



Supreme Court of Vanuatu

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Ellis v Attorney-General [1985] VUSC 9; [1980-1994] Van LR 190 (12 December 1985)

[1980-1994] Van LR 190

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

CIVIL JURISDICTION

Civil Case No. 22 of 1983

BETWEEN:

GEORGE ARTHUR ELLIS
of Victoria, Australia
First Plaintiff

GEOFFREY JOHN McINNES
of Victoria, Australia
Second Plaintiff

PHILIP STEPHEN McINNES
of Victoria, Australia
Third Plaintiff

STEVEN HAROLD DOBIN
of Victoria, Australia
Fourth Plaintiff

BERNARD CHARLES ALFORD
of Victoria, Australia
Fifth Plaintiff

GORDON GILL
of Victoria, Australia
Sixth Plaintiff

AND:

THE ATTORNEY GENERAL
representing the Government of Vanuatu
Defendant

Coram: Chief Justice Cooke

Counsel: Mr W. McKeague for plaintiff
Mr Kattan for defendant

JUDGMENT

**[CONTRACT - ← FISHERIES → - Sovereign immunity -
Government]**



On the 16th February 1983, a Writ of Summons was filed in the Supreme Court by the Plaintiffs alleging that the Government of Vanuatu was in breach of contract with them.

On the 23rd February 1983, the Attorney General, on behalf of the Government, filed a Memorandum of Appearance.

On the 10th March 1983, a Summons was filed in the Supreme Court by Mr Silas Hakwa, now the Attorney General, for an order that the Plaintiffs' Statement of Claim be struck out under the Rules of the Supreme Court, and under the inherent jurisdiction of the Court, on the grounds that it discloses no reasonable cause of action against the Defendant, and that the Plaintiffs' action against the Defendant be dismissed.

Mr Hakwa submitted that the Statement of Claim was vague and it was difficult to understand what was the basis of the claim. In a judgment given on the 28th March 1983, I was of the opinion that the alleged contract could be more clearly stated and the consideration set out, thus making it clear to the Defendant the claim he had to meet.

I dismissed the application of Mr Hakwa but ordered that the Plaintiffs amend their Statement of Claim and set out more clearly what the alleged contract was and the consideration therefor.

On the 26th April 1983, an ex parte Motion was filed in the Supreme Court by the Plaintiffs applying that James Crossland, the then Director of  Fisheries  of Vanuatu, be joined as a Second Defendant in this action and that the Writ of Summons be amended accordingly. This application was heard by me in chambers on the same date and I allowed the application to join Mr Crossland as a Co-Defendant.

On the 3rd May 1983, a Writ of Summons with Mr James Crossland as Second Defendant was filed in the Supreme Court.

On the 18th May 1983, an appearance for James Crossland was entered.

On the 7th June 1983, Mr Crossland wrote to the Court stating that he would not be filing a Defence because of the immunity conferred on him by the Diplomatic Privileges and Immunities Order No. 24 of 1983, which appeared in the Gazette No. 18 dated 6th June 1983. In view of such, he asked the Court to strike out his name as a Defendant in this action.

On the 8th June 1983, Mr Hakwa filed a Defence on behalf of the Government of Vanuatu.

On the 19th January 1984, Mr McKeague who was now briefed on behalf of the Plaintiffs, applied to the Court for an order that interlocutory judgment be entered against the Second Defendant in that he has failed to enter a Defence to the Statement of Claim.

On the 13th February 1984, this application was heard by me. Mr Silas Hakwa (Amicus Curiae), for James Crossland, stated that the said James Crossland claimed immunity, being assigned to the Vanuatu Government by the Food and Agricultural Organisation of the United Nations (F.A.O) and by virtue of the [Diplomatic Privileges and Immunities Act](#) No. 9 of 1982 which came into force on the 24th May 1982. After hearing Mr Hakwa and Mr McKeague, I dismissed the application as I considered Mr Crossland was protected by virtue of his assignment and under the Diplomatic Privileges and Immunities Act No. 9 of 1982. Accordingly, I struck out Mr Crossland from the case.

On the 9th August 1985, the matter came before me in chambers by way of a Summons for Directions. Mr Kattan, Solicitor General, with Mr Julia Ala, Legal Officer, appeared on behalf of the Attorney General.

Mr Kattan submitted there were certain matters which should be dealt with by way of preliminary objection. That the evidence of James Crossland should be accepted by a sworn Affidavit, as he now resides in New Zealand. That no amended statement of Claim had ever been filed as ordered in my judgment of the 28th March 1983. Mr McKeague stated he wanted Mr Crossland for cross examination. In view of the request for the presence of Mr Crossland, Mr Kattan asked for the increase of the bond to cover security for costs to be increased from 100,000VT to 200,000VT. I allowed this application and set the matter down for further hearing, regarding issues, to the 17th September 1985.

On the 17th September 1985, Mr Kattan with Mr Ala appeared for the Attorney General and Mr Gee, an associate of Mr McKeague, appeared for him.

An undertaking was given by Mr Kattan that the draft Affidavit of Mr Crossland would be sent to him in New Zealand and when it was returned, it would be passed to the Plaintiffs to ascertain whether they would require Mr Crossland for cross examination. The Statement of Claim was filed on the 16th September 1985 and the amended Defence was filed on the 17th September 1985.

Mr Kattan then submitted that subsequent to draft issues being agreed and following on amended pleadings, there were preliminary issues on law which he submitted should be dealt with before the hearing. That if the preliminary objection is accepted by the Court, it could dispose of the action. This may save costs and does not require wit