

**BETWEEN:** **REPUBLIC OF VANUATU**  
Appellant

**AND:** **HUGO BRUGGER, MARCEL BRUGGER,  
FABIENNE BRUGGER, OLIVIER BRUGGER,  
PASCAL BRUGER, CHLOE BRUGGER,  
SANDRA DALY BRUGGER and BIRGIT  
METTEL**  
Respondents

**Date of Hearing:** 7 February 2024

**Coram:** *Hon. Chief Justice, Vincent Lunabek  
Hon. Justice Ronald Young  
Hon. Justice Richard White  
Hon. Justice Oliver A. Saksak  
Hon. Justice Edwin P. Goldsbrough  
Hon. Justice William K. Hastings*

**Counsel:** *F Bong and S Aron for the Appellant  
M Fleming for the Respondents*

**Date of Judgment:** 16 February 2024

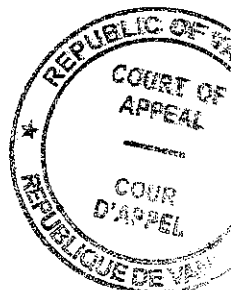
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## REASONS FOR JUDGMENT

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### Introduction

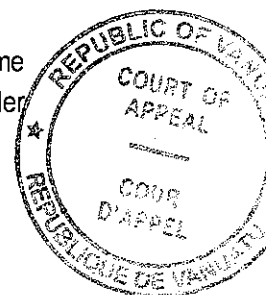
1. The Republic of Vanuatu appeals against orders made by a judge in the Supreme Court consequent upon the removal of members of the Brugger Family from Vanuatu by the Director of Immigration Services (the Director) on 27 August 2023.
2. For approximately 13 years, the Brugger Family resided without incident in Eratap on Efate. The family comprises Marcel Brugger, his wife Fabienne, his children Chloe (13 years old), Pascal (10 years old) and Olivier (9 years old), his father Hugo Brugger and his mother Sandra Brugger. In addition, a friend and business associate, Birgit Mettel had been living with the family. In these reasons, we will, unless otherwise indicated, include Birgit within the description "*Brugger Family*". We will also, without intending any disrespect, refer to the individual members of the Brugger Family by their first names.
3. The Brugger Family constructed and subsequently operated the Aquana Resort at Eratap. In doing so they have employed many Ni-Vanuatu people.



4. On 7 April 2021, the Director declared Marcel, Fabienne, Hugo, Sandra and Birgit to be prohibited immigrants, pursuant to s.50(1)(b) and (c) of the Immigration Act (2010) (*“the Prohibited Immigrant Declarations”*), and caused their names to be entered in the *“Prohibited Immigrants Lists”*. Each Declaration (wrongly shown in one place as having been made on 7 September 2021) directed the family member *“to make any necessary arrangements to leave the country”* and banned the member from entering Vanuatu until their name had been removed from the Prohibited Immigrants Lists.
5. Despite these actions, the Director did not serve on any of the Brugger Family, the Declarations, notice of the making of the Declarations or notice that they had been entered into the Prohibited Immigrants Lists. The Brugger Family were not otherwise aware that the Declarations had been made or that their names had been entered on the Prohibited Immigrants Lists.
6. There were numerous communications between Marcel and the Department of Immigration (*“the Department”*) after 7 April 2021. It will be necessary to return to some of those communications.
7. Some 2 years and 4 months after 7 April 2021, on 17 August 2023, the Minister of Internal Affairs, acting on advice from the Director and stating that he was acting under s.53A(1)(ab) and (ac) of the Immigration Act 2010, made an order (the Removal Order) directing that all members of the Brugger Family, other than Birgit, be removed from Vanuatu on the grounds that they were prohibited immigrants and had breached conditions of their visas on *“three different occasions”*. The Minister did not specify the breaches alleged.
8. We will return to the statutory regime governing the making of removal orders shortly. It is sufficient to record presently that the Minister did not observe several aspects of that regime and, in particular, did not serve the Brugger Family with copies of the Removal Order.
9. The consequence, as the primary Judge found, was that the Brugger Family did not have notice that they had been declared Prohibited Immigrants and did not have notice of the Removal Order, let alone notice in advance that the Minister proposed making such an order.
10. Despite these circumstances, at 2:00am on Sunday 27 August 2023, Immigration Officers, supported by Police, executed the Removal Order by taking the members of the Brugger Family (other than Sandra) into custody at the Aquana Resort and putting them on the Port Vila – Sydney flight at 7am. Sometime after 2:00am, Immigration Officers returned to the Aquana Resort and took Sandra into custody. She too was put onto the Port Vila – Sydney flight at 7am that day.
11. As the Minister had not issued any Removal Order with respect to Birgit, there was no basis at all on which Immigration Officers could lawfully have taken her into custody on 27 August 2023 or have removed her from Vanuatu.

### **The Application for Judicial Review**

12. On 13 October 2023, the Brugger Family commenced judicial review proceedings in the Supreme Court seeking an order quashing the removal order, the removal of Birgit and seeking an order

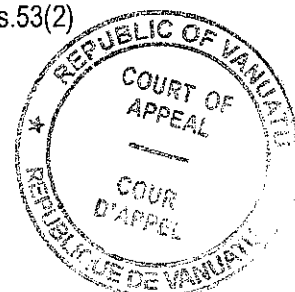


that publication of the Minister's decision of 17 August "*be removed*". In addition, the Brugger Family sought "*any other order deemed suitable*".

13. At the hearing of the judicial review application on 13 November 2023, counsel for the Republic accepted that none of the Prohibited Immigrant Declarations and the Removal Order had been served on the Brugger Family and, accordingly, that the Declarations and Order should be quashed.
14. Strictly speaking, that concession should have entitled the Brugger Family to complete relief on the application for judicial review (with a declaration that the removal of Birgit had been unlawful as the removal itself could not be quashed). However, the parties requested the Judge to hear and determine other issues even though there had not been any amendment of the judicial review application. The Judge acceded to that request.

### **The Statutory Regime**

15. Unless the subject of an exemption, all non-citizens must have a visa in order to enter, and remain in, Vanuatu: Immigration Act s.26. Applications for visas are to be made to the Director (s.34). If satisfied that the criteria for the issue of a visa have been satisfied, as well as other specified matters, the Director must grant a visa to an applicant (s.39).
16. Section 50 specifies categories of non-citizens who are prohibited immigrants. These include a person who is a member of a class of persons prescribed by the Regulations to be prohibited immigrants (s.50(1)(l)).
17. No question was raised in this case about the powers of the Director to make a declaration that a person is a prohibited immigrant but, as this Court noted in *Lowe v Markson* [2022] VUCA 34, someone, logically the Director, has to make the factual determination that a person comes within one or more of the categories in s.50.
18. Having the status of a prohibited immigrant has a number of consequences: by s.50A the Director may approve the publication of information relating to a prohibited immigrant if the Director is satisfied that the person is in Vanuatu; s.51 establishes a number of offences in relation to the entry into, or remaining in, Vanuatu by prohibited immigrants; the prohibited immigrant may incur a liability for a number of costs; and, significantly for present purposes, the prohibited immigrant may be removed from Vanuatu.
19. There are two sources of power for such a removal. By s.53(1) the Minister may make an order for the removal of persons in a number of categories, one of which is that the person is a prohibited immigrant and another is that the person has breached conditions of his/her visa on three different occasions.
20. Removal orders are serious matters which can have substantial adverse effects on those subject to them. No doubt in recognition of those considerations, the Parliament has provided in s.53(2) and (2A) important procedural safeguards.



*"(2) Before making an order under subsection (1) Minister must give the person notice in writing that:*

- (a) the Minister proposes to make the Order; and*
- (b) the reasons why the Minister proposes to make the order; and*
- (c) that the person may within 14 days from the date of notice, make written representations to the Minister stating why the person should not be removed from Vanuatu.*

*(2A) The Minister must consider the representations before making an order under subsection (1)."*

21. Further, s.53(3A) requires the Minister to make the order in writing and to give a copy of it to "the person affected" and to the Director. Section 54 contains prescriptions as to the form and content of a removal orders made by the Minister under s.53. It provides:

*54 Notice and form of removal orders*

*The Removal Order made by the Minister under section 53 must be in the approved form and:*

- (a) set out the grounds for making the removal order*
- (b) provide a summary of the information on which the Minister is relying; and*
- (c) state that the person may appeal to the Supreme Court against the decision of the Minister under section.59.*

22. Section 55 is also pertinent, as it provides (relevantly):

*55 Removal procedure*

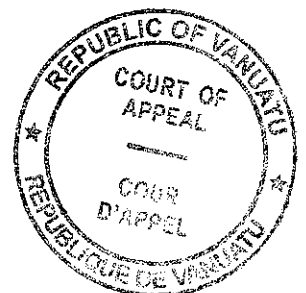
*(1) An immigration officer may:*

- (a) detain a person subject to a Removal Order using such force as may be reasonably necessary in the circumstances; and*
- (b) with the consent of the owner or occupier of land or premises or under a warrant issued under section 19, enter the land or premises and search the land or premises, or any vessel, vehicle, aircraft other thing in or on the land or premises, for a person subject to a removal order, and detain that person.*

*(2) A person subject to a Removal Order may be detained in custody or at such a place as the Principal Immigration Officer may determine until the person is removed from Vanuatu.*

*(3) Subject to subsection (5), a Removal Order takes effect on:*

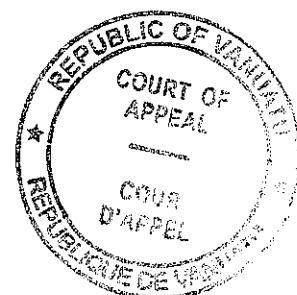
- (a) if the period for applying to the Supreme Court for a review the order has expired without any application having been made, the end of that period; or*
- (b) if an application is made within that period, when the application is finally determined.*



23. Section 53A contains a second source of authority for the Minister to make removal orders, including of a prohibited immigrant. In the Removal Order concerning the Brugger Family, the Minister said that he was acting under s.53A, but it is noteworthy that one of the grounds on which he relied (a breach of visa conditions “on three different occasions”) is a ground specified in s.53(1), but not in s.53A. This suggests that the Minister was also exercising the power vested in him by S. 53(1), so that compliance with its provisions was required.
24. In any event, it has been held that a removal order made under s.53A is subject to the provisions of ss.54, 55(3) and 59 of the Act and that the removal order made under s.53A does not come into effect until after a period allowed for review in s.53 has expired or until the review has been finally determined: *Gil Jang Yoon v Republic of Vanuatu* [2023] VUSC 239. As will be seen, the primary Judge applied that reasoning in the present case, at [143] – [148].

### The findings of the Judge

25. The parties’ evidence at trial was wholly documentary. The Judge made the following findings (*Brugger v Republic of Vanuatu* [2023] VUSC 247):
- (a) Contrary to the evidence of the Director, the residence visas issued to the members of the Brugger Family (other than Sandra) had expired on 20 October 2020 and not 20 October 2019, at [43] – [44]. Sandra did not have a residence visa as she had arrived in Vanuatu on an extended tourist visa;
  - (b) Contrary to the Director’s evidence, the Brugger Family had applied to renew their visas before 20 October 2020 but, despite considerable follow up by Marcel with the Department, had not received renewed visas, at [61];
  - (c) It was the Republic which was responsible for the Brugger Family not having valid visas after 20 October 2020, at [61];
  - (d) The Department had, purportedly pursuant to s.83 of the Immigration Act, served notices of penalty directed to each Brugger Family member by giving them to Marcel on 8 September 2021 but, with the exception of the notices directed to Chloe, Pascal and Olivier, the due date for payment of the penalties was 29 April 2021, that is, just on 5 months earlier, at [73];
  - (e) Despite the Director’s evidence to the contrary, the Prohibited Immigrant Declarations had not been served on the Brugger Family; the failure to serve the Declarations had denied the Family the opportunity to seek judicial review of them; and the failure was a “breach of natural justice”, at [90], [104];
  - (f) The Republic had not identified any lawful basis for its conduct in effecting the forcible removal of Birgit, with the Judge describing that conduct as “nothing short of egregious and ... to be condemned in the strongest terms”, at [97];
  - (g) The omission of the Brugger Family to pay the amounts in the penalty notices was not a valid ground on which to declare them Prohibited



Immigrants because the Immigration Act did not impose any obligation on the Family to make the payments, at [115];

- (h) None of the three matters specified in the Prohibited Immigration Declarations as the grounds for those Declarations had been made out, with the consequence that the Director did not have any lawful basis on which to declare the Brugger Family as Prohibited Immigrants, at [121];
- (i) The Brugger Family were not Prohibited Immigrants and the Minister did not have a valid basis for ordering their removal from Vanuatu, at [121];
- (j) The exercise of the Minister's powers under s.53(A) is subject to s.55(3) of the Immigration Act which specifies when a Removal Order takes effect, at [147]; and
- (k) Any removal order made by the Minister pursuant to s.53A(1) of the Immigration Act must be served on the subject of the order, so that the failure to do so in the present case had denied the Brugger Family the opportunity to seek review of the Minister's decision, at [147] – [148].

26. The significance of the first three findings was that, despite not having visas at 27 August 2023, the Brugger Family were not within the class of Prohibited Immigrants prescribed for the purposes of s.50(1)(l). Regulation 19(a) of the *Immigration Visa Regulation Order No. 180 of 2011* is the relevant prescription:

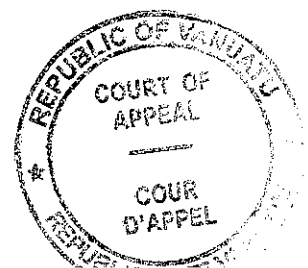
*"For the purposes of paragraph 50(e) of the Act, the following classes of persons are prescribed prohibited immigrants:*

- (a) a person who, without a compelling reason and without making a valid application for a visa, remains in Vanuatu for a period of more than 30 days after the expiry of the term of validity of a visa or permit granted or issued, or deemed to have been granted or issued, under the Immigration Act [CAP. 66] or the Immigration Act No. 17 of 2010".*

27. The Judge considered that the Brugger Family was not within Regulation 19(a) because they were not persons who were remaining in Vanuatu "*without making a valid application for a visa*", at [118]. The Judge also considered that there were "*compelling reasons*" for the Brugger Family to remain in Vanuatu after the expiry of their visas, at [119]. Accordingly, and contrary to the contention of the Republic, the continued presence of the Brugger Family in Vanuatu after 20 October 2020 was not a valid ground on which they could be declared Prohibited Immigrants.

### **Grounds One and Two – The Prohibited Immigrant Declarations**

28. The Judge declared that the Director's Prohibited Immigrant Declarations were unlawful and quashed them. By Grounds One and Two in the appeal the Republic sought to impugn those orders by contending, on various bases, that the Judge's finding that the Brugger Family had applied on or before October 2020 for renewal of their visas was incorrect. The Republic sought thereby to show that the Brugger Family were within the class of prohibited immigrants prescribed in Reg. 19(a).



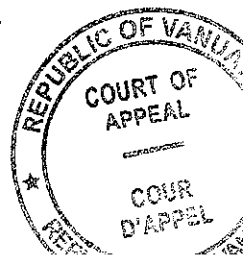
29. In making that finding, the Judge had attached significance to the fact that the Director had annexed to his own sworn statement copies of pages from the passports of Birgit, Chloe, Pascal and Olivier, each of which had been issued after October 2020. The Judge considered that the only way by which the Department could have had copies of those passports was by virtue of visa renewal applications submitted after October 2020 which Marcel claimed to have done when told that the Department had lost the original applications.
30. Counsel for the Republic submitted that this was an error in reasoning by the Judge because the Director could have produced the passport copies from the records kept by the Department concerning the Brugger Family and because these Family members could have provided the passports on re-entering Vanuatu after October 2020. Counsel noted that the Department had records relating to the Brugger Family dating back to 2009.
31. This submission cannot be accepted. First, by reason of the dates of issue of the four passports, they could not have been provided to the Department before October 2020. Secondly, there was no evidence of re-entry by these members of the Brugger Family into Vanuatu after October 2020 so as to provide some separate occasion for the production by them of their passports.
32. Next, the Republic submitted that evidence from Marcel as to the making of applications for renewal, which the Judge had accepted, was inconsistent. In a letter to the Department of 4 May 2021, Marcel had said:

*"I asked [a family friend Esrom employed in the Immigration Department] if he could assist with the lodgement and arranged for my staff, bus driver Wallis John, to drop the old residency permits with necessary documentation off at his office, to allow Esrom to lodge them on my behalf. This was in October last year".*

33. In reference to that letter, Marcel had deposed in his sworn statement:

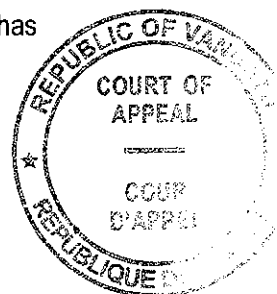
*"I referred to Esrom ... who worked at Immigration (it's common expats get to know certain officers personally who they return to each year for assistance) and that I had lodged the Visa renewal in "October last year". It would have been somewhere between 28 September 2020 and 4 October 2020. The fact is we were always conscious to get the Visas done promptly every year. I would put together a bundle of documents such as copies of passports, VIPA approval, business licence, and the residency application form and attach the cheque for payment. I remember talking with Esrom about the fee waiver and asked him to confirm whether I needed to pay for this year. I remember giving him the residency application etc, and I left it at that".*

34. Counsel submitted that these two pieces of evidence were contradictory. Had Marcel given the documents to Wallis John to deliver or had he given the documents to Esrom directly? Counsel also noted that the Brugger Family had not led evidence from Wallis John or Esrom to support the claim that they had been given the documents, and referred to the evidence of the Director that the Department did not have any record of applications having been made.
35. In our view, it was open to the Judge to proceed on the basis that there was no inconsistency in the two statements of Marcel, because the second can be understood as an assertion of delivery



of the documents, made in summary form, whereas the first particularised the manner of the delivery.

36. Nevertheless, the Republic is correct in contending that it was for the Brugger Family to show that applications for renewals of the visas had been made to the Director in the prescribed form – see s.34(1) of the Immigration Act. The Republic is also correct in contending that the Brugger Family had not adduced direct evidence that the visas applications had in fact been lodged at the Departmental office or delivered to a person authorised to receive them on behalf of the Director.
37. However, there is circumstantial evidence that the applications for visas had been made, as claimed by Marcel. First, there is Marcel's evidence concerning his instructions to his staff member Wallis John, and his evidence of the arrangement he had made with Esrom.
38. Secondly, there is Marcel's evidence that he had been told by the Departmental officer on more than one occasion in May 2021 that the Departmental file was "missing" or "lost". The implication was that there had been a file capable of being lost or going missing and, in any event, Marcel deposed that he had on one occasion provided fresh copies of the residence visas, passports and supporting documents.
39. Thirdly, Marcel's evidence of his attempts to make good the short-comings in the Departmental files is supported by the fact that it was the Director himself who annexed to his own sworn statement copies of the passports of Birgit, Chloe, Pascal and Olivier, each of which had been issued after October 2020. As indicated above, it is a ready inference that these copies had been provided to the Department after October 2020 but in support of applications for visas.
40. Next, the evidence shows a continued stream of communications between Marcel and the Department with respect to the issue of visas. That course of communications is consistent with Marcel pursuing the applications for the visas. It is highly improbable that, had Marcel not lodged the visa applications, he would have engaged over a long period in a charade of pretence that he had done so. Moreover, absent from those communications is any assertion by the Department that Marcel had not lodged visa applications.
41. Finally, while the Director had asserted that no renewal applications had been made, his evidence on important matters was rejected by the Judge, thereby undermining the reliability of his evidence generally. In fact the Judge said that she regarded the Director's evidence as "*not credible or reliable and that I can rely on it only where it is supported by the documentary evidence*", at [43]. Moreover, the admissions made by Departmental officers to Marcel that the files or documents in them were missing or lost undermines the reliability of the Director's assertion that, because renewal applications could not be located on the files, they had not been made.
42. Having regard to all these matters, the Judge's finding that the Brugger Family had applied to renew their visas on or before 20 October 2020 was a finding well open on the evidence and has not been shown to be wrong. Accordingly, Grounds 1 and 2 in the notice of appeal fail.





### **The validity of the penalty notices**

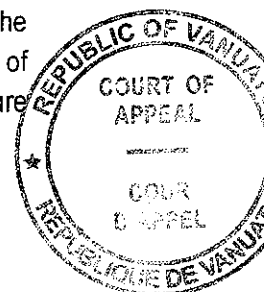
43. The Judge declared that the penalty notices directed to the Brugger Family with due dates of 22 September 2021 were unlawful.
44. Ground 3 in the Republic's notice of appeal indicated that it intended to contend that the Judge had erred in making that declaration. However, counsel informed the Court that the Republic did not pursue that ground. Accordingly, it is unnecessary to address the validity of the penalty notices.

### **Removal of names from Prohibited Immigrants Lists**

45. The Judge ordered the Republic to remove forthwith the names of the Brugger Family from the Prohibited Immigrants Lists referred to in the Director's Declarations and from any other publication made by the Republic, including a press release issued by the Minister on Facebook on 28 August 2023.
46. By Ground 4 in the notice of appeal, the Republic indicated an intention to impugn the making of that order. However, at the hearing, counsel for the Republic accepted that the fate of that ground would be determined by the Court's determination of its challenge to the Judge's quashing of the Director's Prohibited Immigrants Declarations. As the Republic has been unsuccessful in that challenge, this ground of appeal too must fail.

### **The Order that the Republic issue a public apology to the Brugger Family**

47. The Judge ordered the Republic to "*issue a public apology*" to the Brugger Family. On the appeal, the Republic submitted that it was not within the power of the Supreme Court in determining a judicial review application to make such an order and that, in any event, the requirement for such an apology was inappropriate.
48. Mr Fleming, counsel for the Brugger Family, sought to support the order for the making of an apology in two ways. First, he referred to a recommendation in the report of the Australian Law Reform Commission concerning the protection of privacy that the ordering of an apology may be an appropriate remedy in some cases of non-compliance with the statutory requirements of privacy protection. Mr Fleming also referred to statutory regimes, such as anti-discrimination legislation, in which statutory authority for the ordering of an apology does exist. Those contexts are quite different from the present and do not provide support, even by analogy, for this order made by the Judge. Mr Fleming acknowledged that, despite his extensive research, he had not been able to locate any authority in the context of judicial review which has recognised the making of an apology as an appropriate form of relief.
49. This ground of appeal must be upheld. Judicial review is concerned with legality, that is, the legality of the acts or omissions of a person or body exercising public authority on statutory power. On such applications, the Court is concerned with the source of the legal authority, the manner of its exercise and the character of the function being exercised: De Smith: Principles of Judicial Review (2<sup>nd</sup> Ed) at [15 – 003]. The relief which a court may grant is confined by the nature

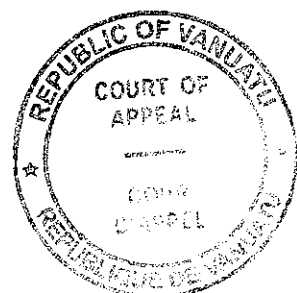


of that jurisdiction and therefore generally confined to orders which are directed to setting aside unlawful exercises of power or the requiring the exercise of power when that has been wrongly refused. An order for an apology is not of that kind.

50. In addition to these considerations, the order that the Republic "issue a public apology" lacks certainty in that it does not specify precisely that which the Republic must do in order to comply with it. Orders of a court, in particular mandatory orders of this kind, must make clear to the recipient of the order what is required by way of compliance. The order for apology in this case does not satisfy that requirement.
51. Accordingly, the order that the Republic issue a public apology to the Brugger Family, while conveying an understandable sentiment, must be set aside.

### **The order for visas to issue**

52. Following the delivery of judgment on 13 November 2023, the Brugger Family filed an "Application to Amend/Add Orders". They sought from the Supreme Court an additional order, namely, that "the Defendant within 7 days is to issue a residence Visa of the same category and conditions previously granted for Claimants 1 to 6 and 8".
53. Over the opposition of the Republic, the Judge acceded to that application and made an additional order in the terms sought.
54. The Republic contended that the making of that order was inappropriate because it is the Director, and not the Supreme Court, who has been vested with the power under the Immigration Act to issue visas. It referred to *Zheng Wu Wei v Minister of Internal Affairs [2019] VUSC 22 at [20]* in which Andrée Wiltens J held: "[T]his Court has no authority to make a mandatory order requiring the Immigration Services to grant Mr Zheng a work visa."
55. The provisions concerning the grant of visas are contained in Part 4 of the Immigration Act. Section 34 specifies that an application for a visa must be made to the Director in the approved form and accompanied by the prescribed fee. Section 36(2) provides that the Director must not accept an application for a visa that is invalid because it is not in the approved form or is not accompanied by the prescribed charge (and is not exempt from the obligation to pay a charge).
56. Section 37 specifies the criteria for the grant of a visa, namely:
  - (a) *the person is not a prohibited immigrant; and*
  - (b) *a determination under section 85 is not in force in relation to the person; and*
  - (c) *the person passes the character test; and*
  - (d) *the person is not suffering from a contagious or other disease, or a mental condition, which makes his or her presence in Vanuatu a risk to the health of the community in Vanuatu; and*

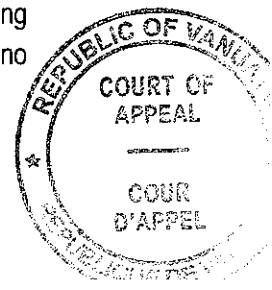


- (e) any security required to be provided under Part 8 in relation to the visa being applied for has been provided to the satisfaction of the Principal Immigration Officer; and
- (f) the person has the financial means to support himself or herself, and all of his or her dependents (if any); and
- (g) any other criteria prescribed by the regulations.

57. As is apparent, one of the criteria which an applicant for visa must satisfy is that the applicant passes the "character test". Section 38 specifies circumstances in which a person will not pass the "character test". That criterion, as well as others in s.37, requires an evaluative exercise.
58. Finally, s.39 specifies the duty of the Director in relation to granting or refusing a visa:
59. In these circumstances, it is readily apparent that the statutory discretion with respect to the grant of visas is vested in the Director, and not one which can be exercised by the Supreme Court. It is for the Director to assess whether the necessary criteria for the grant of a visa have been satisfied and to make the required evaluations of an application for that purpose. The Supreme Court has no power to exercise that statutory function, or the statutory duties of the Director with respect to it. Contrary to Mr Fleming's submissions, the Supreme Court does not on applications for judicial review have some free standing jurisdiction to override decisions of the Director with respect to the merits of visa applications. To the contrary and as already noted, on a judicial review application, the Supreme Court is concerned only with the lawfulness of the decision made by the statutory decision-maker and, in the absence of express statutory warrant, it is not empowered to exercise the discretion or judgment of that decision-maker.
60. Accordingly, the order that the Republic issue residence visas will be set aside.
61. We add two matters. Given the findings in the Supreme Court, the Director may consider it appropriate to delegate to another Immigration Officer the function of considering any new applications for visas by the Brugger Family – see s.8 of the Immigration Act.
62. Secondly, in considering any applications by the Brugger Family for visas, the Director or his delegate will have to proceed on the basis that the Prohibited Immigrant Declarations have been quashed so that they will not be a proper basis for refusal of visas. In addition, it is to be expected that the Director or his delegate will not make decisions which are inconsistent with the findings of fact and conclusions of the Supreme Court.

#### Other Orders

63. In [168] and [169] of the judgment, the Judge ordered the Republic to pay forthwith the costs of the Brugger Family's airfares and travel (including domestic flights within Australia) to return to Vanuatu and to reimburse forthwith any of the immigration bonds and securities of the Brugger Family which may have been used in their unlawful removal from Vanuatu. Although at the hearing of the appeal, counsel for the Republic indicated that the Republic sought the setting aside of those orders, they were not made the subject of any separate ground of appeal and no submissions were directed to them. Accordingly, we decline to interfere with those orders.



**The order for costs**

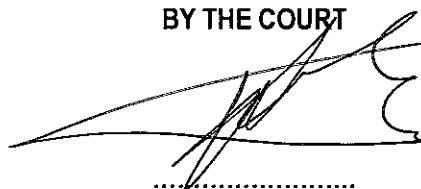
- 64. The Judge ordered the Republic to pay the costs of the Brugger Family on an indemnity basis which were then fixed at VT3,680,000.
- 65. The Republic appealed against this order but only on a limited basis. It recognised that, subject to one additional submission, if it did not succeed on the first five grounds of appeal, it could not succeed in its challenge to the Judge’s order on costs. Counsel added a submission that, if the Court was to accept that the Brugger Family had failed to submit valid applications for visas, then they themselves were responsible for the events which had occurred, and that it should be reflected in the costs order.
- 66. This Court has not made a finding to that effect, and has instead upheld the Judge’s order.
- 67. There being no other challenge to the costs order, this ground of appeal fails.

**Conclusion**

- 68. For the reasons set out above, the orders made by the Judge in [167] and [172] in the judgment (the orders with respect to the making of public apology and issuing of residence visas) are set aside. In all other respects, the appeal is dismissed. The Republic is to pay the costs of the Brugger Family on appeal fixed in the sum of VT250,000.

**DATED at Port Vila, this 16<sup>th</sup> day of February, 2024.**

**BY THE COURT**



**Hon. Chief Justice Vincent LUNABEK**

