

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

Civil
Case No. 16/868 SC/CIVL

BETWEEN: John Vacher Amos
Jonas James
Arnold Prasad
Anthony Wright
Stephen Kalsakau
Paul Telukluk
Pascal Harry
Thomas Laken
Serge Vohor
Jean Yves Chabod
Moana Carcases Kalosil
Marcellino Pipite
Tony Nari
Claimants

AND: The Republic of Vanuatu
Defendant

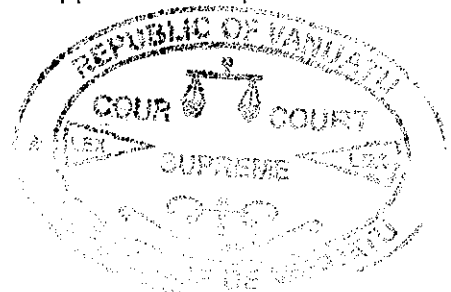
Coram: Justice Aru

Counsel: Mr. G. Boar for the Claimants (John Vacher Amos, Anthony Wright, Stephen Kalsakau, Pascal Harry, Pascal Harry, Serge Vohor, Moana Carcases Kalosil)
Mrs. M.G. Nari for the Claimants (Paul Telukluk, Jonas James, Arnold Prasad, Jean Yves Chabod, Tony Nari) (no-appearance)
Mr. H. Tabi for the Defendant

DECISION

Introduction

1. The defendant applies to have the claim in this matter struck out and filed its Application with their written submissions and a sworn statement deposed by CT Quai of the State Law office. The grounds for making the application as pleaded in its



defence are basically that the claim is res judicata and frivolous, vexatious and amounts to an abuse of process.

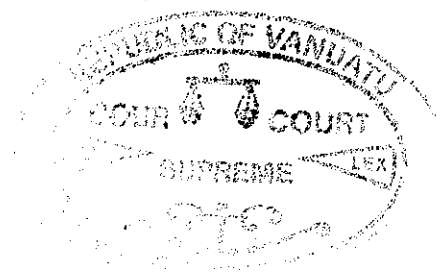
2. Both Mrs Nari and Mr Boar filed responses to the Application with their written submissions. When the Application was heard, there was no appearance by Mrs Nari and I heard submissions from Mr Tabi and Mr Boar and reserved my decision. This is the decision.

Background

3. The facts which give rise to the filing of the claim are not so much in issue and arise from a decision of the National Parliament to suspend the claimants which led to a series of legal challenges before this Court and the Court of Appeal. The following chronology sets out how the events unfolded:-

- 25 November 2014
Parliament passed a resolution to suspend the claimants as members of Parliament;
- 27 November 2014
The claimants filed an Urgent Constitutional Application in *Carcasses v Boedoro* [2014] VUSC 155 (ConC 10 of 2014) to challenge their suspension;
- 2 December 2014
The Supreme Court held in favour of the claimants that the suspension was in breach of their constitutional rights;
- The Speaker of Parliament appealed the decision and on 8 May 2015 the Court of Appeal in *Boedoro v Carcasses* [2015] VUCA 2 (CAC 1 of 2015) upheld the decision of the Supreme Court
- 24 March 2016
The claimants filed their current claim for compensation for breach of their constitutional rights;

4. The claimants allege that they were suspended from Parliament for a period of 8 days and each claimant claims VT 10 million.



Law

5. A person seeking a legal remedy under the constitution may apply either under Article 6 or Article 53 or under both. Article 6 relevantly provides:-

"6. Enforcement of fundamental rights

(1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.

(2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right."

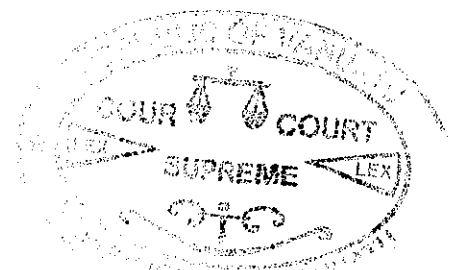
(emphasis added)

Application

6. The defendant asserts in its application that the claimants are relying on the same set of facts and cause of action to seek payment in the sum of VT 10 million. Secondly, it is submitted that the claimants should have brought the claim for compensation as part of their whole case in ConC 10 of 2014 as that remedy was available to them but they did nothing.
7. Finally the defendant says that because of the claimants' negligence and inadvertence, the defendant will be twice vexed therefore the claimants are estopped from raising the matter again as it is re judicata.
8. The claimants deny that the defendant will be twice vexed or that the matter is res judicata. Mr Boar submits that the facts of ConC 10 of 2014 differ to the factual circumstances of CC 868 of 2016. He draws the following distinction between the two cases:-

ConC 10 of 2014

- It was an Urgent Constitutional Application;
- The Speaker of Parliament was the respondent;
- The Claimants were challenging a Parliamentary resolution to suspend them as members;



- The issues were in relation to their suspension preventing them from attending Parliament;
- The issues involved a breach of their constitutional rights under Article 5 and Article 53 of the constitution

CC 868 of 2016

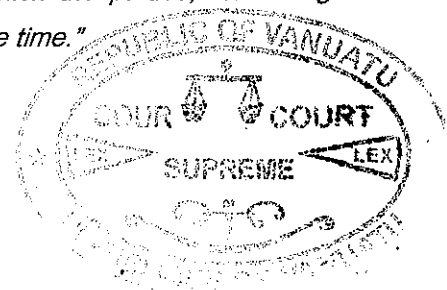
- The claim is against the Republic of Vanuatu;
- The pleadings refer to ConC 10 of 2014;
- The pleadings refer to CAC 1 of 2015;
- This is a Supreme Court claim not a constitutional application;
- Here the issue is payment for breach of the Claimants rights by the Republic of Vanuatu as determined in ConC 10 of 2014 and upheld in CAC 1 of 2015.

9. I reject the claimants' submissions that the two cases arise from different sets of facts. First with regards to parties in a constitutional application, the respondent is always the Republic of Vanuatu [see: rule 2.4 1) (b) of the Constitutional Procedure Rules]. Secondly , in CC868 of 2016 the claimants plead the same facts about their suspension and finally the main relief they now seek was available in the initial proceedings yet was never raised which is as follows:-

"1. An order that the defendant pays VT 10 million each to the claimants for breach of their constitutional rights guaranteed to them under Article 5 1)(d) , 5 2) (a) and (b)and Articles 16, 17, 21, 28, 43 (2) and 47 (1) pursuant to the judgements of the Supreme Court and the Court of Appeal in ConC 10 of 2014 and CAC 1 of 2015."

10. The principle referred to in *Henderson v Henderson* (1843) 67 ER319 is that :-

*"where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence or even accident, omitted part of their case. The plea of **res judicata** applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belong to the subject of the litigation, in which the parties, exercising reasonable diligence, might have brought forward at the time."*



5. At the outset, the basis of ConC 10 of 2014 as set out at paragraph 5 of the judgement is that:

"the Petitioners filed their petition on an urgent basis under Articles 5(1)(d), 5(2)(a), 5(2)(b), 6(1), 6(2), 16, 17, 21, 28, 43(2), 47, 53(1) and 53(2) of the Constitution. "

(emphasis added)

11. The relief for compensation was certainly available to the claimants as they also relied on Article 6 (2) of the Constitution to challenge their suspension and should have brought their whole case. I am satisfied that the factual circumstances are the same and CAC 1 of 2015 brought finality to the issues between the parties . The claim is res judicata. The Court of Appeal in *Financière du Vanuatu Ltd v Morin* [2008] VUCA 4, succinctly stated that:-

"the Court will not permit the same parties to open the same dispute by raising a further matter which might have been brought forward at the time the issue was first raised".

12. The claim cannot be sustained and must therefore be struck out. The final orders are :

Orders

1).The claim is hereby dismissed.

2).The defendant is entitled to costs in the sum of VT 50,000 to be paid within 21 days.

DATED at Port Vila this 12 day of June, 2017.

BY THE COURT

D. ARU
Judge

