

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

Civil Case No. 217 of 2005

BETWEEN:

JOHNATHAN NAUPA
Claimant

AND:

**THE MINISTER FOR AGRICULTURE, QUARANTINE,
FORESTRY & FISHERIES**
First Defendant

AND:

THE ACTING DIRECTOR OF FORESTS
Second Defendant

AND:

THE GOVERNMENT OF THE REPUBLIC OF VANUATU
Third Defendant

AND:

BECKENBURG LIM BOON KEE
T/AS SPI SANDALWOOD
Fourth Defendant

Mr Wade Roper for the Claimant
Mr Tom Joe for the First, Second and Third Defendants, and
Mr Godden Avock of Jack Kilu and Associates for the Fourth Defendant

REASONS FOR JUDGMENT

This is an application of the Claimant dated 6 January 2006 seeking for the Court to restrain the Fourth Defendant, Beckenburg Lim Boon Kee trading as SPI Sandalwood Vanuatu, his servants, employees and agents from exporting, processing, purchasing, harvesting any Sandalwood or sandalwood products or any other forest products pursuant to the licence of 29 September 2005 until further order.

There were a number of civil proceedings between the parties about the issue of Sandalwood and related matters before the Supreme Court.

The First, are the proceedings in Civil Case No. 80 of 2005 in which the claimant filed a claim for judicial Review challenging a decision of the First, Second and Third Defendants of 11 February 2005 granting a license to the Fourth Defendant to be called up and quashed on the basis that:

- (i) it was in contravention of a Council of Ministers' decision of 25 June 2003 reserving all involvement in sandalwood operations to Ni-Vanuatu custom landowners;
- (ii) based on irrelevant considerations and failed to take into account those considerations the Minister was required to have regard to under section 4 of the Forestry Act No. 26 of 2001.
- (iii) Was in all the circumstances beyond the powers of the First and/or Second Defendants.

On 1st day of July 2005, by and with the consent of the parties, the court issued a consent orders to the effect that:-

- (1) The Decision of the First, Second and/or through them the Third Defendant to grant a license to SPI Sandalwood Vanuatu ("SPI") of 11 February 2005, be called up and quashed.
- (2) The Licence issued to SPI referred to in Order 1 above, be and is hereby set aside.

The second, are the proceedings in Civil Case No. 08 of 2005. On 3 November 2005, the Claimant filed a claim for Judicial Review against the Minister for Agriculture, Quarantine, Forestry and Fisheries, the Director of Forests and the Government of Vanuatu.

The claim is for orders, among other matters, that:-

- 1. The decision of the First, Second and/or through them the Third Defendant of 18 October 2005, to prohibit the export of sandalwood products in raw form, including and without limitation chips, spent biomass and carving logs ("the First Decision"), be called up and quashed.
- 2. The First, Second and/or through them the Third Defendant's decision of 24 October 2005 to suspend the Claimant's rights to purchase sandalwood under the Claimant's existing licence ("the second Decision") be called up and quashed.
- 3. The Second Defendant to issue export permits to the Claimant in respect of the Application for such permits lodged with the Second Defendant on 26 October 2005 ("the 26 October Applications"), immediately on the granting of these Orders.
- 4. A Declaration that the First Decision:

- (i) was in contravention of the spirit and intendment of the Forestry Act No. 26 of 2001 (“the Act”);
 - (ii) failed to take into account those considerations that the Minister was required to have regard to under section 4 of the Forestry Act No. 26 of 2001 (“the Act”);
 - (iii) was based on irrelevant considerations; and
 - (iv) was in all the circumstances ultra vires the powers of First and/or Second Defendant.
5. A declaration that the Second Decision:
- (i) was not a decision the First, Second or through them the Third Defendants were empowered to make having regard to sections 33, 36 and 37 of the Act;
 - (ii) was not a decision that the First, Second and/or Third Defendants could in any event make without first issuing a Notice of non-compliance to the Claimant under section 37(1) of the Act;
 - (iii) in the premises was improperly based upon irrelevant considerations; and
 - (iv) was in all the circumstances ultra vires the powers of the First and/or Second Defendant under the Act.
6. A declaration that the only matters constituting relevant considerations for the purposes of any decision by the First, Second and/or through them the Third Defendant to grant or withhold an export permit of the type applied for by the Claimant are:-
- (a) whether the material to be exported was logs or flitches and as such prohibited under section 61 of the Act; and
 - (b) whether the application was made in accordance with Form 23 of Schedule 1 of the Forestry Regulation Order No. 46 of 2003 (“the Regulation”).
7. Damages and interest thereon against the First, Second and/or Third Defendants”).
8. The First, Second and/or Third Defendants and each of them be jointly and severally liable to pay the Claimant’s costs of and incidental to these proceedings on an indemnity basis or on such other basis as this Honourable Court shall consider appropriate;

The following consent orders were issued by the Court with and by the consent of all parties on

22nd November 2005:-

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

Civil Case No. 08 of 2005

BETWEEN:

JOHNATHAN NAUPA
Claimant

AND:

THE MINISTER FOR AGRICULTURE, QUARANTINE, FORESTRY & FISHERIES

First Defendant

AND:

THE ACTING DIRECTOR OF FORESTS
Second Defendant

AND:

THE GOVERNMENT OF THE REPUBLIC OF VANUATU
Third Defendant

AND:

BECKENBURG LIM BOON KEE
T/AS SPI SANDALWOOD
Fourth Defendant

CONSENT ORDERS

The Court orders, by CONSENT:-

1. *The decision of the First, Second and/or through them the third Defendant of 18 October 2005, to prohibit the export of sandalwood products in raw form, including and without limitation chips, spent biomass and carving logs (“the First Decision”), be called up and quashed.*
2. *The decision of the First, Second and/or through them the third Defendant of 24 October 2005 to suspend the Claimant’s rights to purchases sandalwood under the Claimant’s existing licence (“the Second Decision”) be called up and*

quashed.

3. *The Second Defendant to issue export permits to the Claimant in respect of the Application for such permits lodged with the Second Defendant on 26 October 2005 (“the 26 October Application”), immediately the granting of these orders.*
4. *A Declaration that the First Decision:*
 - (i) *was in contravention of the spirit and intendment of the Forestry Act No. 26 of 2001 (“the Act”);*
 - (ii) *failed to take into account these considerations that the Ministers was required to have required to under section 4 of the Forestry Act No. 26 of 2001 (“the Act”);*
 - (iii) *was based on irrelevant considerations; and*
 - (iv) *was in all the circumstances ultra vires the powers of First and/or Second Defendant.*
5. *A declaration that the Second Decision:*
 - (i) *was not a decision the First, Second or through them the Third Defendants were empowered to make having regard to sections 33, 36 and 37 of the Act;*
 - (ii) *was not a decision that the First, Second and/or Third Defendants could in any event make without first issuing a Notice of Non-compliance to Claimant under section 37(1) of the Act;*
 - (iii) *in the premises was improperly based upon irrelevant considerations; and*
 - (iv) *was in all the circumstances ultra vires the powers of the First and/or Second Defendant under the Act.*
6. *A declaration that the only matters constituting relevant considerations for the purposes of any decision by the First, Second and/or through them the Third Defendant to grant or withhold an export permit of the type applied for by the Claimant are:-*
 - (a) *whether the material to be exported was logs or flitches and as such prohibited under section 61 of the Act; and*
 - (b) *whether the application was made in accordance with Form 23 of Schedule 1 of the Forestry Regulation Order No. 46 of 2003 (“the Regulations”).*

7. *A declaration hat the Claimant has not over harvested or purchases Sandalwood Heartwood in excess of the Claimant's annual allowable quota, at any time in the five year period immediately preceding the making of these orders.*
8. *The First, Second and Third Defendants be jointly and severally liable to pay the Claimant's costs of these proceedings at the standard rate, as taxed or agreed.*

DATED at Port Vila this 22nd day of November, 2005.

BY THE COURT

JUDGE

***Solicitor for the First,
Second and Third Respondents
Mr Tom Joe Botleng***

***Solicitor for the Claimant
Mr Wade Roper***

The Third, are proceedings in Civil Case No. 217 of 2005. The Applicant, through his counsel, applies for the following orders on 24th November 2005:-

1. The decision of the First, Second and/or through them the Third Defendant to grant a licence to the Fourth Defendant ("the purported, Licence") of 29 September 2005 ("the First Decision"), be called up and quashed.
2. Further and/or in the alternative that the First, Second and/or through them the Third Defendant's decision, implicit in the grant of the Purported Licence, to thereby increase the quota of harvested Sandalwood from 80 tonnes to 120 tonnes per annum ("the Second Decision"), be called up and quashed.
3. A declaration that the First Decision was:
 - (i) in contravention of a Council of Ministers' decision of 25 June 2003 reserving all involvement in Sandalwood operations to Ni-Vanuatu Custom Landowners;
 - (ii) based on irrelevant considerations and failed to take into account those considerations the Minister was required to have regard to under section 4 of the Forestry Act No. 26 of 2001 ("the Act"); and
4. A declaration that the only matters constituting relevant considerations for the purposes of any decision by the First, Second and/or through them the Third Defendant to grant or withhold a licensed of the type purportedly granted to SPI or any person on its behalf are:-
 - (a) whether doing so would contravene the Council of Ministers' decision of 25 June 2003; and

- (b) the matters set out paragraph 4 of the aforesaid Act.
5. A declaration that the Second Decision:
- (i) was not a decision aimed at sustainably managing, developing or protecting the Sandalwood resource so as to achieve greater social, environmental and economic benefits for current and future generations;
 - (ii) was not a decision otherwise based upon the relevant considerations to which the First and Second Defendants were to have regard under section 4 of the Act;
 - (iii) in the premises was improperly based upon irrelevant consideration and
 - (iv) was in all the circumstances ultra vires the powers of the First and/or Second Defendant under the Act.
6. An Order that the Fourth Defendant be and is hereby restrained from acting on the Purported Licence and from making harvests, purchasing, processing or exporting any sandalwood products, howsoever, until further order.
7. The First, Second and/or Third Defendants and each of them be jointly and severally liable to pay the Claimant's costs of and incidental to these proceedings on an indemnity basis or on such other basis as the Court shall consider appropriate; and

On 23rd December 2005, the Court issued the following orders with and by the consent the Claimant, the First, Second and Third Defendants:-

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

Civil Case No. 217 of 2005

BETWEEN:

JOHNATHAN NAUPA
Claimant

AND:

THE MINISTER FOR AGRICULTURE, QUARANTINE, FORESTRY & FISHERIES
First Defendant

AND:

THE ACTING DIRECTOR OF FORESTS

Second Defendant

AND:

THE GOVERNMENT OF THE REPUBLIC OF VANUATU

Third Defendant

AND:

BECKENBURG LIM BOON KEE T/AS SPI SANDALWOOD

Fourth Defendant

CONSENT ORDERS

The Court orders, by CONSENT:-

1. *The decision of the First, Second and/or through them the Third Defendant to grant a licence to the Fourth Defendant (“the Purported Licence”) of 29 September 2005 (“the First Decision”), be called up and quashed.*
2. *Further and/or in the alternative that the First, Second and/or through them Third Defendant’s decision, implicit in the grant of the Purported Licence, to thereby increase the quota of harvested Sandalwood from 80 tonnes to 120 tones per annum (“the Second Decision”), be called up and quashed.*
3. *A declaration that the First Decision was:*
 - (i) *in contravention of a Council of Ministers decision of 25 June 2003 reserving all involvement in Sandalwood operations to Ni-Vanuatu Custom Landowners;*
 - (ii) *based on irrelevant considerations and failed to take into account those considerations the Minister was required to have regard to under section 4 of the Forestry Act No. 26 of 2001 (“the Act”); and*
4. *A Declaration that the only matters constituting relevant considerations for the purposes of any decision by the First, Second and/or through them the third Defendant to grant or withhold a license of the type purportedly granted to SPI or any person on its behalf are:-*
 - (a) *whether doing so would contravene the Council of Ministers’ decision of 25 June 2003; and*
 - (b) *the matters set out in paragraph 4 of the aforesaid Act.*
5. *A declaration that the Second Decision:*

- (i) *was not a decision aimed at sustainably managing, developing or protecting the Sandalwood resources so as to achieve greater social, environmental and economic benefits for current and future generations;*
 - (ii) *was not a decision otherwise based upon the relevant considerations to which the First and Second Defendants were to have regard under section 4 of the Act;*
 - (iii) *in the premises was improperly based upon irrelevant considerations; and*
 - (iv) *was in all the circumstances ultra vires the powers of the First and/or Second Defendant under the Act.*
6. *The First, Second and/or through them the Third Defendants and each of them be jointly and severally liable to pay the Claimant's costs of and incidental to these proceedings on an indemnity basis as the Court shall consider appropriate; and*
7. *Such further or other orders as this Honourable Court may consider appropriate.*

DATED at Port Vila this 22nd day of December, 2005.

BY THE COURT

JUDGE

***Solicitor for the First,
Second and Third Respondents
Mr Tom Joe Botleng***

***Solicitor for the Claimant
Mr Wade Roper***

Order 6 seeking to restrain the Fourth Defendant, his employees, servants and agents from doing the things as specified in the claim was not issued by the Court on 22 December 2005. An Application by the Claimant against the Fourth Defendants seeking orders to the like effect was adjourned to 14 March 2006.

The History of the proceedings show clearly that the First, Second and/or through them the Third Defendants made decisions in each of the proceedings referred to above which were:-

- (i) *in contravention of a Council of Ministers' decision of 24th June 2003 reserving all involvement in Sandalwood operations to Ni-Vanuatu custom landowners; and*
- (ii) *based on irrelevant considerations and failed to take into account those considerations the Minister was required to have regard to under Section 4 of the Forestry Act No. 26 of 2001 ("the Act"); and*
- (iii) *in all the circumstances beyond the powers of the First and/or Second Defendant.*

In the last proceedings of CC 217 of 2005, an application similar to the one presented on 6 January 2006 was adjourned to 14 March 2006 for hearing. I have enquired to counsel for the Claimant as to the similarities of the two (2) applications – Mr Wade Roper confirmed the similarities of the applications and presses the Court to hear the present application because there is a potential risk that if the Fourth Defendant, Beckenburg Lim Boo Kee trading as SPI Sandalwood Vanuatu, his servants, employees and agents are not restrained, from exporting, processing, purchasing, harvesting or otherwise acquiring howsoever any Sandalwood or Sandalwood products or any other forestry products pursuant to the licence of 29 September 2005 or otherwise, the Fourth Defendant will operate illegally as he has no valid licence and will carry on the acquisition of Sandalwood products to the detriment of the industry and the resource generally. The Claimant filed a sworn statement in support of the Application. I have heard the Applications and submissions of counsel, I have perused the sworn statement and the various consent orders issued by the Courts with and by the Consent of the parties including the First, Second and Third Defendants through their respective counsel spelling out that any licence to the Fourth Defendant, its servants, employees or agents, is in contravention of the decision of the Council of Ministers of 23 June 2003 and section 4 of the Forestry Act No.26 of 2001 and in all the circumstances beyond the powers of the First and/or the Second Defendants. Furthermore on balance of convenience, I am satisfied that the Fourth defendant, his employees, servants and agents must be restrained for the following reasons:-

1. The decision of the First, Second and/or through them the Third Defendant to grant a licence to the Fourth Defendant (“the purported licence”) of 29 September 2005 (“the First Decision”) has been called up and quashed.
2. The First, Second and/or through them the Third Defendant’s decision, implicit to the grant of the Purported licence, to thereby increase the quota of harvested Sandalwood from 80 tonnes to 120 tonnes per annum (“the second decision”) has been called up and quashed.

For the foregoing reasons, the Court makes the Following ORDERS:

1. The Fourth Defendant, Beckenburg Lim Boon Kee trading as SPI Sandalwood Vanuatu, his servants, employees and agents be and are hereby restrained from exporting, processing, purchasing, harvesting or otherwise acquiring howsoever any sandalwood or sandalwood products or any other forestry products pursuant to the license of 29 September 2005.
2. The Fourth Defendant pays the Claimant’s costs of and incidental to this Application of Vatu 20,000 by 31 January 2006.
3. The applications by the First, Second, Third and Fourth Defendants to adjourn the hearing of the claimant’s application are refused as there is no basis for further adjournment and there is a potential risk to the detriment of the industry of sandalwood and resource generally if the Fourth Defendant is allowed to acquire the Sandalwood products illegally.
4. The hearing of 14 March 2006 is vacated.

DATED at PORT VILA this 6th day of January 2006.

BY THE COURT

VINCENT LUNABEK
Chief Justice