

**BETWEEN: NOEL VARI**  
Claimant

**AND: RESERVE BANK OF VANUATU**  
Defendant

**Date of Hearing:** 12 June 2025  
**Before:** Hon. Chief Justice V. Lunabek  
**Counsel:** Mr S Kalsakau for the Claimant  
Mr GM Blake for the Defendant  
**Date of Reason:** 14 July 2025

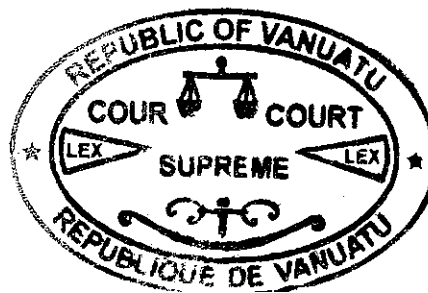
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## REASONS FOR REFUSING INTERIM ORDERS

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### Introduction

1. This is an Amended Urgent Application for interim orders filed on 12 June 2025 (*the Amended Application*). The Applicant filed a Further Sworn Statement in support of the Urgent Application on 6 June 2025.
2. The Amended Application seeks for the following orders:
  - (1) That the letter of termination dated 4 June 2025 and letters of suspension dated 3 March 2025 and 1 April 2025, be stayed forthwith pending the final determination of this proceeding;
  - (2) The findings and recommendations of the Disciplinary Committee of the Defendant be stayed pending the final determination of this proceeding;
  - (3) The Defendant be restrained from appointing a Deputy Governor pending the final determination of this proceeding;
  - (4) The Defendant to continue to pay the Claimant's salary and benefits pursuant to his employment contract dated 30 November 2021 until further orders of the court;
  - (5) Any other reasonable and just orders.



### Procedural history

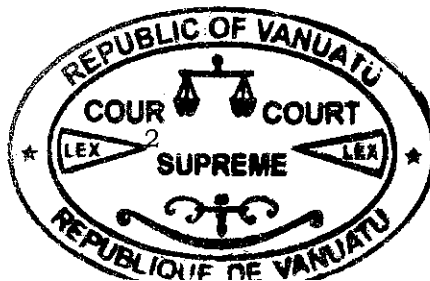
3. A claim for judicial review was filed on 3 June 2025 and an Amended Claim (for Judicial Review) was filed on 12 June 2025. A sworn statement of the claimant in support was filed on 3 June 2025.
4. A proof of service was filed on 4 June 2025.
5. A response to the Urgent Application for Interim Orders was filed on 10 June 2025. Mr August Letlet, Governor of the Reserve Bank of Vanuatu ("RBV") filed a sworn statement on 10 June 2025.
6. The Applicant/Claimant filed a sworn statement in reply to August Letlet's sworn statement on 12 June 2025.

### Hearing of the Urgent Amended Application

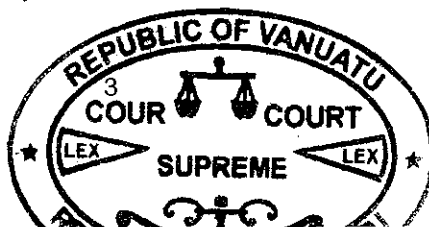
7. On 12 June 2025, the Court heard the Urgent Amended Application. At the end of the hearing, I declined to make the interlocutory orders sought. What follow are the reasons of my oral decision of 12 June 2025.
8. The orders that the Claimant seeks include an order restraining his termination as an employee and suspending and staying the effect of the letter of 21 May 2025 and the report of the Disciplinary Committee.
9. The grounds in support of the application assert that:
  - (a) The disciplinary process employed by the Defendant was unlawful, illegal and contrary to law;
  - (b) The status quo need to be maintained due to the prejudice the Claimant will suffer and damages would not be an adequate remedy;
  - (c) It is in the interest of justice.

### Background

10. The Claimant commenced his employment work with the Reserve Bank of Vanuatu ("RBV") since November 11<sup>th</sup>, 1997. In November 2021, the Claimant occupied the position of Deputy Governor of the RBV, a statutory corporation established under the Reserve Bank of Vanuatu Act (the "Act").



11. Provision is made in the Act for the appointment of the Deputy Governor in Section 8B. It provides that the Governor is to appoint the Deputy Governor "*with the approval of the Minister*". Annexure NV1(i) contains the letter of appointment of the Claimant made 30 November 2021 for a term of five years.
12. The Claimant has a contract of employment with the RBV dated 30 November 2021 (the "*contract*") and the contract recites that "*the Governor of the RBV being empowered by the Reserve Bank of Vanuatu Act [CAP. 125] to effect employment of staff at the bank at such remuneration and at such terms and conditions, necessary for the deliverance of the duties ascribed to them*".
13. Pursuant to Section 10 of the Act, the Governor is to appoint:
  - (a) "*Directors;*
  - (b) "*Special Advisors;*
  - (c) "*Other employees as are required assist in fulfilling the functions of the Reserve Bank*".
14. Section 10(1A) of the Act provides that "*the Governor must consult with the Minister, prior to an appointment or removal of a Director or a Special Advisor*".
15. The Claimant was suspended from his position as the Deputy Governor of the RBV on 3<sup>rd</sup> March 2025 and 1<sup>st</sup> April 2025 for serious misconduct.
16. A Disciplinary Committee (DC) was appointed to assess the suspension of the Claimant following the offences described in the suspension letter of March 3<sup>rd</sup>, 2025. The DC is mandated, among other matters, to review the evidence related to the allegations, consider the responses of the Claimant and to make recommendations based on the validity of the offences. The DC is also tasked to evaluate the severity of any misconduct and recommend appropriate actions in accordance with RBV's Staff Policy 2025, the RBV Act [CAP. 125] (as amended), and other relevant laws, for submissions to the Governor.
17. On 21<sup>st</sup> May 2025, the DC provided a Report of its findings with its recommendations to this effect:
  - Termination of Employment since the offences are serious in nature classified as "*Gross Misconduct*" Section 5.5 of the RBV Staff Policy 2025.
18. Clause 4 of the contract empowers the Governor of the RBV, "*after consultation with the Minister of Finance and Economic Management*" to "*terminate the Claimant's appointment in accordance with the provisions of the Act and the Employment Act*".
19. The Governor of the RBV, Mr August Letlet, filed a sworn statement on 10 June 2025 showing that in his capacity as Governor, he did consult with the Minister in connection with the termination of the Claimant's employment by the RBV.



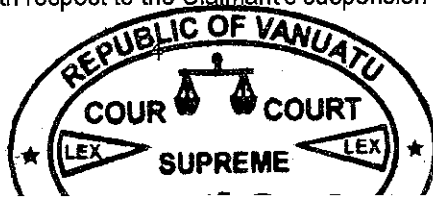
20. On 4 June 2025, the Governor of the RBV terminated the Claimant's employment with the RBV based on the findings and recommendations of the DC of 21 May 2025.

### **Applicable Rules – r7.1 – 7.7?**

21. Mr Kalsakau says the Amended Application is made pursuant to rule 7.2 but not r7.5 based on *Teaching Service Commission v Director General in the Ministry of Education and Training* [2024] VUCA 7; Civil Appeal Case No. 3416 of 2023 (16 February 2024).
22. In this Amended Application, I apply Rule 7.2 and Rule 7.5 as well because, the Claimant, in this Application (like in other decisions of the Supreme Court and Court of Appeal) has to demonstrate that there is a serious question to be tried, that the Claimant would be seriously disadvantaged if the orders are not granted and that the balance of convenience supports the granting of orders sought (*Republic of Vanuatu v Letlet* [2016] VUCA 36 at [6]).

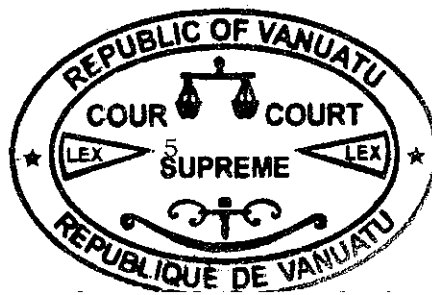
### **Submissions**

23. Mr Kalsakau submits that the consideration of the Court in deciding an application made under Rule 7.2 are this:
- (i) What are the legal or equitable rights in case and do the injunction relate to those rights?
- He says that the legal rights involved are the rights to a fair and just hearing (rules of natural justice). As a result of the breach of those rules, the Claimant had lost his positions as Deputy Governor of the RBV;
- (ii) Is there a serious question to be tried?
- He says that if the evidence (on a prima facie basis) remains as it is, the Claimant's case will likely succeed;
- (iii) Balance of convenience
- He says the Claimant's reputation which he has built for the past 27 years, has been tarnished as a result of the adverse findings of the DC and the decision to terminate made by the Governor. Unless those findings are overturned or quashed, the Claimant will suffer irreparable hardship;
- (iv) Overall justice
- He says that the overall interest of justice favours the grant of the interlocutory orders. Unlike the Governor here who has acted contrary to the Board's resolution with respect to the Claimant's suspension and/or termination.

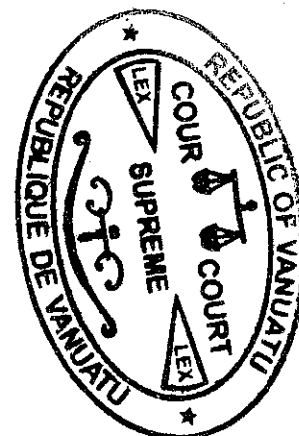


24. Mr Kalsakau says the Claimant challenges his suspension and termination by the Governor of the RBV because the Governor is the complainant in the disciplinary matters against the Claimant; the Governor is also responsible for appointing the members who made the decision to terminate the Claimant. There is apprehension of bias on the whole disciplinary process made against the Claimant. Part of the interlocutory relief is to have the DC Report suspended pending the substantive claim. There was no opportunity given to the Claimant to respond to new allegations.
25. Mr Blake says in essence that what is at the heart of this case is about an employee (the Claimant) who was terminated for serious misconduct. The Claimant should address that termination by making a claim under the Employment Act (under Section 50) for unjustified termination. Courts have long recognized that they are not going to enforce specific performance to an employment contract and, thus, forcing an employer to employ an employee.
26. Mr Blake says that the first relief sought is to put the Claimant back to his employ. The order is to stay but the effect is to put the Claimant back into his employ. The Governor took the view that he could no longer work with the Claimant. The reinstatement of the Claimant is an impossibility (see paragraph 5 of the sworn statement of Letlet filed 10 June 2025).
27. The sworn statement of Letlet showed that he was appointed by the Prime Minister in September 2023. He could not take his appointment. He resigned as the Director General of Finance. He intended to start work. The then Prime Minister (Tabimasmas) attempted to revoke his appointment as the Governor. While the sworn statement of the Claimant filed in June 2025, showed that the Claimant was employed by the RBV for 27 years. There was no information about the Claimant's salaries. It was just because the Claimant will have no salary he came to the Court. The Claimant's case is about termination for gross misconduct. Failure to observe Section 50(3) of the Employment Act give an opportunity to answer the allegation as an unjustified dismissal with the remedy of damages. But, here, it is a judicial review case by attacking a matter dealt with under Section 50(3) of the Employment Act.
28. Mr Blake raised in his response and grounds the applicability of the Judicial Review proceeding in these matters based on the Court of Appeal judgment in *Airports Vanuatu Ltd. v Bong* [2015] VUCA 17. The position of the Claimant as the Deputy Governor is not a public office but merely a position within the RBV as with any employee of the RBV other than the Governor.
29. Mr Blake says finally that the power to terminate does not lie with the DC but lies with the Claimant's employer, the Reserve Bank of Vanuatu, in which institution the relevant powers to hire and fire employees are delegated to the Governor of the Reserve Bank.

### Considerations

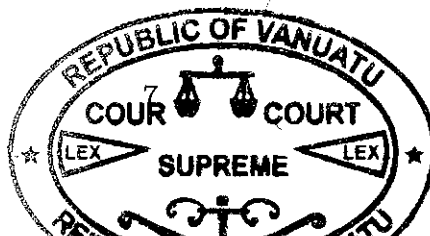


30. The appointment of the Claimant was an appointment made by his employer, the RBV, from within the institution he had been working in since 1997. In making the appointment the Governor at the time was simply exercising power as Chief Executive Officer delegated to him.
31. I agree with the submissions of Mr Blake that the position of Deputy Governor is not a public office but merely with an organization resulting from an appointment within the organization, as with any employee of the RBV other than the Governor, whose appointment by the Prime Minister clearly makes his position more akin to "public office" [see *Letlet v Tabimasmas* [2023] VUSC 255].
32. Mr Blake was right that termination of employment simply does not lend itself to a judicial review challenge in respect to the termination of the employment. Whilst employees of Airports Vanuatu Limited did bring a judicial review challenge in respect to the termination of their employment, it is clear from the Court of Appeal judgment on appeal, that the Court saw a clear distinction between judicial review of a decision to terminate and a claim for unlawful termination of employment.
33. The authority for that proposition is the Judgment of the Court of Appeal in *Airports Vanuatu Ltd. v Bong* [2015] VUCA 17, at [8] – [12]:
8. *AVL did not plead in its defence that judicial review was not available with respect to any of the respondents. At this appeal counsel for the appellant accepted that the appellant had not raised any objection to the case proceeding as a judicial review in the Supreme Court. We note at paragraph 7 of his decision the judge said the criteria in Rule 17.8(3) (a) – (d) had been met.*
  9. *This illustrates the decision by the Supreme Court to hear this employment contract dispute as a judicial review has no precedent value for future cases. There were no submissions by counsel in the Supreme Court on the availability of judicial review and there is no reasoned decision by the judge. It cannot be said therefore that the Supreme Court decision stands for any principle as far as judicial review of employment contracts are concerned.*
  10. *In those circumstances if we gave leave we would be doing so where this Court did not have the assistance of a reasoned decision from the Supreme Court.*
  11. *While in some cases the law allows review of private employment contract disputes (for example it may do so where the contract of employment effectively involves the tenure of a public office) typically such disputes will best be resolved by litigation determined under the Employment Act. Judicial Review and proceedings under the Employment Act can provide for different remedies. Review does not typically involve damages claims and the remedy sought will generally be reinstatement. But in an employment context reinstatement may not be given even if there is a reviewable error where there has been significant delay and where the employment relationship has broken down.*
  12. *Employment Act proceedings while providing for both reinstatement and damages in certain circumstances typically do not involve reinstatement.*



*Most proceedings under the Employment Act will likely fully resolve all employment issues and judicial review will not therefore be appropriate under Rule 17.8 (3) (d).*

34. The Court of Appeal in Airports Vanuatu Limited case, did not see Judicial Review (JR) proceedings as appropriate except perhaps in cases "*where the contract of employment effectively involves the tenure of a public office*", but the position of the Claimant as Deputy Governor is not a public office. I accept the submission to that effect.
35. It is also of note in the Court of Appeal's judgment that the statement at [11] that "*in an employment context reinstatement may not be given even if there is a reviewable error where there has been significant delay and where the employment relationship has broken down*". Here, the "*employment relationship has broken down*". The employer (RBV) says the reinstatement of the Claimant is an impossibility. From the evidence should the Claimant be granted an interim injunction in this case, the Court would be enforcing a contractual relationship between the parties against the will of one of the parties. Courts have long recognized that it is not appropriate to force an employer to keep in the employment of a particular employee who he does not wish to employ (*Virelala v Air Vanuatu (Operations) Ltd.* [2005] VUSC 14).
36. In this case, the Claimant has been employed for many years in the Bank and is part way through an existing contract of employment. The Employment Act provides for termination for serious misconduct as does the contract of employment in Clause 4. The Claimant has been terminated for serious misconduct as envisaged in Clause 4.
37. The following series of events occurred before the termination of the Claimant for serious misconduct on 4 June 2025 (see sworn statements of the Claimant filed 2 June 2025 and the sworn statement of the Governor filed 10 June 2025):
- The letter of suspension of the Claimant by the Governor was made on 3<sup>rd</sup> March 2025. It was in the letter of 3<sup>rd</sup> March 2025 that all allegations are raised about court cases and other matters that the Claimant complained of;
  - On 7 March 2025, the Claimant applied and obtained an urgent ex-parte order from the Court suspending or staying his suspension by the Defendant;
  - On 1 April 2025, the Defendant applied and got an order from the Court setting aside the order staying the suspension of the Claimant and the Claimant's suspension became effective again on 1<sup>st</sup> April 2025;
  - On 1 April 2025, the Claimant was asked to respond to the allegations against him contained in his letter of suspension dated 3<sup>rd</sup> March 2025;
  - The Claimant responded to the allegations on 15 April 2025 to the Governor;



- On 15 May 2025, the Claimant was advised of the DC hearing. He was also invited to participate in the meeting. The Claimant responded saying he would not attend;
- The meeting of the DC took place on 19 May 2025;
- The report of the findings and recommendations of the DC was issued on 20 May 2025;
- On 21 May 2025, the Governor sent a letter to the Claimant attaching the report of the DC to the Claimant ("NV3"). The Governor invited the Claimant to give his response to the report 14 days from 21 May to 3<sup>rd</sup> June 2025;
- The Claimant did not respond;
- The Claimant was terminated by the Governor for serious misconduct on 4 June 2025.

38. The Court notes and accepts the fact that to say the Claimant is not afforded an opportunity to respond do not sit with evidence. The above series of events show a process started on 3<sup>rd</sup> March 2025 and completed on 4 June 2025 through termination of the Claimant for serious misconduct. The Claimant had 3 opportunities to address these matters. He declined on two occasions.

39. I have read the letter of termination of the employment of the Claimant with the RBV dated 4 June 2025 by the Governor ("NV14"). I set the content of that letter for ease of reference:-

"4 June 2025

TO: Mr Noel Vari  
Reserve Bank of Vanuatu

Dear Mr Vari,

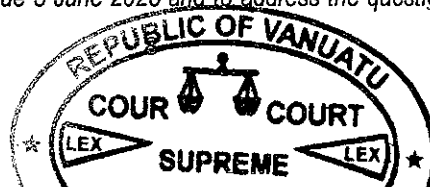
**TERMINATION OF YOUR EMPLOYMENT WITH RBV**

*I refer to my letter of suspension dated 1 April 2025 setting out a number of concerns about aspects of your conduct within RBV.*

*A disciplinary process was instituted in line with the Staff Policy and a Disciplinary Committee was constituted.*

*You responded in writing in your letter of 15 April 2025 and were given the opportunity to appear and be heard before the Committee, an invitation which you declined by making it very clear by your letter of 16 May 2025. The Disciplinary Committee then wrapped up their findings the subject of your suspension and produced their report to me for further deliberation.*

*Based on the findings of the Committee and the recommendation of the Committee is that you be terminated for serious misconduct. I then afforded you a further opportunity to present your case against the finding of the Disciplinary Committee with another 14 days due 3 June 2025 and to address the question of sanction.*



You again declined the offer to make submissions to me by 3<sup>rd</sup> June in relation to the matters set out in the letters of 1<sup>st</sup> April 2025 and 21 May 2025.

Having exhausted all due processes of Fairness and Natural Justice being afforded, I now write to advise you that after giving full consideration to the matter and the circumstances touching upon your conduct in the course of your employment involving serious offences under the RBV Staff Policy, supported by the finding from the DC report directly in relation to the allegations outlined in the letter of 1 April 2025; as your employer it has been resolved to terminate your employment with immediate effect on the grounds of serious misconduct, as outlined to you. In summary, your ongoing acts of insubordination seeking to work against and undermine the work of the Governor of the Reserve Bank of Vanuatu charged as the "Chief Executive Officer of the Bank" with responsibility "for the execution of its policy and the management of the Reserve Bank".

Not only have you actively undermined me but you have also worked with others within the bank and the VFIU to seek to have me removed. In my memo of 23 April 2024 I extended an olive branch to you to put behind us all that had gone on up until that time and to build a strong team "working together on a path to achieve the best possible outcomes for the bank, the financial system in Vanuatu and Vanuatu generally". Far from working with me, your acting undermining of me continued unabated.

Since this is a termination for serious misconduct, you are not entitled to any notice of termination or to the payment of severance. You are only entitled to salary and related benefits up to the date of this letter.

The HR Unit will be in touch with your to provide you with details of any unpaid amounts for benefits to which you are entitled, but in the meantime please return all property of the bank in your possession, including all keys/passes and any bank equipment.

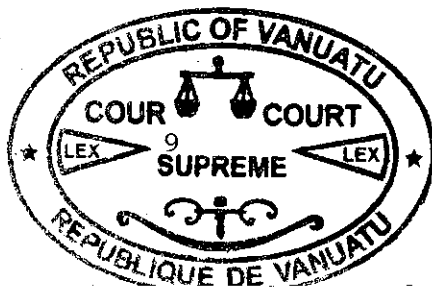
You will also be advised of all your outstanding loan liabilities over the coming days.

Thank you for your service.

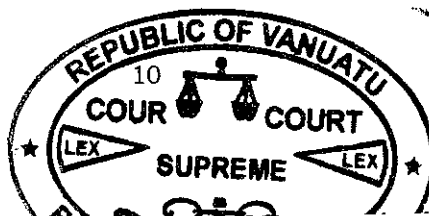
Yours sincerely,

Mr August LETLET  
GOVERNOR."

40. For the purpose of the present case, although, "Directors", under Section 10 of the Reserve Bank of Vanuatu Act is not defined, I consider that the Claimant as Deputy Governor of the RBV is one of the Directors of the RBV.
41. The evidence show that the Governor has consulted with the Minister in connection with any proposed removal of the Claimant as an employee of the RBV (Section 10(1A) and Clause 4 of the Contract of Employment of the Claimant). The fact also show that the Claimant had three opportunities to address his concerns or respond to the allegations against him. He declined on two occasions.



42. It is now clear that subject to those statutory prerequisites to termination of the Claimant, any claims arising in respect to termination, as reflected in Clause 4 of the contract, are matters the subject of challenge under the Employment Act and under the contract, and do not lend themselves to judicial review proceedings of the kind filed in these proceedings.
43. It has to be noted that in circumstances where an employee is terminated for serious misconduct, there are no cases before the Court where such an employee seeks to obtain salary in the interim pending the determination of the lawfulness of the termination. The Virelala case is an example where no such order was made.
44. Mr Kalsakau submitted that there has been numerous judicial review applications made by employees against their employer (usually the Republic or State – owned entities) and he cited as an example the case of Willie v Public Service Commission [2018] VUSC 13; Judicial Review 07 of 2015 (16 February 2018).
45. That Willie case was filed as a Judicial Review case but the claim was substantively an employment case of unlawful termination of employment. The Court dealt with it not as a judicial review proceeding but as a claim of unlawful termination of the employment contract; and the Court found that the termination of employment was unlawful because the employer did not turn their mind to consider Section 50(3) of the Employment Act. Consequently, compensatory damages were ordered on a multiplier of 4, which was applied to the employee's severance entitlement under Section 56(4) of the Employment Act. The case of Willie v Public Service Commission [2018] is not and cannot assist the case of the Claimant in the light of the Judgment of the Court of Appeal in Airports Vanuatu Limited v Bong [2015] VUCA 17, on interim basis and substantively.
46. In the present case, the claim is made as a judicial review claim and at the preliminary stage, it is apprehended that the Claimant will need to satisfy the elements in Rule 17.8. When the considerations in Rule 17.8(3) are addressed, it is apprehended that the Claimant will be unable to overcome that hurdle as:
- (a) His case for the quashing orders and declarations sought in the claim for judicial review is not arguable;
  - (b) There is another remedy that resolves the matter fully and directly.
47. As was noted at paragraph [11] by the Court of Appeal judgment in Airports Vanuatu Limited v Bong, "*most proceedings under the Employment Act will likely resolve all employment issues and judicial review will not therefore be appropriate under Rule 17.8(3)(b)*".
48. If the claim does not satisfy the basic criteria for judicial review proceedings, it is inappropriate to grant interim relief in such circumstances, which is the situation in the present case based on the claim, the Amended Application for interim relief, the sworn statements filed in support of the



claim and application, the responses to the Amended Application, the submissions of Counsel and case authorities in support.

49. Furthermore, independently from the preliminary stage considerations of Rule 17.8, when applying the considerations under the Rules (R7.2 – R7.5) in respect to the grant of interim relief, the Court is satisfied and accepts the submissions to the following effect that:

- (a) There is not a serious question to be tried in relation to the claim the subject of these proceedings;
- (b) The Claimant will not be seriously disadvantaged if the orders are not made as the law does not specifically enforce contracts of employment;
- (c) The balance of convenience works in the Defendant's favour based on all the principles enunciated in the cases referred to in the submissions regarding employer/employee relationship and the unwillingness of courts to force that relationship upon parties.

50. The weight and breadth of relevant authorities do not support the application for interim relief made by the Claimant in this case and the application should be dismissed.

#### **ORDERS**

- (a) The Amended Urgent Application for interim orders filed on 12 June 2025 is dismissed.
- (b) The costs lie where they fall.

**Dated at Port Vila, this 14<sup>th</sup> day of July, 2025.**

**BY THE COURT**

Hon. Chief Justice Vincent Lurabek

