

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

Civil
Case No. 24.1747 SC/CIVL

BETWEEN: August Letlet
Claimant

AND: Josiah Kautpen
First Defendant

AND: Attorney General
Second Defendant

AND: Reserve Bank of Vanuatu
Third Defendant

Before: Hon. Justice EP Goldsbrough

In Attendance: Blake G for the Claimant
Aron S for 1st and 2nd Defendants
Fleming M. for the Third Defendant
before ceasing to act

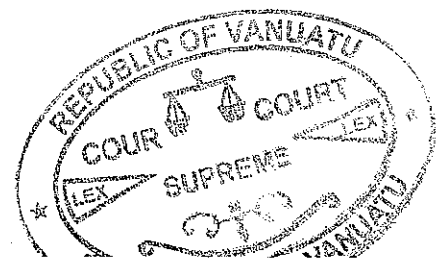
Dates of 27th February,
Hearing: 17th March 2025
Date of 31st October 2025
Judgment:

JUDGMENT

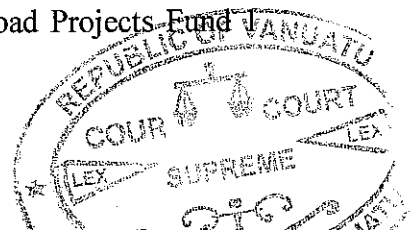
1. Through an amended claim filed on 25 July 2024, the claimant, August Letlet, seeks a Judicial Review of the decisions of the Acting Director of the Financial Intelligence Unit made under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 as amended.

Background

2. The claimant was appointed by the Prime Minister of Vanuatu, the Honourable Sato Kilman Livtunvanu on the 15th of September 2023. That appointment was made in accordance with Section 8A of the Reserve Bank of Vanuatu Act [Cap 125].

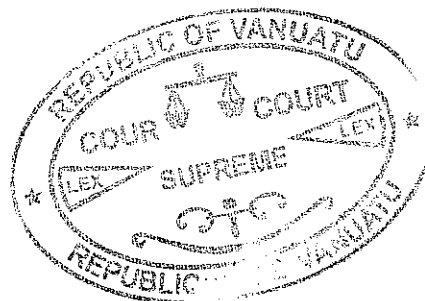


3. On the 22nd of April 2024, the first defendant wrote to the claimant advising that he, the first defendant, had found that the claimant was not 'a fit and proper person in accordance with the anti-money laundering and counter-terrorism financing fit and proper criteria'.
4. In the period between his appointment and the 22nd of April 2024, there had been attempts to remove the claimant from office or prevent him from taking up his office, which culminated on the 22nd of April 2024 in a consent judgement declaring the purported revocation of his appointment unlawful and quashing the decision to revoke the claimants appointment as governor of the Reserve Bank.
5. The concurrence of the delivery to the claimant of a copy letter from the then Prime Minister to the Reserve Bank confirming the claimant's status as governor, together with the first defendant's letter of the 22nd of April 2025, is unlikely to have been a coincidence.
6. A request was made on behalf of the claimant for time to respond to the first defendant's letter of 22 April 2024, and those submissions in response were delivered to the first defendant on 10 May 2024.
7. In a letter of 4 June 2024, the first defendant wrote advising the compliance officer of the Reserve Bank that the claimant did not meet the prescribed fit and suitability criteria and directed that the Reserve Bank remove the claimant as governor.
8. By an order made in these proceedings on 11 June 2024 the effect of the letter was stayed.
9. The 1st defendant referred to eight matters as grounds relied upon in support of his finding. Those grounds are set out in full here:-
 - a) The Claimant had a criminal case registered with the Office of the Public Prosecutor ("OPP") and 4 complainants registered with the Office of the Ombudsman ("OMB") one of which, is an insider trading case bearing registration number " ref. 5353/ OMB20/0036" in relation to potentially fraudulent dealings with the Third Defendant. This was said to be contrary to Clause 15B (b) of the AMLCTF Regulations;
 - b) The Claimant was implicated, as the then DG of the Ministry of Finance, in the Final Report of the Commission of Inquiry to Ambae Road Projects Fund



Billon Vatu, pursuant to recommendation 4.6 (a), for neglecting your responsibilities as outlined under section 34B of the Public Finance and Economic Management Act [Cap 244]. This was said to be contrary to Clause 15B(e) &7 (f) of the AML & CTF Regulations;

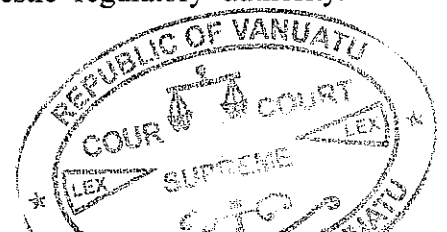
- c) In answering the AML & CTF Fit and Proper Declaration of a Key Person form, the Claimant provided false and misleading information under question 6 denying the above proceedings and implication in the said COI report. The Claimant also provided misleading responses to question 7 in terms of explaining his resignation from the role of chairman of the Third Defendant Board. These occurrences were said to be contrary to clause 15B (e) & (f) of the AML & CTF Regulations;
- d) The Claimant was removed as Third Defendant Board Chairman and Director in 2020. The removal resulted from the fact that the Claimant was occupying Chairmanship of two boards at that time and was the representative of the Ministry of Finance and Economic Management on the Third Defendant's Board which greatly exposed the Third Defendant as the Monetary Policy institution to political influence and potential conflict which has led to the insider trading case as stated in point b) above. The said removal was said to bring into question the Claimant's competency and was contrary to clause 15B & (d) of the AML & CTF Regulations.
- e) Preliminary screening of the shortlisted candidates for the governor position showed that the Claimant had past and current cases registered with the OPP and the OMB. The political influence in the recruitment process was apparent and would expose the Third Defendant to potential conflict of interest in the exercise of regulatory duties. The Claimant failed to declare said potential conflicts of interest. This was said to be contrary to clause 15 (g) of the AML & CTF Regulations.
- f) The Civil Appeal Case No. 23/1096 (Mera v VNPF) confirmed that the Claimant did not demonstrate a readiness and willingness to comply with the requirements and standards of the Vanuatu Financial intelligence Unit and with other legal, regulatory and professional requirements and standards. This was said to be contrary to clause 15B (e) of the AML & CTF Regulations.
- g) The appointment of Mr Paul Kaun as General Manager of VNPF made on 8th November 2023 was contrary to subsection 8(1) of the VNPF Act Cap. 189 which required the Minister's approval. In addition, the appointment was made regardless of Third Defendant's findings that the said person is not fit and proper. The Claimant's actions, as Board Chairman were said to be in breach of clauses 15B (e) and (f) of the AML & CTF Regulation Order No. 122 of 2014 (as amended).



- h) The Claimant's appointment as the incoming Governor of the Third Defendant was questioned by concerned relevant industry stakeholders within the business community. This was said to be contrary to clause 15B (i) of the AML& CTF Regulations.
10. The claimant asserts that the matter so relied upon was so unreasonable and falsely premised that no reasonable person exercising the powers of the first defendant under s 50 L and 50 J of the legislation could have reasonably concluded as the first defendant did, and that in the premises, the decisions made by the 1st defendant are *ultra vires* and should be quashed. In the alternative, it is asserted that the decision was so affected by bias that a fair-minded observer might reasonably suspect that the first defendant did not apply an impartial and unprejudiced mind in arriving at the decision.
11. Given the direction of the first defendant to the third defendant to remove the claimant from office, the third defendant was made a party to these proceedings. In the event, the third defendant took no part in the trial after initially filing an inappropriate 'defence'.

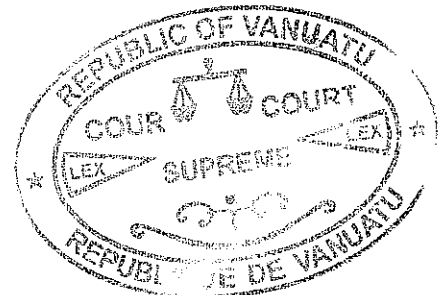
The Statutory Framework

12. The appointment of the Governor of the Reserve Bank is made under s8A Reserve Bank of Vanuatu Act by the Prime Minister on the recommendation of the relevant Minister. This legislation came well before the Anti-Money Laundering and Counter-Terrorism Financing Act of 2014. Because of that, it does not require the person considered for appointment to be found to be a fit and proper person under the subsequent legislation before the Prime Minister is asked to make an appointment. To avoid future embarrassment, the relevant Minister and those who support the Prime Minister in his office might consider discussing with the Financial Intelligence Unity when an appointment process becomes necessary, if that has not already been done.
13. It was the Anti-Money Laundering and Counter-Terrorism Financing legislation (AML & CTF) which established the Financial Intelligence Unit. That unit has powers specified in s 5 of AML & CTF, including the power to supervise reporting entities. The Reserve Bank, as agreed in these proceedings, is a reporting entity that has already been registered under s 9. S 9 (4) and (5) deal with reporting entities regulated by a domestic regulatory authority and those not regulated by a domestic regulatory authority.



Whereas the Reserve Bank regulates the average bank and thus falls under s 9 (4), the Reserve Bank falls under s 9 (5). Registration and the details necessary for it are prescribed in the Regulations. Changes must be notified, and reporting entities may be removed from the Register under s 9 if changes affect their continued qualification for registration. It is not suggested here that the Reserve Bank's continued registration is an issue.

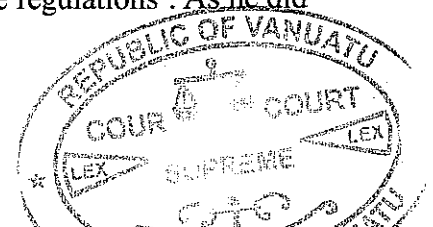
14. Part 10AA of AML & CTF provides for enforcement, and in particular s 50 I and J provide for the Director to require a reporting entity to remove a 'disqualified person'. A disqualified person is defined in s 50 J. There are eight categories of disqualified persons, and it is not suggested that the claimant falls within any of them, save for the final category of 'does not meet any other fit and proper criteria prescribed by the Regulations'.
15. The prescribed criteria for fitness and suitability are set out in AML & CTF Regulation Amendment Order 153 of 2015. There are nine criteria, and failure to meet any of them may result in an adverse finding. The nine categories are:-
 - a) Whether the person has been convicted of any criminal offence, particularly dishonesty, fraud, financial crime or offence against legislation relating to banking, financial services, legal person, legal arrangement, insurance and high-value property and fund management; and
 - b) Whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings; and
 - c) Whether the person has been dismissed, or asked to resign and resigned, from employment or from a position, trust, fiduciary appointment or similar, and
 - d) Whether the person has ever been disqualified from acting as a director or disqualified from acting in any managerial position, and
 - e) Whether in the past 10 years, the person has been honest and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the Vanuatu Financial Intelligence Unit and with other legal, regulatory and professional requirements and standards; and



- f) Whether the person has contravened any of the requirements and standards of the Vanuatu Financial Intelligence Unit or equivalent standards or requirements of other regulatory authorities, professional bodies, or government bodies or agencies; and
- g) Whether the person has actual or potential conflicts of interest that are likely to influence their ability to carry out their role and functions with appropriate probity and competence; and
- h) Whether the person has adequate experience and demonstrated competence and integrity in the conduct of business duties; and
- i) Whether the person is of bad repute with the financial and business community.

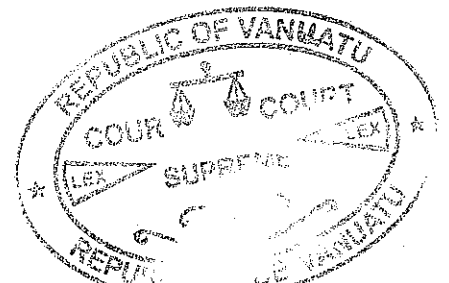
The evidence

16. The claimant was the only person to give evidence on his behalf. His evidence in chief consisted of four sworn statements filed in these proceedings. Those sworn statements were filed on 7 June 2024, 3 July 2024, 22 July 2024 and 8 October 2024. Counsel extensively cross-examined him for the 1st and 2nd defendants.
17. Given that the challenge is against the decisions of the 1st defendant, there was little that the claimant could say in evidence other than what took place. However, during cross-examination, some important information was elicited. He was asked about the grounds the Director had specified for why he did not meet the prescribed fitness and suitability criteria, and answered substantially in accordance with the information provided in his initial response to the Director.
18. More significantly, the Acting Director of FIU gave evidence as to how he came to his conclusion. All of his evidence in chief was contained in four sworn statements. Orders were made for the removal of parts from each of his four statements. He was asked in cross-examination about his general understanding of the legislation within which the FIU was required to operate. He confirmed in his evidence that the fit-and-proper-person test had to be completed in the context of AML & CTF risks. In his words, it was to try to ensure that key personnel in post do not increase the risk of AML and CTF. He spoke of ongoing criminal prosecutions. Whilst he agreed that he had not sought or obtained information from the Office of the Public Prosecutor, he expressed the view that 'if there is a registered case, that is a proceeding as per the regulations'. As he did

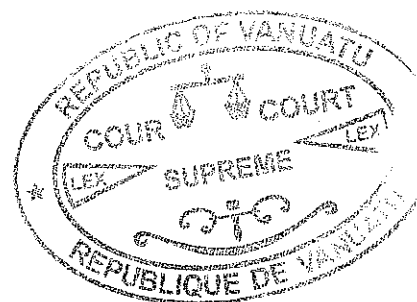


not ask, he did not discover that an allegation of assault had been withdrawn. As he did not ask, he was not aware that no charges had been filed in relation to any insider trading allegations.

19. The witness made his position very clear about how he dealt with information received. He described himself as a receiver of information, not a fact finder. Whatever its nature, if there is a registered case, that is enough. 'I do not make any inquiry as to whether a charge has been brought', he answered. He also said that being involved in civil proceedings means that there must be something wrong. Mention in an Ombudsman report implies that something is wrong. He summarised his position by stating that he had suspicions about the claimant due to registered cases.
20. He was questioned about an email written with his authority. That email made it clear that the claimant was not a fit person within the relevant regulations. That was expressed as a finding, not an opinion. He also confirmed that, in his sworn statement filed in CC 3203 of 2023 on 15 January 2024, the FIU found that the claimant was not a fit person under the regulations. He was referred to p 20 and p 26 of that particular statement.
21. It was at this point that I observed the witness to be evasive. He was reluctant to answer these questions and gave the impression of dishonesty. The manner in which he was now answering was quite different from his earlier evidence. He had earlier and confidently asserted facts and opinions about the legislation within which he was required to operate, demonstrating his lack of understanding of it. Now, faced with the notion that he had predetermined the issue leading to his decision, he could hardly remember anything. He even suggested that the signature on his statement was somehow different, but eventually recalled working with RBV officers on it.
22. He asserted that his assessment of the claimant was independent of any other. Still, he agreed that the letters were written on the same day and delivered in the same car, with an officer from the Office of the Prime Minister on the left and an officer from FIU on the right. He then suggested it was two cars, but at the same time.
23. He confirmed his view that if a report was given to the Office of the Public Prosecutor, that amounts to a registered case and that means there are criminal proceedings on foot.

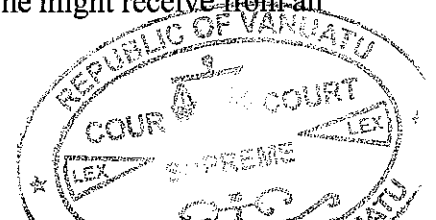


24. He agreed that, as the Office of the Ombudsman had not published reports on uncompleted cases said to involve the claimant, all of that was unfinished. He felt under no obligation to inquire, just as he felt no obligation to inquire into registered civil cases.
25. He agreed that he had taken steps to freeze the bank accounts of the claimant. He was aware of a Supreme Court decision on that, but chose not to write to ANZ to correct his error.
26. He agreed that he gave an interview to the Daily Post, which led to the publication of an article on 12 July 2024 at a time when there was an order for a stay in place.
27. He said that he read the response to his decision that the claimant provided and reviewed it against the response that the reporting entity had provided. He felt supported by officers from the Reserve Bank (RBV).
28. He explained why he believed the answers provided by the claimant were not true. Sadly, his explanations were distinctly lacking. In particular, he could not explain why, when legislation requires membership of the RBV Board to include the Director General of Finance, the fact of membership of the Board by the claimant could form the basis of a finding of not being fit.
29. On resignation, he said that, having resigned, he was a disqualified person.
30. He agreed that suspicious activity reports filed by the Compliance Officer of RBV did not involve either proceeds of crime or terrorist activities and so could not reconcile how taking them into account could be a proper part of the fitness and suitability test.
31. He spoke of the conflict between those responsible for monetary policy and those responsible for fiscal policy, and the position of a DG MoFEM being a Board member of RBV by virtue of s 8(3) RBV Act. That, he said, was the basis of his opinion that the claimant had a conflict of interest.
32. Finally, he confirmed that FIU are not an investigator, merely a receiver of information. He felt no obligation to make further inquiry.



Discussion

33. The 1st defendant has already concluded, as he said in his sworn statement filed on 15 January 2024 in a different but related case, that the claimant did not fall within the fit and proper criteria. He had formed that view based on information he had received.
34. He then allowed the claimant to make representations after his letter of 22 April 2024, delivered along with the letter from the Office of the Prime Minister confirming the claimant's position within the Reserve Bank, as he is no doubt required to do.
35. Thereafter, having received representations from the claimant, he nevertheless maintained his position. It is not necessary to state that he was entitled, after considering the representations made, to reject them. However, it is clear from the abundant evidence that the 1st defendant paid no more than lip service to the process and did not, in fact, consider the representations at all, for his mind was already made up.
36. In his own view, he did not need to consider the representations because he had no interest in the truth or otherwise of the material he had been provided with. He was not interested in knowing that there were legitimate reasons why the claimant was involved in civil proceedings, or that there was no decision made to institute criminal proceedings against the claimant.
37. In evidence, the claimant explained in similar terms to that which he gave to the 1st defendant in his representations. He was able to explain why he disagreed with the conclusion that, based on the material, he did not meet the fit-and-proper person criteria. Whilst the view formed by the Court is of little if any relevance in that regard, the explanations given were sufficient to suggest the claimant was correct in that regard.
38. Importantly, the 1st defendant also appeared to fail to consider his powers and his consideration in the context of the applicable legislation. In failing to do that, he risked abusing power. Many of the individual criteria set out in Regulation 15 are capable of being unconstitutional if they are not used within the framework of the legislation and in line with its stated aims and objectives.
39. The apparent lack of understanding as to his role within the general scheme, in particular his assertion that he was not to look behind reports which he had received, leading no doubt to his lack of consideration of any response he might receive from an



individual involved in his assessment of suitability criteria, is a significant failure. Approaching his work in this way will, in my view, inevitably lead to error.

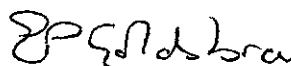
40. The apparent lack of understanding of his role and responsibilities extended to the submission that none of his actions could be challenged in a court of law. He demonstrated that misunderstanding in his response to the request for interim relief and in his published interview with the Daily Post during the course of these very proceedings.
41. AML & CTF legislation, whether in this jurisdiction or in others, affords great and intrusive power to those charged with its enforcement. It must be used and applied with great care and respect to the rights which it seeks to curtail, otherwise it will fall foul of constitutionality tests

Conclusion

42. The claimant is successful in his claim, and the decision of the 1st defendant reflected in his letter of 4 June 2024 addressed to the 3rd defendant is declared to be ultra vires and void, and is hereby quashed.
43. An order is made that the 1st defendant pay the costs of and incident to the claim to the claimant. At the request of counsel, a hearing may be held to determine whether the costs should be on the standard or indemnity basis if required and requested within seven days from the publication of this decision. Otherwise, an order for costs of and incidental to this claim is made on the standard basis, such costs to be agreed or assessed.

Dated at Port Vila, this 31st day of October 2025

BY THE COURT



Hon. Justice EP Goldsbrough

