

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

*CAF Rk*

**CIVIL CASE No.68 OF 2008**

**IN THE MATTER OF:** THE MUTUAL ASSISTANCE IN THE CRIMINAL  
MATTERS ACT No.14 OF 2002 [CAP.285]

**BETWEEN:** THE PARTNERS OF PKF CHARTERED  
ACCOUNTANTS, ANDREW NEILL, ROBERT  
AGIUS AND KELLY FAWCETT-MOURGES  
AND THE INTERNATIONAL FINANCE  
TRUST COMPANY LIMITED  
Applicants

**AND:** THE SUPREME COURT OF THE REPUBLIC  
OF VANUATU  
Defendant

**CIVIL CASE No.69 OF 2008**

**IN THE MATTER OF:** THE MUTUAL ASSISTANCE IN THE CRIMINAL  
MATTERS ACT No.14 OF 2002 [CAP.285]

**BETWEEN:** JAMES ALBERT BATTY & LESLEY ANNE  
BATTY, EQUITY INVESTMENT GROUP, PKF  
CHARTERED ACCOUNTANTS, AND THE  
INTERNATIONAL FINANCE TRUST  
COMPANY LIMITED  
Applicants

**AND:** THE SUPREME COURT OF THE REPUBLIC  
OF VANUATU  
Defendant

**CIVIL CASE No.70 OF 2008**

**IN THE MATTER OF:** THE MUTUAL ASSISTANCE IN THE CRIMINAL  
MATTERS ACT No.14 OF 2002 [CAP.285]

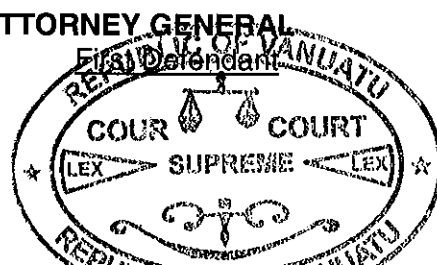
**BETWEEN:** MOORES ROWLAND (a firm)  
First Claimant

**AND:** TRANSPACIFIC TRUST LIMITED  
Second Claimant

**AND:** ANDREW ROSS MUNRO  
Third Claimant

**AND:** LAURENCE JOHN HARRISON  
Fourth Claimant

**AND:** ATTORNEY GENERAL  
First Defendant



**AND:**     **The Honourable CHIEF JUSTICE,  
VINCENT LUNABEK**  
                  Second Defendant

**AND:**     **VANUATU POLICE FORCE**  
                  Third Defendant

## **CASE STATED**

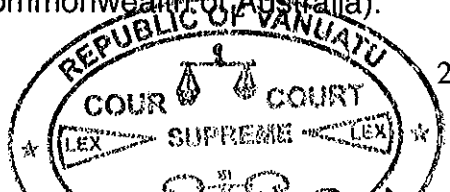
***Pursuant to Section 31(5) of the  
Judicial Services and Courts Act of 2000***

1.     Is a decision to issue a warrant pursuant to section 20 of the Mutual Assistance in Criminal Matters Act 2002 reviewable under a Claim for Judicial Review?
  
2.     If yes, does-
  - (a)     the Supreme Court
  - (b)     the Court of Appealhave jurisdiction to adjudicate on the review at first instance?
  
3.     If yes to question 2(a), does the Court of Appeal have jurisdiction for an appeal against the finding of the Supreme Court on the review?
  
4.     If no to question 1, does the Court of Appeal have jurisdiction to hear an appeal from the decision?
  
5.     If yes to question 4, does the Court of Appeal have jurisdiction to order the decision-maker to give the appellant a written statement of his reasons for issuing the warrant?

### **Background information**

1.     On some date prior to 22 April 2008, Australia made three requests under s.6 of the Mutual Assistance Act to the Attorney-General for the Republic of Vanuatu for the issue of search warrants. The first request related to an investigation ("the PKF investigation") which had commenced in Australia into:
  - (a)     Robert Francis Agius
  - (b)     Kelly Jane Fawcett-Morgues
  - (c)     Neill Gregory Fontin
  - (d)     Fiona Denise McConnochie
  - (e)     Allan John McLeish
  - (f)     Andrew Neill

for a criminal matter involving alleged offences under s.29D and s.86 of the Crimes Act 1914 (Commonwealth of Australia) and sections 11.5, 134.2, 135.4, s 400.3 of the Criminal Code 1995 (Commonwealth of Australia) and s. 81 of the Proceeds of Crime Act 1987 (Commonwealth of Australia).



4

2. The second request related to an investigation ("The Batty investigation") which had commenced in Australia into:

- (a) James Albert Batty; and
- (b) Lesley Anne Batty

for a criminal matter involving alleged offences under s.29D and s.86 of the Crimes Act 1914 (Commonwealth of Australia) and s.81 of the Proceeds of Crime Act 1987 (Commonwealth of Australia).

3. The third request related to an investigation ["The Moores Rowland (a firm) & Transpacific Trust Ltd (formerly guardian Trustees Ltd)"] which had commenced in Australia into:

- (a) Lynette Katleen Liles
- (b) Billy Ray Harrison
- (c) Laurence Harrison
- (d) Jane Maria Sakovits
- (e) Andrew Meikle
- (f) Paul Earnest Mascall

for a criminal matter involving alleged offences under s.29D and s.86 of the Crimes Act 1914 (Commonwealth of Australia) and Section 11.5, 134.2, 135.4 400.3 of the Criminal Code 1995 (Commonwealth of Australia) and s.81 of the Proceeds of Crime Act 1987 (Commonwealth of Australia).

4. On 22<sup>nd</sup> April 2008, the Attorney General of the Republic of Vanuatu directed Inspector Allanrow Bani, pursuant to s.19(1) of the Mutual Assistance Act, to apply to the Supreme Court of Vanuatu for the search warrants requested by Australia.

5. On 22 April 2008, in relation to the PKF investigation, Inspector Bani filed an application pursuant to s.19 of the Act for the issue of search warrants to search the following premises:

- (i) PKF House, Lini Highway, Port-Vila, Vanuatu, being the business premises of PKG Vanuatu and the registered address of International Finance Trust Company Limited;
- (ii) the residential premises of Robert Francis Agius;
- (iii) the residential premises of Kelly Fawcett-Mourgues;
- (iv) the residential premises of Neil Gregory Fontin;
- (v) the residential premises of Andrew Neill;
- (vi) Westpac Banking Corporation;
- (vii) ANZ Bank (Vanuatu) Limited;
- (viii) Port-Vila Post Office

(MA Criminal Case No.01 of 2008)

6. Also on 22 April 2008, Inspector Allanrow Bani filed an application pursuant to s.19 of the Act in relation to the Batty investigation for the issue of search warrants to search the following premises:



- (i) the Summit Estate, Devils Point Road, Port-Vila, Vanuatu, being the resident of James Albert Batty and Lesley Anne Batty;
- (ii) EIG House, Rue Captain Bligh, Port-Vila, Vanuatu, being the business premises of Equity Investment Group;
- (iii) PKF House, Lini Highway, Port-Vila, Vanuatu, being the business premises of PKF Vanuatu; and
- (iv) Port-Vila Post Office, Lini Highway, Port-Vila, Vanuatu in relation to Post Office Box 1401, Port-Vila, Vanuatu, being the Post Office Box used by Equity Investment Group.

(MA Criminal Case No.02 of 2008)

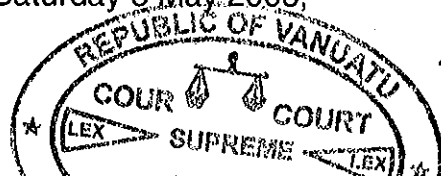
7. Further on 22 April 2008, Inspector Allanrow Bani filed an application pursuant to s.19 of the Act in relation to the Moores Rowland & Transpacific Trust Limited investigation for the issue of search warrants to search the following premises:

- (a) Premises occupied by Moores Rowland Vanuatu at 2<sup>nd</sup> Floor Windsor House, Lini Highway, 110 Port-Vila, Vanuatu;
- (b) Premises occupied by Guardian Trustees Limited at 2<sup>nd</sup> Floor Windsor House, Lini Highway, 110 Port-Vila, Vanuatu;
- (c) Premises occupied by George Vasaris and Company at Law House, Lini Highway, Port-Vila, Vanuatu;
- (d) The residential premises of Andrew Ross Munro at Unit 24, the Melanesian Hotel, Port-Vila, Vanuatu;
- (e) The residential premises of Lawrence Harrison;
- (f) The residential premises of George Vasaris, Law House, Lini Highway, Port-Vila Vanuatu;
- (g) National Bank of Vanuatu, Rue de Paris, Port-Vila, Vanuatu ;
- (h) ANZ Bank (Vanuatu) Limited, ANZ House, Lini Highway, Port-Vila, Vanuatu;
- (i) Port-Vila Post Office, Lini Highway, Port-Vila, Vanuatu in relation to:
  - (i) Post Office Box 257, Port-Vila, Vanuatu, believed to be used by Moores Rowland Vanuatu;
  - (ii) Post Office Box 9003, Port-Vila, believed to be used by the ANZ Bank;
  - (iii) Post Office Box 166, Lini Highway, Port-Vila, Vanuatu, believed to be used by George Vasaris & Co.; and
  - (iv) Post Office Box 249, Port-Vila, Vanuatu, believed to be used by National Bank of Vanuatu.

8. The applications were supported by sworn statements of Allanrow Bani dated 22 April 2008. On 25 April 2008, further sworn statements of Allanrow Bani were filed in support of both applications.

9. On 25 April 2008, the Supreme Court of Vanuatu issued a search warrant in MA Criminal Case No101 of 2008 authorising Inspector Bani to enter premises including the following:

- (a) PKF House, Lini Highway, Port-Vila, Vanuatu, being the business premises of PKG Vanuatu and the registered address of International Finance Trust Company Limited from 6.00AM on Sunday 27 April 2008 to 6.00PM on Saturday 3 May 2008;



4

*[Handwritten signature]*

- (b) the residential premises of Robert Francis Agius, The Ridge, Pango Road, Malapoa, Port-Vila, Vanuatu between the hours of 6.00AM and 6.00PM;
  - (c) the residential premises of Kelly Fawcett-Mourgues, Lenaca Road, Nambatri, Port-Vila, Vanuatu between the hours of 6.00AM and 6.00PM; and
  - (d) the residential premises of Andrew Neill 3 Tassiriki Peninsular, Tassiriki, Port-Vila, Vanuatu between the hours of 6.00AM and 6.00PM.
10. On 25 April 2008, the Supreme Court issued a search warrant in MA Criminal Case No.02 of 2008 authorising Inspector Bani to enter the premises including the following:
- (a) The Summit Estate, Devils Point Road, Port-Vila, Vanuatu, being the residence of James Albert Batty and Lesley Anne Batty between the hours of 6.00AM and 6.00PM;
  - (b) EIG House, Rue Captain Bligh, Port-Vila, Vanuatu, being the business premises of Equity Investment Group from 6.00AM on Sunday 27 April 2008 to 6.00PM on Saturday 3 May 2008;
  - (c) EIG House, Rue Captain Bligh, Port-Vila, Vanuatu, being the business premises of Equity Investment Group from 6.00AM on Sunday 27 April 2008 to 6.00PM on Saturday 3 May 2008;
11. On 25 April 2008, the Supreme Court issued a search warrant in MA Case No.03 of 2008 authorising Inspector Bani to enter premises including the following:
- (a) Moores Rowland Vanuatu;
  - (b) Guardian Trustees Limited;
  - (c) Andrew Ross Munro;
  - (d) Lawrence Harrison.
12. On 23<sup>rd</sup> May 2008, application were filed to restrain the First and/or the third Defendants, agents or servants until the trial of the proceeding, among other matters, from dealing with, or otherwise disposing of all or any property seized pursuant to the warrants in MA Case No.3 of 2008 (now Civil Case No.70 of 2008).
13. Also on 23<sup>rd</sup> May 2008, a claim for Judicial Review was filed on 23<sup>rd</sup> May 2008 in MA Case No.3 of 2008 which is now Civil Case No.70 of 2008.
14. On 23<sup>rd</sup> May 2008, Mr Laurence Harrison and Ms Eleanor Kenneth filed sworn statements in support of the claim and the application in Civil Case No.70 of 2008.
15. On 27 May 2008, applications were filed pursuant to part 17 of the Civil Procedure Rules 2002 seeking to have the search warrants issued in MA

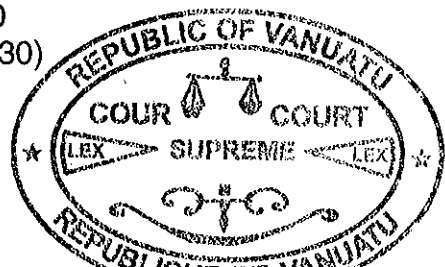


CR No.1 of 2008 (Civil Cases No.68 of 2008) and MA CR NO.2 of 2008 (Civil Case No.69 of 2008) set aside, and the material seized pursuant to them returned to the parties from who they were seized.

16. ON 27 May 2008, Andrew Neill, a partner of PKF Chartered Accounts, filed a sworn statement in support of the application in Civil Case No.68, and James Batty, a principal of the Equity Investment Group of companies, filed a sworn statement in support of the application in Civil Case No.69.
17. On 28 May 2008, the Supreme Court made interim orders in MA CR No.1 of 2008 and MA CR No.2 of 2008 restraining the Commissioner of Police and any of their officers from:
  - (a) disposing of, delivering up, transferring or transmitting the things seized pursuant to the search warrants issued in MA CR No.1 of 2008 and MA CR No.2 of 2008 ("the things seized") to the Australian Government; or
  - (b) removing any of the things seized from Vanuatu; or
  - (c) transmitting any photos or videos or other photographic or digital representations of the things seized or the events involving their seizure to any third party.
18. On 3 June, 2008 the Supreme Court of Vanuatu granted the Interim injunctive orders sought in MA Case No. 3 of 2008 (Civil Case No. 70 of 2008).
19. On 9 June 2008, the Applicants in MA Cases Nos. 1 and 2 of 2008 filed Amended Applications by way of Judicial Review, pursuant to Part 17 of the Civil Procedure Rules 2002.
20. On 13 June 2008, the Defendant filed defences to the Amended Applications.
21. **RELEVANT CONSTITUTIONAL AND LEGISLATIVE PROVISIONS REQUIRING THE CASE TO BE STATED TO THE COURT OF APPEAL.**
  - (a) Supreme law of the land: Vanuatu Constitution - Articles 47 & 49
  - (b) Judicial Services and Courts Act of 2000 - Sections 27 and 28
  - (c) Mutual Assistance in Criminal Matters Act No.14 of 2002 (MACM) (Vanuatu).

**NOTES/OBSERVATIONS ON MACA Act No.14 of 2002**

- Court means the Supreme Court of Vanuatu
- Court is referred to under following Parts of MACM of 2002
  - Part I (Definitions)
  - Part 2 – s.6(5)
  - Part 4 – ss. 19 and 20
  - Part 5 – Division 1 (s.30)
  - Part 6 (s.36)



- Part 7 (ss. 40, 42, 44, 45, 46, 47 and 48)
- Part 8 (s. 49)
- Part 3 makes specific reference to the Judge (ss. 12, 13, 14, 15 and 15) but not the Court
- Part 9 contains its own definitions with the MACM Act No.14 of 2002 –

Reference is made to Vanuatu Court which means:-

- (a) the Supreme Court of Vanuatu; or
- (b) a judge or arbitrator acting under Vanuatu law, or
- (c) a person or body authorised by Vanuatu law, or by consent of parties, to hear, receive and examine evidence.

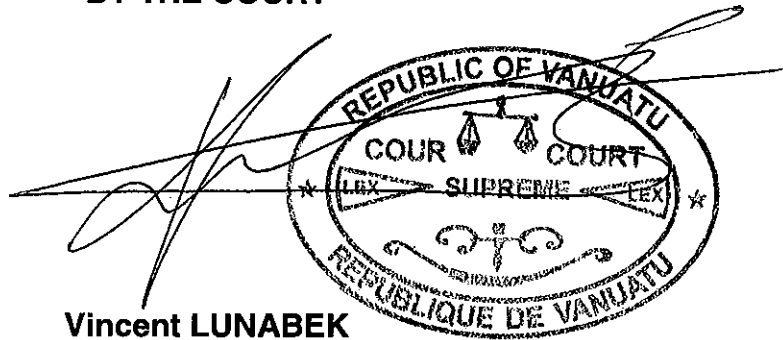
Part 9 applies to a proceeding, before a Vanuatu Court, that is:

- (i) a criminal proceeding for an offence against Vanuatu law; or
- (ii) a related civil proceeding.

22. Application stayed pending outcome of Case Stated before the Court of Appeal.

**DATED at Port-Vila this 10<sup>th</sup> day of July 2008**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**