

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

Civil  
Case No. 22/1893 CVL

**BETWEEN: GIL JANG YOON**  
*First Applicant*

**CHOI EUN CHEOL**  
*Second Applicant*

**AND: REPUBLIC OF VANUATU**  
*Respondent*

**Date of Hearing:** by circulation of papers  
**Date of Delivery:** 28th August 2023

**Before:** Justice E.P Goldsbrough

**Counsel:** Sugden, R for the Applicants  
Robert, N for the Respondent - O.A.G

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**DECISION**

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1. This decision deal with two matters. Firstly, it deals with an application to amend the Constitutional application filed on 22<sup>nd</sup> July 2022. Then it deals with a preliminary question of law.
2. The proposed amendment is wide, and seeks to raise matters that have already been determined. Most importantly, it suggests that section 53 of the Immigration Act is unconstitutional. That allegation was contained in the original application, was the subject of a preliminary question and answered in these proceedings. To seek now to amend to ask the same question again is nothing more than an abuse of process.
3. The applicants also seek to raise a further question about the timing of the gazettal of the order made against them. It is common ground that the order was not gazette when made, rather it was gazetted some months later. The applicants seek to litigate that point. I understand that further proceedings have been filed, and an order made to consolidate them with this application. In those proceedings the same question of gazettal is raised. Given that, there seems to be no need to allow any amendment to

this application to allow the Court to deal with the question. The application to amend is dismissed.

4. Both parties have filed submissions on the second preliminary question of the effect of gazettal. The applicants submit that the order cannot come into force until it has been gazetted. They further submit that, as they were no longer in the country when the order was gazetted, it could not be put into effect and was, essentially, a nullity.
5. The grounds for the submission from the applicants all point to the need for scrutiny of statutory orders required by the Interpretation Act. The submission acknowledges the relevant terms of Interpretation Act [Cap 153] which are set out here for convenience: -

#### **12. Definition of statutory orders**

Where an Act of Parliament confers on the President, a Minister or any other authority a power to make or a power exercisable by making proclamations, rules, regulations, by-laws, orders or statutory orders, any document by which that power is exercised shall be known as a statutory order and the provisions of this Act shall apply thereto accordingly.

#### **13. Publication of statutory orders**

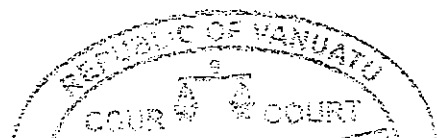
Every statutory order shall be published in the Gazette and shall be judicially noticed.

#### **14. Commencement of statutory orders**

(1) Subject to the provisions of this section –

(a) the commencement of a statutory order shall be such date as is provided in or under the order or where no date is so provided the date of its publication as notified in the Gazette;

(b) every statutory order shall come into force immediately on the expiration of the day next preceding its commencement.



(2) A statutory order may be made to operate retrospectively to any date that is not earlier than the commencement of the Act under which the order is made except that no person shall be made or shall become liable to any penalty in respect of any act committed or the failure to do anything before the date on which such order was published in the Gazette.

(3) A statutory order made and published on the date of commencement of the Act under which the order is made shall come into force simultaneously with that Act unless the order gives a later date or time of commencement.

(4) Reference in this section to the commencement of the Act under which a statutory order is made shall, where different provisions of that Act come into force on different dates, be construed as reference to the commencement of the particular provision under which the instrument is made.

(5) The provisions of this section shall be without prejudice to the operation of section 18.

#### **15. General provisions relating to statutory orders**

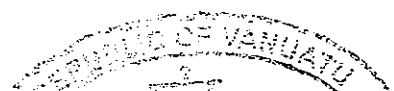
(1) Any reference in a statutory order to "the Act" shall be construed as a reference to the Act under which the order is made.

(2) Unless otherwise provided terms and expressions used in a statutory order shall have the same meaning as in the Act under which the order is made.

(3) A statutory order may at any time be amended by the authority by which it was made, or by any other authority lawfully replacing that authority.

(4) Any provision of a statutory order which is inconsistent with any provision of any Act of Parliament (including the Act under which the order was made) shall be void to the extent of the inconsistency.

(5) Unless the enabling Act otherwise provides, a statutory order may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding VT 20,000 or to a term of imprisonment not exceeding 1 year or to both such fine and imprisonment.



(6) An act done under or by virtue of or in pursuance of a statutory order shall be deemed to be done under or by virtue of or in pursuance of the Act conferring power to make the order.

(7) Every statutory order shall be considered to be made under all powers thereunto enabling, whether or not it purports to be made in exercise of a particular power or particular powers.

(8) Section 11 of this Act shall apply on the revocation of a statutory order as it applies on the repeal of an Act of Parliament.

#### **16. Publication of orders, etc. made under Constitution**

(1) All Constitutional Orders shall be published in the Gazette and shall be judicially noticed.

(2) In this section "Constitutional Orders" means any orders or declarations made in exercise of a power conferred by the Constitution on the President, the Council of Ministers or any other person or body except a court.

#### **17. Authentic version**

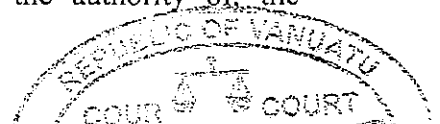
(1) In construing an enactment, all its versions in the official languages of Vanuatu shall be equally authentic.

(2) Where there is a difference between two or more versions of an enactment, preference in construing such enactment shall be given to the version which, according to the true spirit, intent and meaning of the enactment, best ensures the attainment of its objects.

(3) In this section –

"enactment" means any provision in an Act of Parliament or in any order, rule, regulation, notice, proclamation or other instrument made or issued under the authority of any Act of Parliament;

"version" means a version published by, or under the authority of, the Government or any public authority of Vanuatu.



## PART 4 – POWERS AND DUTIES

### 18. Exercise of power between publication and commencement of acts

Where by an Act of Parliament which is not to come into force immediately on the publication thereof there is conferred –

(a) a power to make or a power exercisable by making statutory orders;

(b) a power to make appointments; or

(c) a power to do any other thing for the purposes of the Act;

such power may be exercised at any time, on or after the date of publication of the Act but no order, appointment or thing made or done under such power shall have effect until the commencement of the Act unless it is necessary to bring the Act into operation.

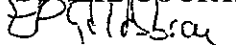
6. It is accepted that the order made by the Minister the subject of these proceedings is a statutory order. The provisions of section 14 therefore apply. The order on its face says that it comes into effect on the day on which it was made. That is permissible within the terms of section 14. The order is not a Constitutional Order.
7. The effect of gazettal is to give notice of the existence of the order. In many instances, parties affected by an order will already be aware of its existence. Once aware, those parties can begin if they choose to exercise any right which may arise because of the existence of the order. That need not wait for a gazette notice, nor is there any requirement that a court cannot hear and determine a civil claim arising out of such an order prior to its gazettal.
8. The applicants submit that Presidential scrutiny is not possible until after gazettal. Presidential scrutiny can see Bills referred to the Supreme Court prior to being enacted by the President for constitutionality. Regulations can similarly be scrutinized.
9. But a statutory order deporting a non-citizen by the Minister responsible for Immigration under section 53 of the Immigration Act as amended, even if drawn to the attention of the President through a gazetted notice, will not provide him with

sufficient information to be concerned and would not fall within the ambit of his scrutiny with a reference to the Supreme Court on a constitutional basis since the terms of the order on their face do not provide the information necessary to raise a constitutional question. That, it seems to the Court, is within the knowledge of the persons the subject of the order and sufficient procedure is available for them to take the necessary action.

10. The submissions of the applicants on this preliminary question do not raise any issue that would suggest the failure to gazette the order prior to implementation affects the validity or legality of the order or subsequent actions. It is therefore answered in the negative.
11. Costs will be costs in the cause.

Dated at Port Vila this 28th day of August 2023

BY THE COURT



Justice E.P Goldsbrough

