

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

Constitutional
Case No. 22/904 SC/CONST

BETWEEN: Tropical Plantations Limited and
Robert Osborne

Applicant

AND: Republic of Vanuatu

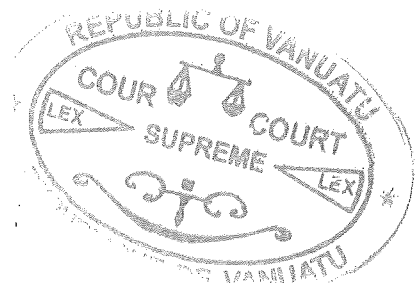
Respondent

Date of hearing: 19 May 2022
By: Justice G.A. Andrée Wiltens
Appearances: The Applicant in person – Mr Osborne
No appearance by or for the Respondent
Date of Decision: 20 May 2022

Judgment

A. Introduction

1. Mr Osborne has filed a constitutional application. It arises from the criminal prosecution of Tropical Plantations Limited, of which Mr Osborne is the proprietor, for alleged breaches of the Vanuatu National Provident Fund Act.
2. Mr Osborne raises a number of concerns, none of which fit within the usual ambit of a constitutional application.



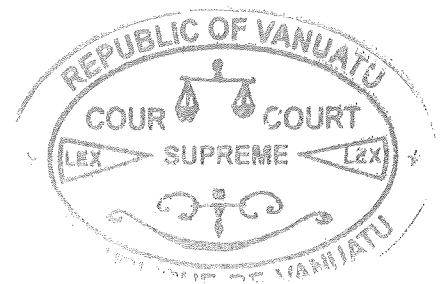
3. Indeed, the application does not specify which of the company's or Mr Osborne's constitutional rights have been allegedly infringed – a requirement under the Rules. It follows that the application must be dismissed as inadequately pleaded.

B. Constitutional Application

4. The application seeks that the Supreme Court urgently stays the continuation of a prosecution in the Magistrate's Court against Tropical Plantations Limited, which is currently scheduled to resume on 31 May 2022, pending resolution of this constitutional application.
5. It also seeks that all 7 charges be dismissed "with prejudice", due to alleged but unspecified breaches of the Constitution. There is then a prayer for relief seeking:
 - the replacement of the presiding Magistrate,
 - a declaration as to the unconstitutionality of the appointment of a VNPF staff member as prosecutor in the case,
 - a recommendation that the Public Prosecutor appoints an independent and impartial prosecutor other than Mr Nathan,
 - an order or recommendation that the Public Prosecutor's delegated authority to Mr Nathan be revoked,
 - a referral of Mr Nathan and two other named persons to the Commissioner of Police and the Public Prosecutor relating to alleged perjury, and
 - a referral of Mr Nathan to the Law Council.
6. Finally, the application seeks compensation for legal costs on an indemnity basis, together with exemplary damages for injustices allegedly suffered.

C. Evidence filed in Support

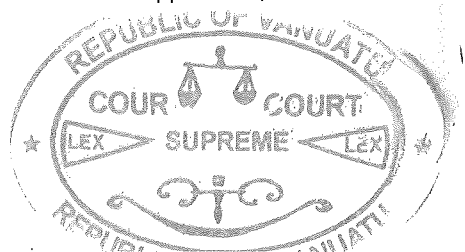
7. Mr Osborne has filed a supporting sworn statement, in which he pointed out that despite not being personally prosecuted, the Magistrate's Court had imposed bail terms on him - on the application of the prosecutor, Mr Nathan. Despite that, he has not filed an appeal against that determination, which would be the usual available remedy.
8. Mr Osborne further appended to his sworn statement a 22-page document, which he described as a "submission". It is headed "Vanuatu Supreme Court Application."



9. The 22-page submission sets out a long list of concerns. It is partly evidential in nature and partly commentary. There are a number of appendices attached relating to the criminal prosecution.
10. Mr Osborne considers there is no/little utility in the prosecution as VNPF now accept that all Tropical Plantations Limited employee contributions have been fully paid – the alleged failure of such payments being the subject of the 7 charges. The decision whether to prosecute or not, and whether to continue the prosecution is for the prosecution to make, not Mr Osborne, nor this Court.
11. Mr Osborne perceives there is bias on the part of the presiding Magistrate, due to the Magistrate having previously been a member of VNPF staff who worked in close tandem with the case prosecutor, Mr Nathan. Mr Osborne points to certain steps taken by the presiding Magistrate during his dealing with the case, which he considers strongly supports the possibility of potential bias. He is especially concerned with the length of time taken to date in completing the matter, the last stage of which involved a reserved decision on a preliminary point of law which the Magistrate indicated he would publish in 2 weeks, but which actually was only recently published after a delay of 10 months. Mr Osborne has now filed an application for the presiding Magistrate to recuse himself. The outcome of that application is not yet known.
12. Mr Osborne is also most concerned about the role of the prosecutor. He again points to perceived bias, as Mr Nathan is directly employed by VNPF and is prosecuting their cases under the authority of the Public Prosecutor. Mr Osborne also points to steps taken by Mr Nathan which he considers supports his contention of potential bias. In particular, he alleges that Mr Nathan exerted pressure on two witnesses in the criminal prosecution to commit perjury. The Public Prosecutor is responsible for whom he delegates with his authority to prosecute, not this Court. Mr Osborne can refer the issue of the alleged perjury to the Police himself.

D. Discussion

13. There is no issue that Mr Osborne's concerns are genuinely held.
14. However, this application is not the correct means of addressing those concerns. The concerns are not breaches of Tropical Plantations Limited's constitutional rights, nor Mr Osborne's constitutional rights.
15. Mr Osborne and his company have other legal remedies to address the concerns briefly summarised above. For that reason, as well as the technical inadequacy of his application, the constitutional application is dismissed.
16. This Court has a supervisory role in relation to all constitutional applications. Pursuant to the Constitutional Procedures Rules, Rule 2.7, this Court is required to inquire into the matters raised. The purpose of such inquiry is to see whether there is merit in the application, such that



a response is required from the Republic of Vanuatu prior to the Court being able to determine the issues raised. In this instance, such determination can be made without requiring any response from the Republic.

E. Result

17. The Constitutional application is dismissed.

18. There is no order as to costs.

Dated at Luganville this 20th day of May 2022

BY THE COURT



Justice G.A. Andrée Wiltens

