAP he would say no. He seemed to somehow differentiate and separate the LPC's from PAP. I reminded the Claimant's of the detail of the Claim. For example paragraph 28 states that at its first conference PAP resolved that *it* would, "... acquire and operate a costal trading vessel". At paragraph 37 the Claim states that at its third conference (the one in 2011) PAP resolved that a limited liability company would be incorporated to own and operate the new coastal trading vessel, "...for and on behalf of PAP and its, members". At paragraph 65 it is said the first four defendants had been informed that they were no longer members of PAP "...and therefore could not continue to have anything to do with the vessel..". Then we turn to a letter exhibited as JK10 to the sworn Statement of John Kwise (the Second Defendant). The letter is signed by the Chairman of PAP (Mr Hakwa). The letter says in terms that the ownership, management and business operation of MV Aganda belongs to PAP. This refrain is repeated in the sworn statements of Amon Ngwele (see paragraph 7), Johnroll Tanihehe (paragraph 14) and Job Titiro (paragraph 7).

14. In fact the general tenor of the evidence produced by the Claimants is that MV Aganda is owned and operated by PAP for the sole benefit of its members. This claim to exclusivity cannot be tenable given that the funding was going to come from the MP's allocation. This is public money and it cannot simply be emptied into a political party's coffers by dint of saying it is to purchase and run a boat. Whatever an MP's allocation is it is his to dispose of but he cannot pass it on exclusively to the political party he belongs to.

15. As for the declaration referred to by the Claimants (see paragraph 10 above) that has an air of enforceability to it. Mr Vuta did declare the ownership of MV Aganda but again there is a degree of exclusivity about the declaration which mitigates against enforceability. There are conditions attached to the declaration as well and there is no evidence those conditions have been met in part or in whole.

16. In any event what Mr Vuta did was to purchase the MV Aganda and have the ownership registered in the name of the Ambae Shipping Cooperative Society Ltd. The application for registration of the cooperative was signed by Zacheus Fila, Job Titiro, Peter Vuta, Paul Didi, Stephen Hari and Alick Aru. The suggestion from Mr Vuta was that these names included those who were chairman of the LPC's on Ambae. In other words Mr Vuta had done what he said he would do in the declaration although strictly speaking he has not complied with the exact wording of the declaration. He has however arranged that the ownership and management of the MV Aganda is with a co-operative and all of the people of Ambae can be part of that cooperative and say how the vessel should be operated.

17. I informed Mr Botleng for the defendants that I did not need to hear any further evidence from his clients to establish his defence. Mr Hakwa having said there was no evidence that any of the defendants could give which would support the claim I said in the

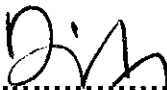


interests of justice I should dismiss the claim at this stage. The Claimants were given the opportunity to make further submissions but said they had none to make. As there was no counterclaim the interests of justice dictated that no further costs were expended and no further court time was warranted in arguing a claim which would not and could never succeed. The Claimants had been given ample opportunity to build their case; they had been told time and time again what was required by way of proof. They were unable to come close to proving their claim and it was clear beyond any doubt that they never would.

18. Although the Claimants should have realised they had no chance of succeeding at trial I only awarded costs to the Defendants on a standard basis. This was a very poorly prepared and run case and the Claimants were fortunate not to have to pay indemnity costs. Had they continued with their claim I believe I would have found it hard to resist and application for indemnity costs.

19. The Claim is dismissed in its entirety. The Claimants shall pay the Defendants' costs, such costs to be taxed on a standard basis if not agreed.

DATED at Luganville this 12th day of October 2016


D. CHETWYND
Judge

