

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

**Constitutional
Case No. 25/225 SC/CNST**

BETWEEN: BANABAS TAPIRUPMIEL
Applicant

AND: THE REPUBLIC OF VANUATU
Respondent

Date of First Hearing: 13 June 2025

Coram: Hon. Chief Justice Vincent Lunabek

Counsel: Mr Jerry Boe for the Applicant
Mr Sammy Aron for the Respondent

Date of Decision: 13 June 2025

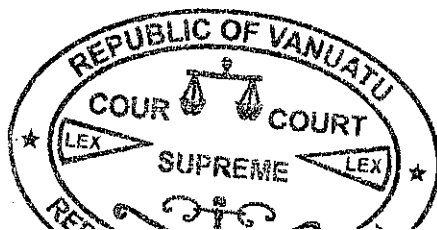
**REASONS TO STRIKE OUT THE SUPREME COURT
CONSTITUTIONAL CASE No. 225 OF 2025 AT THE FIRST HEARING
(Rules 2.7 and 2.8 Constitutional Rules)**

I. Introduction

1. At the First Conference Hearing held on 13 June 2025, the Court struck out the Constitutional Case No. 225 of 2025 as based on misapprehension or misunderstanding of a constitutional case.
2. The reasons are set out below.
3. A Constitutional Case No. 225 of 2025 was filed on 19 February 2025 with a sworn statement in support by the Applicant. The Applicant filed a further sworn statement in support of the constitutional application on 27 March 2025. The Constitutional Application together with the sworn statements were served on the Attorney-General on 4 March 2025.

II. Relief Sought

4. The Applicant applies for:
 - (a) The Applicant's rights under Article 5(1)(c), (d) and (j) of the Constitution has been breached by the Republic of Vanuatu;



- (b) Pursuant to order and or declaration 1 above, an order that the Defendant return all the Applicant business assets and properties which the Applicant purchased and accumulated over the period 1988 to 2013 from his Retail Shopping Business, Transportation Business, Rental Quest House Business, Butchery Business and Fishing Business;
- (c) Pursuant to order and or declaration 1 above, an order that the Defendant returns AMPA Financial Investment Centre (hereinafter "Afic businesses) finance, assets and records which the Defendant seized and confiscated in early 2017;
- (d) Pursuant to order and or declaration 1 above, an order that the Defendant pays compensation to the Applicant in the sum of VT11 billion being for unconstitutional seizure and confiscation of the Applicant's properties and assets which he purchased and acquired before the commencement of Afic Business in 2013 and including unconstitutional seizure and confiscation of Afic Business assets and properties;
- (e) Costs.

III. Grounds of the Application

5. The Application was advanced on the following grounds. I reproduced the grounds as set out in the Constitutional Application as follow:

- A. *THE Applicant was at all material time a banker, a businessman and a former Member of Parliament and held various ministerial portfolio in past governments;*
- B. *PRIOR to launching and commencing the AMPA Financial Investment Centre (hereinafter 'the Afic Businesses') in 2013, the Applicant was at all material time since 1988 been an entrepreneur having Retail Shopping Businesses, Transportation Businesses, Rental Quest House Businesses, Butchery Businesses, Restaurant Businesses and Fishing Businesses;*
- C. *THE Applicant had the following Retail Shopping Business which he established before the establishment of Afic Business in 2013:*

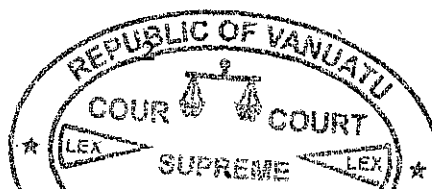
PARTICULARS OF RETAIL SHOPPING BUSINESSES

The Applicant had the following Retail Shopping Businesses at:

- a) *AG Store at Enna Village Central Pentecost Island;*
- b) *Retail shop at Seaside Pamma; Port Vila;*
- c) *Retail shop at Green Light Tebakor, Port Vila;*
- d) *Retail shop along Pango Road, Port Vila;*
- e) *Retail shop at Ohlen White Wood Opposite Fr Lini Residence, Port Vila;*
- f) *Retail shop Yao Building, Port Vila;*
- g) *Retail shop Smet, Port Vila;*
- h) *Retail shop Etas, South Efate.*

- D. *THE Applicant had purchased and acquired the following vehicles which he used as taxi services before he established Afic Business in 2013;*

PARTICULARS OF VEHICLES USED FOR TRANSPORTATION TAXI SERVICES



- a) 1 Car Toyota Corolla – 2 doors;
- b) 1 Car Toyota Corolla – 1 day;
- c) 1 Toyota Hilux – Red Color;
- d) 1 Toyota Hilux – White Color;
- e) 1 Toyota Land Cruiser – Green Color;
- f) 2 Toyota Land Cruisers – Red Color;
- g) 2 Toyota Land Cruisers – Brown Color;
- h) 2 old model Toyota Land Cruisers – Blue and Red Color;
- i) 1 Toyota Land Cruiser – Grey Color.

E. THE Applicant also had Rental Quest House Business, Butchery Business, Restaurant Business and Fishing Businesses before he established Afic Business in 2013;

PARTICULARS OF OTHER BUSINESS

See the Applicant sworn statement filed in support of this Constitutional Application.

F. ABOUT 2013, the Applicant established Afic Businesses with money generated from the Applicant Businesses referred to in paragraph B, C, D and E above including his salaries as Member of Parliament in various Government Ministries;

G. INITIALLY, there were only 5 branches of Afic Businesses on Pentecost Island and later over the years, other Afic Business branches were opened on other Islands of Vanuatu making a total of 49 branches all together;

PARTICULARS OF WRONG

- (i) By relying on the false Minute of 01st July 2013 and the Application for Registraion Schedule 1 of Section 18(2)(a) of the Cooperative Societies Act No. 24 of 1982;
- (ii) By relying on the voidable consent order of 15th April 2019.

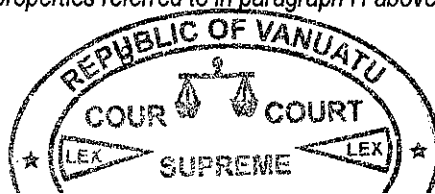
H. AT all material time, Afic Business purchased the following vehicle for use in the Afic Business and there were:

PARTICULARS OF VEHICLES

- 1. 1 Red Brado
- 2. 1 Toyota Hilux Blue Color for Santo Branch
- 3. 1 Toyota Hilux Double Cabin Red Color
- 4. 1 Toyota Land Cruiser blue Color
- 5. 1 Toyota Hilux Double Cabin Red color Vila Branch
- 6. 1 Nissan Patrol Tanna Branch
- 7. 1 Isuzu Red Color Tanna Branch
- 8. 1 Red Car
- 9. 5 Camion
- 10. 1JVC
- 11. 1 Bulldozer
- 12. 2 Land crafts vessels namely L.C. Bejida and L.C Blessing

I. AT no time did the applicant registered Afic Business under the Co-operative Societies Act.

J. ACTING on the false and purported Minute of 1st January 2013 and Application for registration Schedule 1 of section 18 (2) (a) of the Co-operative Societies Act No 24 of 1982, THE Defendant trough the Director of Co-operative Department with the assistance of Police raided Afic Business accounts and finance and including the Afic assets and properties referred to in paragraph H above.



PARTICULARS

The Director and the Police seized Afic Businesses assets and properties without Court orders in early 2017

- K. *FURTHER acting upon the purported Minute of 1st July 2013 and Application for Registration Schedule 1 of section 18 (2) (a) of the Co-operative Societies Act No.24 of 1982, the Defendant filed Supreme Court Civil Case No.931 of 2018 and obtained consent order for confiscation of the Applicant's other Business assets and properties referred to in paragraph B, C, D and E above and including Afic Businesses properties referred to in paragraph H above.*

PARTICULARS

Consent Orders dated 15th April 2019 obtained in Supreme Court Civil Case No.931 of 2018.

- L. *IN addition, acting upon the purported Minute of 1st July 2013 and Application For Registration Schedule 1 of section 18 (2) (a) of the Co-operative Societies Act No24 of 1982, and the consent order of 15th April 2019 the Defendant proceeded to confiscate the Applicant's Afic Business Accounts.*

PARTICULARS OF AFIC BUSINESSES ACCOUNT

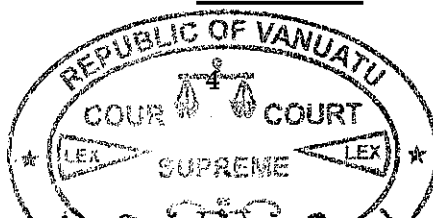
The Afic Businesses had over 40,000 customers with financial cash approximately VT400 million.

- M. *IN Supreme Court Civil Case No.930 of 2018, the Court did not consider the merit of the Defendant Defence and the Claimant's claim rather the case came to an early end by the consent order of 15th April 2019.*
- N. *FURTHER in Supreme Court Civil Case No. 21/1753, the Supreme Court dismissed that claim without considering the merit of the Claimant's Claim in that claim.*
- O. *AT all material time, the Claimant claims that Afic Business was never registered under the Co-operative Societies Act and so the Defendant acted unlawfully by seizing and confiscation the Applicant's Business assets and properties which he had purchased and acquired before 2013 as well as Afic Businesses assets and properties, and converting them into their own use and or selling them to third parties but never giving the proceeds of such sales to the Applicant.*

PARTICULARS OF BREACH OF THE CONSTITUTION

- A) *By seizing and confiscation the Applicant's assets and properties which he had purchased and acquired before 2013 and converting and/or selling them to third parties, the Defendant breached the Applicant's fundamental right under Article 5(1)(c), (d) and (j) of the Constitution;*
- B) *By seizing and confiscation the Afic Businesses assets and properties and converting them and/or selling them to third parties, the Defendant breached the Claimant's right under Article 5(1)(c), (d) and (j) of the Constitution.*
- P. *FURTHERMORE, the Defendant's reliance on the purported Minute of 1st July 2013 and Application For Registration Schedule 1 of section 18 (2) (a) of the Co-operative Societies Act No 24 of 1982, in order to prosecute Supreme Court Claim No.193 of 2018 and 1753 of 2021 was wrong and illegal for the following reasons.*

PARTICULARS



- (i) Those named in the Minute of 1st July 2013 denied ever attending that meeting.
- (ii) Those whose names appeared on the Application for Registration Schedule 1 denied ever signing their signature on that Schedule 1 of the Application for Registration.
- (iii) Those named in the purported Minute dated 1st July 2013 and on the Application for Registration Schedule 1 dated 1st July 2013 have made statements to the Police against one Takasumba Joda (also known as Joda Bule) who made up the Minute of 1st July 2013 and in the application of registration Schedule 1 dated 1st August 2013 writing the names of those named therein and signing their purported signature without those persons' knowledge and approval.

PARTICULARS

- (i) By a Minute dated 11th July 2018, Mr. Takasamba Joda Bule accepted that he made the falsified Minute of 1st July 2013 and signed the purported signature of those named in the Application for Registration Schedule 1 thereof.
- (ii) Those named in the Minute of 1st July 2013 denied ever attending a meeting to register Afic under the Co-operative Societies Act.

- Q. AT all material time, the Applicant and those named as members of the Committee of Afic Businesses in the purported Minute of 1st July 2013 filed criminal complaint against Takasomba Joda Bule.
- R. By letter dated 20 July 2020, the Applicant's former Lawyer, Jack Kilu had asked the Police to expedite investigation of Takasamba Joda's action and lay criminal charges.

PARTICULARS

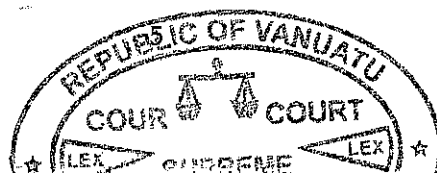
Letter dated 20 July 2020

- S. AT all material time, the Defendant through the action of the Police and the Director of the Vanuatu Co-operative Department and the Registrar and or Liquidator appointed to administer the Afic business Affairs, has possession of the Applicant's business assets and properties before there was any Court order authorizing such seizure.

PARTICULARS

- (i) From March 2017, the Defendants raised Applicant's Afic Business Head Office Premises in Port Vila and removed the Applicant's Afic Business filed and finance.
- (ii) The consent order was issued on 15th April 2019 was obtained some 2 years later after the Police raid..

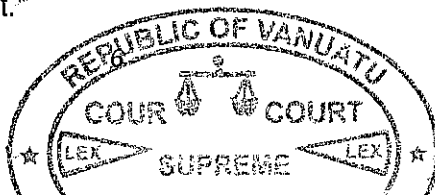
- T. PURSUANT to the Co-operative Societies Act, the Registrar and or Liquidator, must give a report to the members of the Co-operative but to date, the Registrar still has not given a report on the Applicant's Afic Businesses status although the Applicant says Afic was never registered under the Co-operative Societies Act so the Director of Co-operative and Registrar can have jurisdiction.
- U. AT all material time, Afic Businesses has over 4,000 customer which had deposited money with Afic Businesses and these customers need to have returns on their investment but the continued seizure and confiscation of the Afic Business assets, reports, accounts and finance has made it difficult for the Applicant to conduct business with Afic Business customer.



- V. *SINCE 2017 to 2024, it has been 7 years that the Director of Co-operative Department and the Registrar, continue to hold onto the Afic Businesses and has not issued a report nor return the Afic Business to the Applicant.*
- W. *FROM 2017 to 2019, the Defendant through Director of Co-operative Department and or Registrar and Liquidator, has sold off the Applicant's business assets and has kept the proceeds from these sales for their own personal use without compliance with the Co-operative Societies Act and the laws of Vanuatu but with the intention to destroy the Applicant's businesses and his livelihood.*
- X. *THE Applicant says the Defendant seizure and confiscation of the Applicant business assets and properties refer to in paragraph B, C, D and E above has breached the Applicant's constitutional right under Article 5(1)(c), (d) and (j) of the Constitution;*
- Y. *THE Applicant says the Defendant seizure and confiscation of the Applicant's Afic Businesses assets and properties refer to in paragraph H above has breached the Applicant's constitutional right under Article 5(1)(c), (d) and (j) of the Constitution;*
- Z. *THE Applicant has filed sworn statements in support of this Constitutional Application;*
- AA. *On further grounds to be submitted.*

IV. First Conference Hearing pursuant to Rules 2.7 and 2.8 of the Constitutional Application Rules

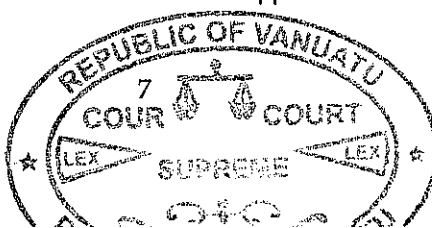
- 6. At the First Conference hearing, I enquired into the application. I asked Mr Jerry Boe to show me whether the Application has a foundation in the Constitution. Mr Jerry Boe informed the court of the following.
- 7. This case is about damages and loss in the circumstances that the Applicant set up a business called "Afic" which was previously called "Apma". In 2013, the name of the business changed from Apma to Afic. It was a lending business – lots of people of Vanuatu from North to South, borrowed money from the company.
- 8. The Applicant paid lots of properties under the Afic. In 2020, the Director of Cooperatives Department accused the Applicant of not operating under a licence to run a cooperative business under the Cooperative Societies Act.
- 9. It is said that is why they took over all his vehicles and other assets and told the Applicant to stop operating the business and that they will take over the business.
- 10. The Applicant suffered loss and damages. The Applicant wants the government to pay back his belongings or give them back to him.
- 11. It is claimed rights of the Applicant under Article 5(1)(c),(d) and (j) are breached when they deprived him of his business and properties.
- 12. The Applicant Banabas Tapirupmiel does not have a licence when he set up of the business of Afic under the Cooperative Societies Act.



13. The sworn statement of the Applicant filed 19 February 2025 referred to the Supreme Court claim between APMA Financial Investment Centre (Claimant) v Barnabas Tapirupmiel (First Defendant) and others, in Civil Case No. 931 of 2018 where the proceeding was eventually resolved by a consent order made on 15 April 2019. That consent order required a number of items to be "*immediately surrendered and/or released to the claimant*". Other items included specified motor vehicles were also surrendered to the Claimant.
14. The Further Sworn Statement of Barnabas Tapirupmiel exhibited a Supreme Court claim between APMA Financial Investment Centre (Claimant) v Barnabas Tapirupmiel (Defendant) in Civil Case No. 21/1753 SC/CIVL where the claim is for an order that the Defendant and his family be immediately removed from the "*Ennar building*" on Pentecost within 2 weeks. There was an application by the Defendant to vary the consent order by removing the reference Ennar building but the Court refused to do that order. The Court granted the order to remove the Applicant and his family from Ennar building. Mr Godden Avock, counsel for the Claimant informed the Court that the Claimant will seek to enforce the judgment.

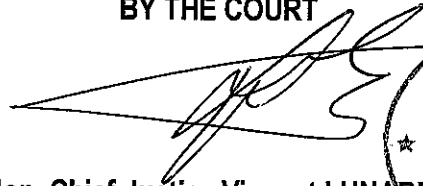
V. **Are there any breach of the rights of the Applicant under Article 5(1)(c), (d) and (j) of the Constitution?**

15. This constitutional question cannot be answered unless, the question as to what sort of properties belong to the Applicant and why?
16. The only answer we now have is from the proceedings in Civil Case No. 931 of 2018 and Civil Case No. 21/1753. Those two (2) cases were resolved on the basis that the Applicant, Barnabas Tapirupmiel set up the Afic or was operating the Afic Business without a licence under the Cooperatives Societies Act. Thus, the Applicant was operating Afic Business unlawfully. Any properties acquired will belong to the State under the Proceeds of Crimes Act 2002.
17. The Applicant seems to say that he had businesses and own properties before he set up or operated the AFIC Business in 2013. He has to show the status of these businesses and properties after the setting up and operation of the AFIC Business; and how they were managed, and any subsequent transformations or gains from these properties then, the Applicant has to do so through a normal Civil Claim but not a Constitutional Application.
18. The following substantive parts of the pleadings suggest that a normal civil claim but not a constitution question is required to determine the rights over the businesses and/or properties (if any):
 - Grounds I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W.
19. There is no breach of any rights of the Applicant under Article 5(1)(c)(d) and (j) of the Constitution.
20. This Constitutional Application is misapprehended or misconceived.
21. These are the reasons to strike out the Constitutional Application No. 225 of 2025.



DATED at Port Vila, this 20th day of June, 2025.

BY THE COURT



Hon. Chief Justice Vincent LUNABEK

