

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

Civil
Case No. 23/2985 SC/CIVL

BETWEEN: Donald Restuettne
Applicant

AND: Vanuatu Police Force
First Respondent

AND: Public Prosecutor
Second Respondent

AND: Florence Jacob, Niman Seru
Third Respondents

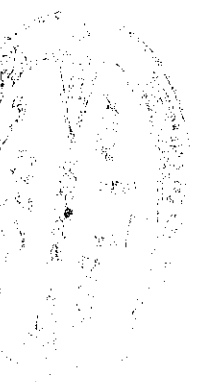
AND: Alistair McGillivray
Fourth Respondent

Date of Hearing of the **27th day of November, 2023**
Application:
Before: **Justice E.P. Goldsbrough**

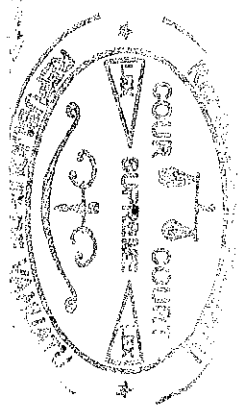
In Attendance: **Boe, J for the Applicant**
First & Second Respondents represent by Huri, L

DECISION

1. This Constitutional Petition was filed on behalf of the Applicant, Donald Restuettne, first by a person who lacks registration as a legal practitioner and thereafter in exactly the same form but signed by a registered legal practitioner. It came before this Court today for a 1st hearing under the Constitutional Applications Rule 2003 (the Rules).
2. Those Rules provide a filter, allowing petitions that have no prospect of success to be struck out at a Conference to be held under Rule 2.8. That will be held after the Petition



- has been served on the Attorney General on behalf of the Republic, as relief is only available against the State under the terms of the Constitution.
3. It was, therefore, wrong, of the Applicant to name any other respondent party rather than or in addition to the Republic of Vanuatu – see Rule 2.4.
 4. There is no provision of the Constitution set out as having been breached. There is reference to Clause 6 and Clause 53 and a reference to Clause 5 (2) (h) which provides that one person who has been . . . tried and convicted or acquitted, shall be tried again for the same offence . . . but there has been no previous criminal trial or conviction.
 5. The pleading suggest that a person who has been the subject of a civil claim which has been completed in the Supreme Court and Court of Appeal exercising its civil jurisdiction cannot subsequently be tried in the Supreme Court or Magistrates' Court for an offence or offences arising from the same factual circumstances. That is not what is provided by Clause 5 of the Constitution. There cannot be a second criminal trial following a conviction acquittal or pardon for a criminal offence. That does not preclude a criminal trial after a civil case has been completed. There could be a bar to bringing civil proceedings in a criminal matter if those proceedings have already been instituted in a civil court – see section 215 of the Criminal Procedure Code – but that is not the case here. The civil proceedings were not brought within a criminal trial, they were brought as separate civil proceedings when no criminal proceedings were on foot.
 6. Those civil proceedings in the Supreme Court concluded with an order being made against the Applicant for compensation to be paid by him to the 4th Respondent. In the Court of Appeal, that order was set aside. It was not set aside after a contested appeal but as part of a wider order filed by consent. Thus, the only finding on the matter was, in fact, adverse to the Applicant.
 7. This application for Constitutional relief is entirely misconceived. Counsel for the Applicant agreed that he had not read the Petition prior to putting his name on it. He agreed that the Petition does not disclose any cause of action in the circumstances and does not resist an adverse order for costs.



8. In the event the Petition is struck out and an order for costs of the Republic in the sum of VUV 10,000 is made, such costs to be paid by the Applicant to the Republic.

DATED at Port Vila this 27th day of November, 2023

BY THE COURT

E.P. Goldsbrough
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E.P. Goldsbrough

Judge of the Supreme Court

