

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

Judicial Review  
Case No. 24/1734 SC/JUDR

**BETWEEN:** Mariana Lal  
Claimant

**AND:** Josiah Kuatpen  
First Defendant

**AND:** Republic of Vanuatu  
Second Defendant

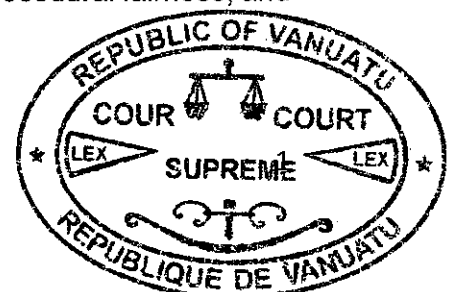
*Date:* 19 August 2024  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr N. Morrison  
Defendants – Mr T. Loughman

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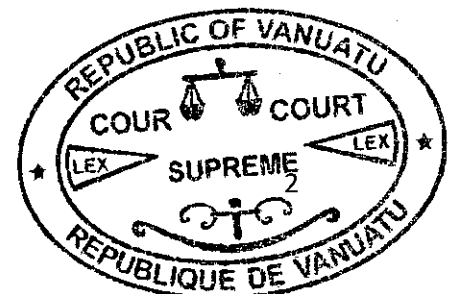
**DECISION AS TO RULE 17.8 MATTERS**

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1. On 6 June 2024, the Claimant Mariana Lal filed the Claim for Judicial Review seeking the following orders:
  - a) A declaration that there were no reasonable grounds for the First Defendant Acting Director of the Financial Intelligence Unit ('FIU') Josiah Kuatpen's decision dated 2 November 2023 and 24 March 2024 to determine that the Claimant was not a fit and proper person under the *Anti-Money Laundering and Counter-Terrorism Financing Act* No. 13 of 2014 (the 'Act') (the 'Decision'); and/or
  - b) A declaration that before the First Defendant made the Decision, the Claimant was not afforded natural justice and/or procedural fairness; and

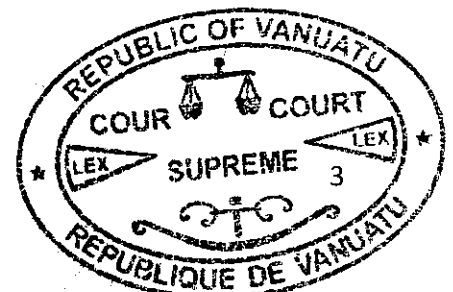


- c) A declaration that the Decision was unlawful.
2. Also on 6 June 2024, the Claimant filed the Sworn statement of Mariana Lal in support.
  3. The Claim is disputed: First and Second Defendants' Defence and Sworn statement of Josiah Kuatpen filed on 25 July 2024.
  4. Rule 17.8(3) of the *Civil Procedure Rules* ('CPR') provides that the judge will not hear the claim unless he or she is satisfied as to all four matters set out in that rule:
    - (i) the Claimant has an arguable case (rule 17.8(3)(a), CPR);
    - (ii) the Claimant is directly affected by the decision under challenge (rule 17.8(3)(b), CPR);
    - (iii) there has been no undue delay in making the Claim (rule 17.8(3)(c), CPR); and
    - (iv) there is no other available remedy which resolves the matter fully and directly (rule 17.8(3)(d), CPR).
  5. The Defendants contested all four matters: Defendants' Submissions filed on 5 July 2024. The Claimant's submissions were filed on 6 August 2024.
  6. The Defendants submitted that the Claimant does not have an arguable case because the First Defendant's Decision that the Claimant was not a fit and proper person within the legislative requirements was by way of a letter written to the Director of the Wanfuteng Bank Limited (the 'Bank'), which was her employer and a 'reporting entity' for the purposes of the Act. The Bank has not contested the Decision. The Director of the Bank told the Claimant the following day to vacate her office as Acting Chief Executive Officer ('CEO') of the Bank. On 6 November 2024, the Claimant resigned from the Bank. The Defendants submitted that on the Claimant's resignation, she ceased to be a 'key person' of the Bank and therefore the Claim is misconceived.
  7. The Defendants also submitted that the Claimant is not directly affected by the Decision as the First Defendant's letter dated 2 November 2023 was directed to the Bank and not to her.
  8. With respect, it is difficult to understand the Defendants' submissions. The First Defendant stated in his letter to the Bank dated 2 November 2023 that the Claimant was not a fit and proper person under the Act. The following day, the Director of the Bank instructed the Claimant to vacate the Acting CEO office. This reflects the legislative framework that a person who is not a fit and proper person cannot occupy




a position defined as a “key person” in s. 1 of the Act which includes a manager (further defined as including a CEO).

9. It is patently obvious from this description of events that the Claimant was directly affected by the Decision. The Decision was directed to or addressed to the Bank however it was about the Claimant personally, stating that she was not a fit and proper person under the Act. The contents of the Decision meant that she could not occupy the ‘key person’ position of Acting CEO of the Bank. This had immediate real-time effects in that within 24 hours of the Decision, she was instructed to vacate the office of Acting CEO and then she resigned from the Bank four days later.
10. Accordingly, it would be to put form over substance to accept the Defendants’ submission that the Claimant was not directly affected by the Decision of the First Defendant. On the contrary, the Claimant was and is directly affected by the decision under challenge: rule 17.8(3)(b) of the CPR.
11. The Claimant alleges in the Claim that she was denied natural justice and/or procedural fairness as she was not given an opportunity to be heard before the Decision was made. That is arguable. It is also alleged that the grounds for the Decision are unreasonable and falsely premised. That also is arguable. Finally, it is alleged that in the premises, the First Defendant acted unlawfully in making the Decision. That is certainly arguable on the allegations set out in the Claim. I conclude that the Claimant has an arguable case: rule 17.8(3)(a) of the CPR.
12. It was not until the First Defendant’s letter to the Claimant’s lawyer dated 24 March 2024 that he responded to the repeated requests for further and better particulars. In that letter, the First Defendant did not provide any further and better particulars but stated that the Claimant should take up her grievances with the Bank.
13. I agree with the Claimant’s submissions that the Decision was properly complete for challenge on 24 March 2024. Further, that it is incorrigible that the Defendants should now argue that there was an undue delay on the Claimant’s part when they caused the delay through the First Defendant’s lack of response until the letter dated 24 March 2024. Accordingly, I am satisfied that there has been no undue delay in making the Claim: rule 17.8(3)(c) of the CPR.
14. Finally, it would be futile for the Claimant to raise her concerns about lack of natural justice or the absence of reasonable grounds in the First Defendant’s Decision with the Bank – as she was invited to by the First Defendant’s letter dated 24 March 2024. On the contrary, her concerns about the First Defendant’s Decision cannot be remedied by the Bank. They can only be resolved by way of a judicial review claim; there is no other available remedy which resolves the matter fully and directly: rule 17.8(3)(d) of the CPR.



15. In the circumstances, this matter must proceed to hearing of the Claim **at 9am on 3 September 2024** at Dumbea Courtroom.

**DATED at Port Vila this 19<sup>th</sup> day of August 2024  
BY THE COURT**

  
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Justice Viran Molisa Trief

