

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

Civil Case No. 25/1095 SC/CIVL

BETWEEN: Tomker Netvunei
Port Vila
Vanuatu

Claimant

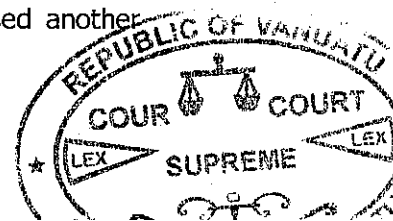
AND: Jullian Nompuat Poki Netvunei
Port Vila
Vanuatu

Defendant

Date of conference: 4 June 2025
Before: Justice B. Kanas Joshua
Counsel: Mr Brian Livo, for the claimant
Mr Willie Kapalu, for the defendant

**DECISION ON APPLICATION
FOR URGENT INTERLOCUTORY ORDERS**

1. On 20 May 2025, the defendant filed an application for urgent interlocutory orders, with supporting sworn statement of the defendant, filed on same date.
2. Mr Livo informed the court, in conference, that he did not file any response to this application. However, he will rely on a response to set aside ex parte interlocutory orders, filed on 5 May 2025, for this application.
3. The application sought an order directing the police to seize and detain a vehicle, registration no. 21716, until further order of the court. Grounds for the application are:
 - a. The claimant is the owner of vehicle registration no. 21716;
 - b. The claimant has breached the verbal contract for use of vehicle no. 21716 from the defendant without his knowledge and shipped to Port Vila while holding on to his vehicle registration no. 24153;
 - c. The defendant or counter-claimant has suffered losses for breach of contract and has filed a counter-claim that is pending in court;
 - d. The claimant has claimed an order for specific performance for the transfer of the defendant's vehicle to him and also alleging that his vehicle be transferred to the defendant. These are issues pending in the court. As such, it is fair for the court while already ordering the seizure of the defendant's vehicle will also order for the seizure of the claimant's vehicle until the matter is fully determined by the court.
4. The vehicle registration no. 21716 is another vehicle that was the subject of an agreement that both parties had made in 2022. The claimant had agreed to provide this vehicle to the defendant to use for transport purposes in contracts he had with Public Works Department, on Erromango. The defendant then purchased another



vehicle registration 24153 and it was agreed by both parties that they would exchange the two vehicles. The claimant held vehicle 24153 in his possession, and the defendant held vehicle 21716 in his possession. The claimant claims that around 2024, the defendant signed a transfer of ownership of the vehicles to reflect this exchange. According to the claim, the defendant used vehicle 21716 and damaged it then left it on Erromango. He then came to Port Vila and removed vehicle 24153 from the claimant. On 23 April 2025, this court issued interlocutory orders for the police to remove vehicle 24153, and to stop the defendant from selling/transferring ownership the said vehicle.

5. The defendant makes this application under Rule 7.7 of the Civil Procedure Rules¹ which provides that a party *"may apply for an interlocutory order at any stage, whether or not the party mentioned an interlocutory order in his claim or counterclaim"*.
6. The *Halsbury's Laws of England*² states that an injunction,

*Is a discretionary equitable remedy awarded by the court to restrain **the imminent threat or the commission or continuance of unlawful acts, in which case the injunction is prohibitory**; or to compel the taking of steps to repair an unlawful omission or to restore the damage inflicted by an unlawful act, in which the injunction will be mandatory.*

[My emphasis]

7. In this application I will not address grounds (a), (b) and (d) as it deals with the substance of the claim. Instead, I will address ground (c), where the defendant states that he has suffered loss for breach of contract.
8. In addressing ground (c), I ask the question, has the defendant suffered loss from a breach of contract. In the sworn statement by the defendant³, in support of the application, it does not state how he has suffered losses from the breach of contract. In paragraph 5, the defendant is basically stating that because an interlocutory order was issued on 23 April 2025, the court should also grant this application.
9. In their response, counsel for the claimant relies on the sworn statement of Samsen Toara, filed on 4 June 2025. Mr Toara is the manager overseeing the workshop and panel operations at Asco Motors Vanuatu⁴. He confirmed that around the end of 2022 and beginning 2023, *"a land cruiser with the registration number 21715 was in our workshop for full-service repair and panel work, as it was scheduled to be shipped to Erromango."*⁵ He further stated,

It is important to note that the vehicle has since returned from Erromango and has been assessed by my team. The assessment indicates that the vehicle is now

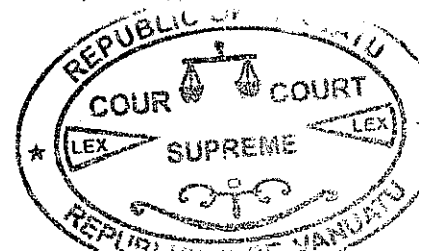
¹ No. 49 of 2002.

² Fifth Edition, 61A Paragraph 107 – *The ordinary remedies of injunction and declaration.*

³ Sworn statement of Jullian Nompuat Poki Netvunei in support of Application for Urgent Interlocutory Orders, filed on 20 May 2025, at paragraph 4.

⁴ Sworn statement of Samsen Toara (filed on 4 June 2025), at paragraph 1.

⁵ Ibid, at paragraph 3.



It is important to note that the vehicle has since returned from Erromango and has been assessed by my team. The assessment indicates that the vehicle is now damaged and will require an additional 2 million vatu to restore it to the standard it was in, prior to its departure for Erromango.⁷

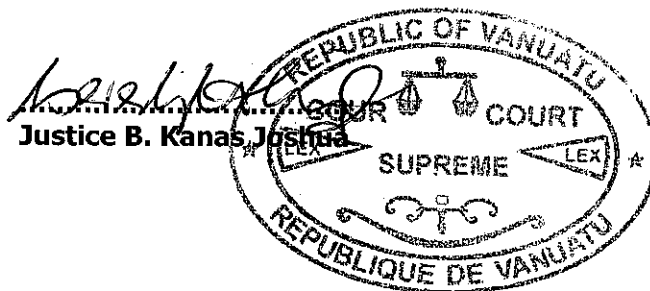
In addition, Mr Toara stated that,

The vehicle is not roadworthy at the moment because of the damage. There are so many parts that are damaged and need to be replaced.⁸

10. The court asks itself whether the granting of the interlocutory order will change the defendant's situation? If vehicle 21716 is in good shape and is roadworthy there is a likelihood of the claimant selling the vehicle before the claim is determined in court, in which case the defendant will suffer loss if the decision was in his favor. It will then be understandable that the defendant will worry about the claimant doing anything to the vehicle, so the granting of this application will stop the defendant from suffering. However, the current state of the vehicle does not pose any imminent threats of being sold off, and there are no commission or continuous of unlawful acts highlighted in the application.
11. The court is not satisfied that that there is an imminent threat or that there is commission or continuance of unlawful acts.
12. The application for interlocutory orders is declined.

Dated at Port Vila on this 6th day of June, 2025

BY THE COURT



⁷ Sworn statement of Samsen Toara (filed on 4 June 2025), at paragraph 7.

⁸ Ibid, at paragraph 8.

