

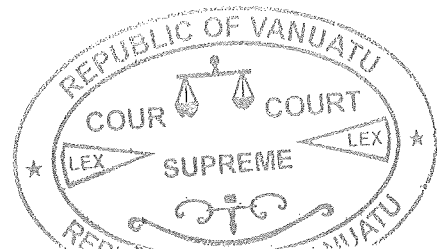
BETWEEN: Clarence Lavinya Ngwele, Terrence John Kerr, Peter John
Fogarty and Isleno Leasing Company Limited
Claimants

AND: Senior Magistrate Peter Moses
Defendant

Date: 25 July 2019
By: Justice G.A. Andrée Wiltens – in Chambers
Counsel: Mr R. Sugden the Claimants (absent)
Attorney General for Respondent (absent)

JUDGMENT

1. A number of consent orders were made in respect of this matter on 6 June 2019. At the time I was persuaded to allow Mr Sugden liberty to apply further in the event of further issues arising.
2. Instead, Mr Sugden has now filed a further civil application (on 3 July 2019, but first given to me today, 25 July 2019!).
3. I have heard no argument on this application, as I consider it to be misplaced.
4. I cannot conceive on what basis Mr Sugden might consider that the Supreme Court has jurisdiction to impose certain orders/directions on the Senior Magistrate when he next considers the prosecution case involving these applicants, which I understand to be on 2 August 2019.
5. I regard the application as premature. If the Senior Magistrate does not follow the law, or follows it in a manner to which Mr Sugden takes objection, then Mr Sugden is at liberty to appeal. This being a criminal case, that appears to me to be the appropriate course for Mr Sugden to follow.



6. Mr Sugden also seeks that an order issue that, unless the prosecution particularises the criminal charges against the appellants, as he has apparently requested, the charges be dismissed. This Court has no jurisdiction in respect of the charges as they are currently formulated – indeed I understand they are only provisional charges at this stage of the criminal proceedings. Mr Sugden needs to make this application to the Senior Magistrate who has carriage of the case.
7. Lastly, Mr Sugden seeks a declaration that the Chief Justice's Practice Direction No 1.1 has a certain limitation, namely that it does not entitle the Public Prosecutor to file criminal charges merely for the purpose of obtaining orders relating to the inspection/copying of bank records. This application conflates the criminal and civil jurisdictions. The better course for Mr Sugden is to argue his interpretation before the Senior Magistrate, or if the case is transferred to the Supreme Court before a Supreme Court Justice. If he does not succeed, he then has the further avenue open to him of an appeal. This application in the civil arena is misconceived.
8. Mr Sugden's application is dismissed.
9. There will no order for costs.

**Dated at Port Vila this 25th day of July 2019
BY THE COURT**

G.A. Andree Wiltens
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Justice G.A. Andree Wiltens

