

IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/63 CoA/CIVA

[2025] VUCA 7

BETWEEN: Teaching Service Commission
First Applicant

AND: Republic of Vanuatu
Second Applicant

AND: Vanuatu Teachers Union
First Respondent

AND: Norah Naviti Wells and the persons named in the
Schedule
Second Respondents

Before: Hon. Chief Justice V. Lunabek
Hon. Justice M. O'Regan
Hon. Justice R. White
Hon. Justice O. Saksak
Hon. Justice D. Aru
Hon. Justice V.M. Trief
Hon. Justice M. MacKenzie

In Attendance: Mr L.Huri for the Applicants
Mr A.Bal for the Respondents

Date of Hearing: 5th February 2025
Date of Decision: 14th February 2025

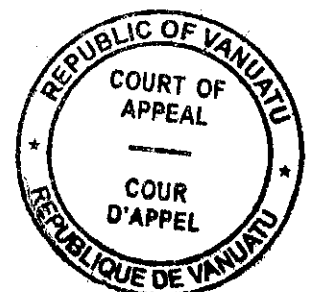
JUDGMENT

A. Introduction

1. This was an appeal as filed but was apparently intended to be an application for leave to appeal against a decision of the Supreme Court dated 16 December 2024 declining the applicants leave to appeal interlocutory orders.

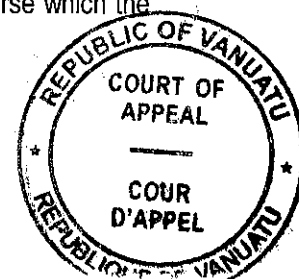
B. Background

2. From 7-17 June 2024 and then from 10 August 2024, the first respondent Vanuatu Teachers Union ('VTU') and the second respondents participated in industrial action arising from a



grievance as to unpaid salary and allowances. The second respondents are teachers, most of whom, if not all, are members of the VTU.

3. Advice was sought from the Attorney General about the lawfulness of the industrial action which commenced on 10 August 2024. Acting upon the Attorney General's advice, the first applicant Teaching Service Commission ('TSC') began disciplinary proceedings against a number of the striking teachers, resulting in the suspensions that are the subject of the respondents' claim for judicial review, initially filed on 3 September 2024.
4. On 4 September 2024, the VTU and a number of suspended teachers filed an Urgent application seeking a stay of the suspension of the teachers. This was opposed. By decision dated 10 September 2024, the Supreme Court refused the Urgent application, stating that on the material provided to the Court, the action was premature.
5. On 24 September 2024, the judicial review claim was amended. The relief sought included a declaration that the industrial action in June and August 2024 was lawful.
6. On 16 October 2024, the claimants filed another Urgent application again seeking a stay of the suspension of the second claimant teachers. This application was heard by the same Judge and granted on 28 November 2024. By the interlocutory orders dated 28 November 2024, the Court stayed the suspension and/or termination of the named-second claimants pending the determination of the judicial review claim. The primary Judge published his reasons in a decision dated 16 December 2024.
7. On 11 December 2024, the claimants filed an Urgent application to add all suspended teachers as second claimants. On 16 December 2024, the claimants filed an application for leave to further amend the claim to include those teachers. This was not opposed, and resulted in interlocutory orders dated 17 December 2024, which named the additional suspended teachers as second claimants (over 500 of them) and stayed the suspension and/or termination of the named-second claimants pending the determination of the judicial review claim.
8. On 12 December 2024, the defendants filed an application for leave to appeal the interlocutory orders dated 28 November 2024. The application was supported by sworn statements from the acting chairman of the TSC and a counsel from the Attorney General's Office, Mr Aron. Counsel for the claimants filed a response to the application.
9. By decision dated 16 December 2024, the primary Judge refused the application for leave to appeal the interlocutory orders of 28 November 2024: *Vanuatu Teachers Union v Teaching Service Commission* [2024] VUSC 391.
10. The primary Judge expressly stated in the decision dated 16 December 2024 at [10] that under the Court of Appeal Rules, the TSC and the State could renew their application for leave to appeal to the Court of Appeal. Inexplicably, they instead filed an appeal against the refusal to grant leave to appeal.
11. This Court held in *Stage Four Ltd (as Trustee for the Montreal Trust) v 100% Pur Fun Ltd* [2024] VUCA 3 at [11] that an application for leave to appeal against a refusal of leave to appeal an interlocutory order is both unnecessary and inappropriate. Further, that the course which the



applicants should have followed was to renew the application to this Court. We have treated the appeal as filed as an application renewed to this Court. For the reasons which follow, we consider that leave to appeal should be refused.

C. Application and Decision in the Supreme Court

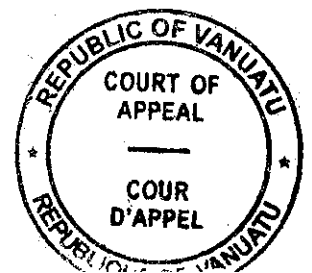
12. The grounds for the applicants' application for leave to appeal the interlocutory orders dated 28 November 2024 included that the respondents' Urgent application filed on 16 October 2024 was an abuse of process when their earlier Urgent application filed on 4 September 2024, seeking the same relief, had been refused (by decision dated 10 September 2024). It was submitted that the defendants had 'substantial' grounds of appeal and that they would be prejudiced if not heard on appeal. Those grounds of appeal included that the decision dated 10 September 2024 had not been appealed or set aside, and that the primary Judge erred as the effect of the interlocutory orders was to render the disciplinary process provided by s. 57 of the *Teaching Service Act* No. 38 of 2013 (the 'Act') nugatory.
13. In refusing leave to appeal, the primary Judge acknowledged that in the decision dated 10 September 2024 which refused an earlier application for interlocutory orders, the Court had determined that the application was premature. However, since that date, a lot had changed including that it was now clear that the disciplinary proceedings against the second claimant teachers were solely based on their participation in the strike. He stated that in his view, renewing an application based on a change in circumstances was not an abuse of process and it could not be said to be judge-shopping given the same judge heard the further application. He considered that the decision to proceed with the hearing over counsel's objection did not amount to a denial of natural justice. Finally, that given that the TSC had the option not to suspend pending the disciplinary proceedings, it cannot be correct to submit that the effect of the interim relief is to render the disciplinary proceedings themselves nugatory.

D. Grounds of the Application

14. The grounds of the application advanced included that the primary Judge erred in; (i) refusing leave to appeal the interlocutory orders because there had been no appeal or application to set aside the 6 September 2024 decision; (ii) in stating that, "the disciplinary proceedings are not interdicted, merely the suspension"; and (iii) failing to consider that a suspension is part of the disciplinary process provided for in the Act.

E. Consideration

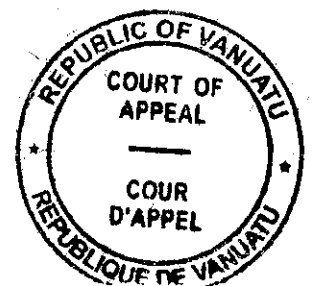
15. As to the first ground of the application, the TSC and State submitted that the primary Judge erred in refusing leave to appeal the interlocutory orders as they have a reasonable prospect of appeal as the later application seeking stay of the teachers' suspensions was erroneously granted when the 6 September 2024 decision declining the earlier application seeking stay of the teachers' suspensions had not been appealed or set aside.
16. However, the two applications seeking stay of the teachers' suspensions were filed in different circumstances. In the earlier application, the judicial review claim challenged only the teachers' suspensions and the primary Judge held in deciding that application that the action seeking stay of the suspensions was premature. However, when the later application was made, the



judicial review claim had been amended so that not only were the suspensions of teachers challenged but also a declaration was sought that the industrial action in June and August 2024 was lawful. In addition, the only ground for the teachers' suspensions was their participation in the industrial action.

17. Therefore, despite the issue before the Court on the judicial review claim being whether or not the industrial action was lawful, teachers were being suspended under disciplinary proceedings for which the sole ground was their participation in that industrial action. The suspensions had been made following the Attorney General's advice that the industrial action was unlawful. The correctness or otherwise of that opinion of the Attorney General is to be determined in the judicial review proceedings. It is apparent that in those circumstances that the interlocutory orders staying the teachers' suspensions pending the outcome of the judicial review claim were designed to maintain the *status quo* between the parties, and to ensure that the final orders when made would not be undermined, or at worst rendered nugatory, by the acts of one or more parties before judgment is given.
18. This Court held as follows in *Hudson & Co v Greater Pacific Computers Ltd* [1997] VUCA 2 at p. 3:

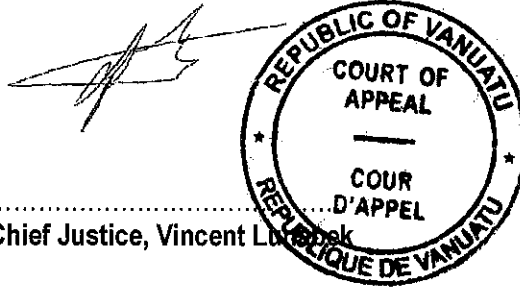
Where an Applicant seeks leave to appeal against an interlocutory order which relates to a matter of practice or procedure, the application will not be granted lightly. Leave will only be granted where it is clear that the substantive rights of a party are likely to have been prejudiced by the order in a way that is not likely to be remedied in the subsequent trial process.
19. The TSC and the State have not pointed to any prejudice that they would suffer as a result of the orders staying the teachers' suspensions. There was a resounding lack of evidence as to the prejudice suffered.
20. For the foregoing reasons, there was no error by the primary Judge in determining the later application seeking stay of the teachers' suspensions when the 6 September 2024 decision as to the earlier application had not been appealed or set aside. It follows that the TSC and State have no prospect of appeal on this ground. The first ground of the application is misconceived and lacks merit.
21. As to the other two grounds of the application, the TSC and State submitted that the TSC's power to suspend teachers is provided in s. 57 of the Act hence the primary Judge erred in ordering the stay of the teachers' suspensions and in refusing leave to appeal those interlocutory orders. Mr Huri submitted that the TSC's power to suspend was a 'prerogative' power. However, the TSC's power to suspend is provided by legislation. It is not in law a prerogative power and it is inappropriate to classify it in such manner.
22. The TSC has the power to suspend teachers pursuant to s. 57 of the Act, as part of the disciplinary process provided for in the Act. However, in the circumstances where the sole ground for the teachers' suspensions is their participation in industrial action, and the Court is seized with the issue of whether or not that industrial action is lawful, no error has been demonstrated by the primary Judge in staying those suspensions.



F. Result and Decision

23. The application for leave to appeal the interlocutory orders dated 28 November 2024 (which orders were varied on 17 December 2024) is declined.
24. The applicants are to pay the first and second respondents' costs of VT75,000 within 28 days.

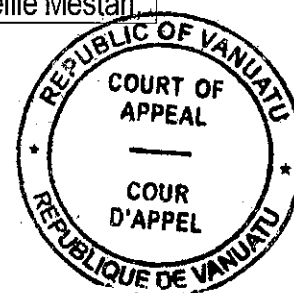
DATED this 14th day of February 2025
BY THE COURT



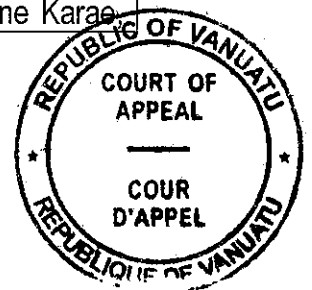
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Hon. Chief Justice, Vincent Lutepak

SCHEDULE

Norah Naviti Wells, Leiwia Caroline James Pakoa, Fred Ottiman, Serah Henry, Walter Bong, Jean Marie Virelala, Timothy Mahit, Daniel Steel, John Noel Alick, Rhonda Natapei, Kalo Tasso, Fitu Natouivi, Bryent Forau, Sigal Iaruel, Paul Sam, Jessynta Saribo Buleman, Honore Enock, John Graham Frezher, George Kalman, Molley Alice Avok, Jack Morris Reuben, Alice Tom, Arianne Cyriaque, Eva Melteres, Felix Nirua, Gina Bouleuru, Jean Gabriel Yamak, Jeremiah Joseph Hosea, Lisa Paniel, Marie France Batick Tiomai, Mnnietoto Sileye, Seraphine Meranie, Trinita Jelpao, Annie Patrick, Korah Robson Vakoumali, Alick Thomas Willie, Geraldine Niptir, Sabrina Lisa Tevanu, Anniely Kaitip, Livan Jack Phillip, Winnie Marie Joe, Godwin Ryain Joe, Claudie Bule, Dick Taigo, Francois Sakama, George Yalimyao, Sylvie Lamoureux, Urbain Dametesso, Calros Luan, Catherine Leinasei Kalo, Celine Kombe, Christelle Tavi, Christiane Armstrong, Delphine Gihiala, Eline Malili, Eugenie Titi, Fabrice Tari, George Lingtamat, Grelinda Qwevira Garae, Lilian Kolomule Majilole, Marie Lea Iapatu, Sylvie Gihiala, Evelyn Yaviong, Endis Claudine Kalsrap, Anne Josephine Amos, Olivia Malsangwul, Rayline Tari, Sussan Naris Kassou, Veronica Temar, Robsen Abel, Julie Natou, Veriri Touwata Andrew, Janette Vevira Korah, Dominiqu Niali, Kalotap Marae, Madlen Morsen, Angela Lessica Tokio, Anika Nari, Calo Regina, Erima Borau Moses, Florence Olul, Fred Amos Bosbos Alvea, Jessica Kalkandi, Louisa Yelliah, Melten Jack Nasse, Nettie Masseng Mahit, Philip Nasse, Shane Francois Viranamangu, Daniel Lalau Tavoia, Alex Suvoli Jacques, Jayline Mary Roban Gesa Morris, Netty Goh Kalworai, Roserlina Kuta Betsesai, Ernest Alexandre Rai, Macklen Tubena Hakebihu, Angelina Nahan, Berthier Bongnebou, Ciriaque Tabiguru, Delphino Baticklamap, Freddy Clarence Anis, Gedeon Sawan, Harrison Solomon Kaloran, Jean Willie Manwo, Johnny Tevanu, Julien Floyted Signo, Luan Christelle, Mhedy Lessy, Pita Kuse, Thierry Worwor, Yosina Bororoa, Yves Sizai, Boe Barry Patrick, Lyn Marou, Robert George, Sheena Maria Mala, Belinda Wogis Kaloris, Betty Taripu, Evelyne Karl Joel, Ireene Gaviga, Juliette Naviti, Klinder Toi, Tony Raymond, Paul Joe Stephen, Herve Nako, Joseph Stevens Bongnembu, Kensy Bilnet, Lydie Maltapie, Lyn Siba Samana, Payato Jimmy, Rose Erevoke, Tony Bule Bebe, Wema Matavussi, Johnny Kalomor, Alick Kaspas, Alick Jimmy, Tasso Mowa, John Jav Kenneth, Clotilde Hivird, Ella Peter Dajoe, George Reuben Songi, Joeme Peter, John Roy Umou, Lise Tamath, Marie Eugenie Bebe, Marie Laure Vira, Rosine Sarafina Ariki, Abdon Terong, Doroiline Maleb, Ernestine Lingsarey, Lilone Rosalee Peter, Marius Tevanu, Ruth Lamun, Urbain Damassing, Ernest Mera, Carmina Hakebihu Niowenmal, Esther Benamie, Graem Carl Tarivuge, Magret Rose Aru Avock, Naileen Tavi, Naime Sawan, Regina Bumseng, Rosina Tubi, Jenny Malessy, Armelle Leymang, Carine Sese, Marie Patrick Massi Ragui, Masden Garaebiti, Albertine Lingban, Claudine Belbong, Diana Maleb, Elisabeth Kuras, Jean Yves Valivu, Letitia Manwo Kaloran, Marcelina Bathelemy, Marily Metmetsan, Marylene Therese Raupepe, Maryse Signo, Mireille Mestan.



Myriam Lop, Pascaline Axi, Rene Tevanu, Rory Agnes, Vivian Rouvoune, Eugenie Nafiau Kuau, Alice Sanderson Tari, Apelle William, Astride Jacques, Bethel Banza Wells, Charley Tari, Dyren Arukelana, Elton Aru, Frisco Cebastien Lini, Helen Morea Garleo, Jenny Wilson, Loise Bule Mabon Melve, Paute Nimissa, Robsen Mana, Shirofanua Floyed, Stuart Mario Williau, Yonel Nimbwen Yonel, Paul Poita, Samuel Sandy, Keith Silona, Donald Tom, Leiman Willie, Flince Benedick Mata, Morrison Avusa Segken, Stephanie James, Benson Talagh Raptgh, Hanson Mata Aru, Helen Daniel, Jeannot Aptin Ankey, Maki Reuben, Noella Yona, Kalo Yona, Royson Yona, Marcie Eric, Moli Ben, Lina Naouga, Lency Yona, Willie Alick, Sabrina Turere, Jimmy Yona, Gideon Ben, Pita Keliu, Tom Jack, Henry Orah, Samson Kenneth, Barbra Noelline Thomas, Serona Roy, Charley Pakoa Carolyn, Norah Bouas, Joseph Kalo, Ronolea Benjame, Miguel Tarisup, Catherine Niowenmal, Fatima Buroro, Paul Ben, Edmond James Vurobaravu, Emory William, Fiona Ngwele, Ivana Tamata, John Konali, Joshua Moveth, Josianne Claire Woi Vire T, Markward Natu, Morine Lapsae, Charity Faith Ihu, Glenna Moli, Victoria Sandy Roslyn, Raella Malisa Raaia Sela. S., Roline Bihu, Rose Hinge, Vokarai Vanua, Kleton Albert Navat, Branson Garae, Dominique Mahuri Bruce, Keithson Fraser Tete, Kaloman George, Rayleen Joy Botleng, David Willie Tien, Sylveo Lamoukli, Jean Dominique, Rex Takatevi, Alison Paul, Patrick Gilu, Lauri Boe, Leonard Tari, Frederic Maeto, Joel Tabi, Paul Vuhu, Victor Novataliawke Korisa, Alex Jill Mala, Marie Omeliu Nasere, Melody Avock, Naser Tevanu, Graham Miller, Branson Gideon, Diallo Wabbak, Julienne Nevy, Arnaud Massingkon, Sylviane Paululum, Jessica Liwuslili, Laura Viraki, Eugenie Kavick, Germain Sam, Marie Antoineth, Voilet Joel, Fiona Mangue, Gertrude Ngwele Tugu, Alphine Jimmy, Theresina Maltaus, Pierrot Lesteour, Peter Jack, Asal Tino Buleban, Francois Tarivondo, Jerome Siom, Florence Kalpukai, Lysiane Meltetake, Francky Rouvoune, Vorakes Baniuri, Judyson Ngwele, Joseph Kemuel, Delina Bosara, Jessica Patrice, Donna Bangtor, Lewia Waspre, Leinase Karpus, Shirley Bangtor, Lidia Maso, Jineth Homal, Klera Edwin, Judith Toa, Sonia Wilson, Linda Garae, Cassandra Dono, Salome Andrew, Kre William, Mary Ala, Elena Ulas, Luisa Paul, Leo Tasso, Cinderella Toa, Rodcheleen Morsen, Nadia Ameliu, Ludvine Marvir Lani, Leonie Bong, Rolline Enrel, Melinda Elton, Gratien Melteck, Betty Buleuru, Ernest Mera, Rodney Mansale, Silas Sese, Elsie Sese, Knox Tugu, Kamuel Diniwok, Joel Daniel, John Ken Hopkins, Fiona Grimound, Tapsi Ngwele Maeto, Emosi Pakoro, Yuen Vatu, Roselyn Fox Gaihala, Marie Tavusimoli, Leonie Vuti, Patrick Ravo, Massosoh Lenny, Vatu Sandrine, Rite Ninie, Waback Florina, Molvido Christophe, Bomwel Niva, Kylie Helen Steplon, Janet Livo, Julie Johnny, Gloria Paul, Vombani Viramata, Valentine Teguebou, Esther Tal, Selvin Talo, Prescilla Ben, Lyly Jacob, Severine Micheal, Salome Garavi, Elisa Molirong, Simrai Shirley, Sabrina Taikwary, Leitora Jacob, Violette Edgar, Cedella Lesah Henry, Julie Walla Bematakasi, Fiona Nevy, Diana Kency, Anna Mabon Sue, Danella Tari, Susanna Palaud, Christian Lessa, Sandra George, Veronique Billy, Soksok Melucine, Cecile Matansus Kawol, Hubert Karu, Joyce Asero Nial, Jenifer Unity Lokai, Kathie George Morsel Kaot, Sale Baniuri, Joana Sumbeto, Rosana Rosbong, Marius Nelrove, Nelly Niala, Susan Varu, Sophie Seri, Jean Paul Vavaharu, Valerie Butacol, Rachel Naru, Michelline Arabela, Emelyn Manhe, Adline Nial, Besivon Hinge, Catsilenda Tomua, Michael Bebe Rob, Augustine Garavi, Joy Womak, Tom Willy Lae, Stephanie Karae, Evelyne Karae.



Herve Kavick, Mauela Bong, Madalaine Livoholo, Madleine Zonarzuru, Noel Ruruely, Rose Olovela, Michael Lirohou, Zaza Guy, Annie Tanavusi, Marie Maliu, Maylin Wilson, Ronal Sava Levu, Lorres Ninisa, Merry Newman, Rebecca Imbert, Judah Karae Voyamere, Sophia Sumbertori, Kyline Hinge, Clarissa Erevoke, Francis Reginalds Mera Aru, Benjamin Kombe, Didier Bila, Johnny Shem, Rebeake Tasi Paul, Gloria Luss, Denise Pisroi, Jennifer Andrew Sewen, Roy Amon Kon, Raynold Vira, Leah Muhango Toa, Jean Daniel Matan, Mark Toanaure, Christophe Nauta, Gelnda Matan, Floyd Ravo, Valory Vogel, Tiffany Garae, Liviana Ligo, Lora Ser, Jean Alrua, Willien Sariseths, Sylvano Makali S, Lorin Tawi, Rex Tavi, Peter Kams Kaiar, Jean Marie Malvaru, Martha Harnpel, Fabiola Nguen, Richard Samson Malsale, Jean Patrice Niowennmal, Nathan Daniel Kali, Fathley Aleres, Leo Mermer, Auken Romassing, Frank Kenneth, Renesi Stephen, Nicholsen Garae Kapdum, Revanna Keke, Derickson Jacob, Timothy Mahit, Paveliani Malvirlani, Vinabit Paolo, Algiane Massingman, Anthony Tullili, Claire Marie Nalet, Cosette Arcknaveth, Dephine Killiteir, Edrico Malterong, Francois Sizai, Jean Baptiste Litenmal, Marietta Viteptir Lingsare, Obed Slee Albert, Rory Renie, Ruth Boas Noubé, Slee Obed Francois, Sylvia Matansangul Malres, Wilson Willow Nguen, Marie Laure Marie Sagan, Claire Sewere, Albert Raptih, Estelio Bae, Firmin Namol, Francky Wollaerang, Geofroy Vianey, Jackson Hosea Josen, Jean Luk Sewere, Josiane Wari, Nathalie Nale, Willy Naguy, John K Kampai, Batick Bertrand, James Lose Laus, Hencely Kaum Tiwor, Melisa Terenabit, Joseph Joe Numaimemei, Richard Vakas, Caroline Sailas, Cynthia Bule, Lindong Amet, Claubert Emile Melteroh, George Nial Maltera, Darius Betsesai, Johnsey Rambey, Honore Enock, Elson Johnwell Jack Vakas, Emelyn Maltaus, Tamat Niptick, Etienne Maltaus, Nadine Bani, Laurent Donts Hugaisive, Giselda Basilio, Jack Lawac, Maria Molwait, Marie Louise Mirene Maltaus, Wilfred Tomo, Jemnion Johnny Antoine, Igrind Hirvir, Albert Laldam Bule, Olivier Bule, Daison Nari, Myriam Ware Williams, Clifford Siro, Stelin Leo, Jean Pierre Olul, Moses Sali Patrick, August Veronkes Louis, Erman Kaenbo, Louis Marie Sumptoh, Lucien Molves, Joseph Kalo, Norah Bus, Charley Pakoa Carolyne, Samuel Liben, Jonah Kerry, Guilain Harry, Diana Kota, Yan Manu, Aristide Malone, Celestine Tau Niere, Tom Brown Saute, Caroline Kasso, Namaha Takifu, Jelson Tawea, Moise Anita, Alexis Kapalu, Figo Loughman, Sawia Luk Stephen, Timothy Kawia, Mary Vira Iati, Ginette Yanimul, Harry Nakek Mulek, David Bill, Makoya Niagarum Ben, Samson Hiwa, Bob Sanga, Sergio Poita, Ian Iaruel, Jim Riando Iaukawai Kalua, Joel Nirua, Roger Hiwa Nalau, Sebastian Iarapia, Charley Kautea, John Selwin Garae, Blandine Lop, Lavinia Ligo, Lorah Ser, Harry Jimmy Moju, Marie Claire Voyate, Frida Velouvu Raphael, Josiane Mauri Tieya, Lavinia Loveliu, Tari Pierre, Elina Vetavul Valivu, Dennis Livingston, Kalistar Pantutun, Lancelot Wotiemaro, Rayclerence Norvaglea W, Winistone Alice Vovei, Judith Meta Mol, Kensley Noah Bolengam Sophia Rodaraban Ray, Wilson Talo, John Fox Webas, Elsion Toswel Fred, Frazer Tuse Malcom, Esther Mera, Charles Vanler, Marie Hanson Towbah, Jean Marie Woleg, Louis John, Alice Savoia

