

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/2548 COA/CIVA
[2025] VUCA 42

BETWEEN: TEDDY GARAE
First Appellant

AND: THE ATTORNEY GENERAL
Second Appellant

AND: WILMARIAH RUTH VOCOR
Respondent

Date of Hearing: 5 November 2025

Before: *Hon. Justice Ronald Young*
Hon. Justice Richard White
Hon. Justice Oliver A. Saksak
Hon. Justice Dudley Aru
Hon. Justice Viran M Trief
Hon. Justice Edwin P Goldsbrough
Hon. Justice Maree M Mackenzie

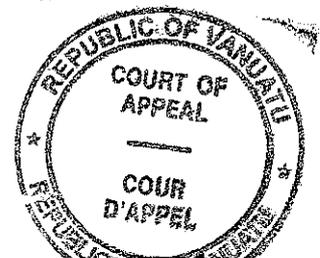
Counsel: *Sammy L. Aron for the Appellants*
Nigel G. Morrison for the Respondent

Date of Decision: 14 November 2025

JUDGMENT OF THE COURT

Introduction

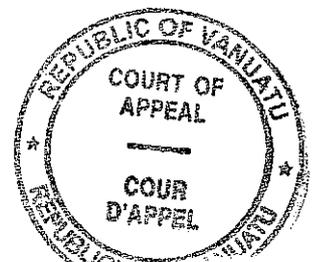
1. This is an appeal from a judgment of the Supreme Court upholding a claim for judicial review of a direction of the Acting Director of the Financial Intelligence Unit that the respondent, Ms Vocor, be removed from her then employment and declaring that direction to be unlawful: *Vocor v Garae and the Attorney General* [2025] VUSC 202.
2. The Financial Intelligence Unit ("*the FIU*") within the State Law Office is established by the *Anti-Money Laundering and Counter-Terrorism Financing Act (2014)* (the AML Act). It has important functions in the identification, avoidance and elimination of money laundering and financing of terrorism activities within Vanuatu.



3. The Director of the FIU is empowered by s.50I of the AML Act to direct a reporting entity to remove a person who is (relevantly) a director or manager of that entity if satisfied that the person is a "disqualified person" within the meaning of s.50J. Section 50J(1) specifies seven circumstances in which a person will be a disqualified person and then specifies in subs.(8) that they will be so disqualified if they do not "meet any other fit and proper criteria prescribed by the Regulations". We will refer to those criteria shortly.
4. Since November 2024 the First Appellant, Mr Garae, has been the Director of the FIU. Before that he held the position of Senior Officer of the FIU.
5. The Respondent, Ms Vocor, commenced employment with Care International Committee (CIC) on 1 July 2024 in the position of its Country Director. CIC is an international humanitarian aid agency which has operated in Vanuatu since 2008. It is also a 'reporting entity' as defined in s.2 of the AML Act and as such is required to comply with the registration requirements of a reporting entity contained in that Act.
6. By letter dated 14 November 2024, the Acting Director of the FIU, Mr Kuatpen, in the purported exercise of powers under Section 50I of the AML Act, informed CIC of his satisfaction that Ms Vocor was a "disqualified person" within the meaning of s.50J(1) and cl.15B of the *Anti-Money Laundering and Counter-Terrorism Financing Regulations* (the Regulations). He directed CIC to remove Ms Vocor as its Country Director.
7. On 25 November 2024, CIC, acting in compliance with the FIU direction, terminated the employment of Ms Vocor.

The Decision in the Supreme Court

8. The Supreme Court upheld Ms Vocor's claim for judicial review of the direction of the Acting Director of 14 November 2014: *Vocor v Garae and Attorney General* [2025] VUSC 202. The Chief Justice, who was the trial Judge, made declarations as follows:
 - (1) *That there were no reasonable grounds for the decision of the First Defendant dated 14 November 2024 and 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 as amended (the "Decision"), and/or;*
 - (2) *That before the First Defendant made the Decision the Claimant was not afforded natural justice and/or procedural fairness and the decision was premised on false facts;*
 - (3) *That the Decision was unlawful."*



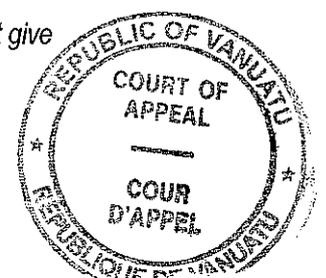
9. In referring to the First Defendant, it is apparent that the Chief Justice was referring to the occupant of the position of Director of the FIU who made the decision and not to Mr Garae, as he had commenced as Director only after the direction of 14 November 2024 had been made. It was not suggested that anything turned on that.
10. As a preliminary matter, we note that the Chief Justice gave two independent reasons for finding the Decision unlawful: unreasonableness and a denial of procedural fairness. The Appellants' only challenge on this appeal is to the finding of unreasonableness. That means that even if the Appellants' challenge succeeded, the appeal would still have to be dismissed. We pointed this out to the Appellants' counsel but there was no application to amend. We will, nevertheless, proceed to determine the appeal on the basis argued by counsel.

The Powers of FIU

11. We have already referred to the important functions of the FIU. The FIU and its director are given wide-ranging powers in the discharge of those functions. Amongst other things, the Director can require the production and disclosure of documents and information by reporting entities and by others (ss.45-45B), examine records (s.46(1)), enter business premises (s.46(2)), require assistance (s.46(3)), and obtain search warrants (s.50). The Director may also issue directions with a view to securing compliance with the AML Act.
12. Reference has already been made to the power in s.50I of the AML Act for the Director to direct a reporting entity to remove a "director, manager, secretary or other officer" if satisfied that that person is a "disqualified person" within the meaning of s.50J. Section 50I provides:

Power to remove a director, manager, secretary or other officer of a reporting entity

- (1) *The Director may in writing direct a reporting entity to remove a person who is a director, manager, secretary or other officer of the reporting entity if the Director is satisfied that the person is a qualified person within the meaning of section 50J.*
- (2) *Before issuing a direction, the Director must give to the reporting entity a written notice requiring the reporting entity and the person proposed to be removed to make submissions to the Director on the matter within a reasonable period specified in the notice.*
- (3) *The Director must review any submission received and decide whether or not to issue the direction.*
- (4) *A direction takes effect on the day specified in the direction, which must be at least 7 days after it is made.*
- (5) *If the Director directs a reporting entity to remove a person, the Director must give a copy of the direction to the person removed.*

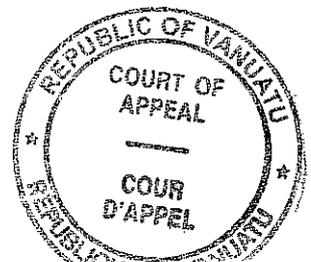


- (6) *If a reporting entity fails to comply with a direction, the reporting entity commits an offence punishable upon conviction by:*
- (a) *In the case of an individual – a fine not exceeding VT25 million or imprisonment for a term not exceeding 15 years, or both; or*
 - (b) *In the case of a body corporate – a fine not exceeding VT125 million.*
13. As already indicated, s.50J sets out eight circumstances in which a person is a disqualified person. The circumstance of immediate relevance presently is subs.(1)(h), namely, that the person “*does not meet any other fit and proper criteria prescribed by the Regulations*”.
14. Regulation 15B is the relevant regulation. It provides:

15B Prescribed criteria for fitness and suitability

For the purpose of paragraphs 9(4)(c) and 9(5)(b), subparagraph 9B(1)(b)(i) and paragraph 50J(1)(h), the following are the fit and proper criteria :

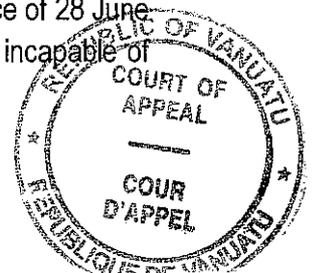
- (a) *Whether the person has been convicted of any criminal offence particularly dishonestly, fraud, financial crime or offence against legislation relating to banking, financial services, legal person, legal arrangement, insurance and high value property and fund management; and*
 - (aa) *whether the person is listed on a United Nations financial sanctions list under the United Nations Financial Sanctions Act No 6 of 2017 or a financial sanctions list under the law of any jurisdiction; 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 [of] 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 requirement 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 Background

- 15. Ms Vocor had previously been employed by Wanfuteng Bank Limited (WBL) as its General Manager.
- 16. By letter dated 26 June 2023, WBL gave Ms Vocor notice of three matters which it characterized as "serious grounds of misconduct". These were:
 - (a) *Your unauthorized entry to the Bank's premises with a non-bank employee male person, on Sunday 7 May 2023. You are aware that person had no authority to enter the Bank's premises on a Sunday;*
 - (b) *Your printing on Sunday 7 May 2023 of 3 x 60 pages of which you printed the [FIU's] one page letter to the Bank dated 5 May 2023 and FIU's 59 page WBL Inspection report attached to it (total of 180 pages). The FIU's letter and report have been released to Catherine Le Bourgeois (they are exhibits to Catherine's sworn statement filed on 13 June 2023 in support of her claim for Judicial Review), even though you were under an express direction by the FIU (via Sharlene Rajah's attached email of 5 May 2023) "The report cannot be shared with participants outside of this email for now." If proven, this is also a direct breach of your Confidentiality & Non-Disclosure obligations set out in Clause 10 of your contract;*
 - (c) *Your printing on Tuesday 2 May 2023 x 6 pages of which seem to be floor plans related to your personal business.*
- 17. WBL required Ms Vocor to attend a meeting to answer these "charges" and, pending the outcome of "this disciplinary process", suspended her employment on full remuneration.
- 18. It does not seem that the contemplated meeting ever took place but communications ensued between Mr Sugden, Ms Vocor's then lawyer, and WBL's lawyer. In his correspondence of 28 June 2023, Mr Sugden protested that the first and third charges were "trivial" so as to be incapable of



constituting serious misconduct and sought particulars of the second (and of a related subsequent "charge"). WBL did not respond, at least in writing, to Mr Sugden's letter.

19. Instead, on 12 July 2023 WBL terminated Ms Vocor's employment. The terms by which it did so are important and we set them out in full.

"Dear Wilma,

Termination of your Employment

We refer to your employment contract signed on 25 June 2021, as varied.

In accordance with Clause 8.12 of your contract, and in accordance with Section 49 of the Vanuatu Employment Act [160] as amended, the Bank has decided to terminate your employment as from today. You will be paid for three months in lieu of notice, together with other entitlements.

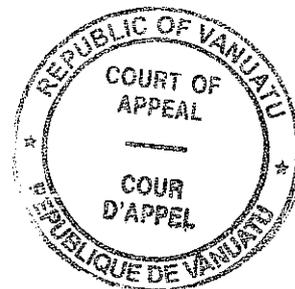
Please find enclosed the schedule setting out the details of your entitlements.

I thank you, on behalf of the Bank, for the services you have provided. We wish you all the best in your future endeavours."

20. As is apparent, WBL exercised the right to terminate Ms Vocor's employment on notice, in the manner contemplated by cl. 8.1.2 of her employment contract and s.49 of the Employment Act. Specifically, it did not say that it was dismissing Ms Vocor on the ground of "serious misconduct" as provided for in s.50 of the Employment Act or for "gross-misconduct" or "fundamental breach" as provided for in cl.8.1.4 of her employment contract.
21. Earlier in 2023, the FIU had conducted an inspection of WBL and had commenced what it described as a "criminal investigation" into identified breaches. However, so far as the material at first instance revealed, the only reference by the FIU to Ms Vocor was its "suggestion/recommendation" that she not exercise the functions of "HR Officer/Manager", that an HR Officer Manager be appointed, and that she not be involved in the recruitment process.
22. The FIU conduct culminating in its letter to CIC of 14 November 2024 commenced relevantly with Mr Kuatpen's letter to CIC on 28 August 2024. The letter stated (relevantly):

"28 August 2024

*Cielito Lindo Salcedo
AML & CTF Compliance Officer
Care International Committee
Port Vila*



Dear Cielito,

AML & CTF COMPLIANCE – MRS. WILMARAIA RUTH VOCOR'

I refer to the above subject.

The Financial Intelligence Unit ('FIU') is currently conducting its review over key persons (committee members & senior managers or directors) of Care International Committee as per section 9A of the Anti-Money Laundering and Counter Terrorism Financing Act No. 12 of 2014 (AML & CTF Act).

The FIU review as mentioned is essential to determine whether or not Care International Committee continues to meet the registration requirements under section 9(4) of the AML & CTF Act.

As such, the Financial Intelligence Unit ('FIU') is conducting a review over Mrs. Wilmaraiia Ruth Vocor (A.K.A Wilmaraiia Ruth Sinumila) who had recently been appointed as the country director for Care international Committee and therefore is considered a key person.

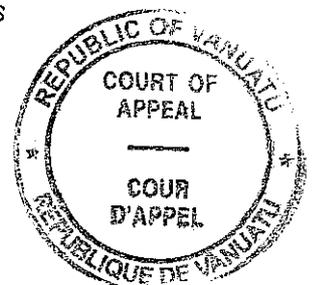
Upon its review, the FIU has identified that Mrs. Vocor was a former employee of Wanfuteng Bank Limited, having served as the bank's general manager. Additionally, this office has identified that Mr. Vocor had been suspended by the bank and eventually terminated for serious confidentiality breaches and serious misconduct which she had committed during her tenure as general manager.

In light of the above, this office has determined that Mrs. Vocor had breached the conditions in her employment contract and the Wanfuteng bank staff handbook which resulted in the ensuing disciplinary actions taken against her thus engendering her failure to meet the 'Fit and Proper Criteria' as prescribed by the AML & CTF Regulations order No. 122 of 2014 (As Amended).

Additionally, as stated under section 50J, a person is a disqualified person if, at any time, the person does not meet the fit and proper criteria prescribed by the **AML & CTF Regulations**. Therefore, a disqualified person must not act or continue to act as a director, manager, secretary or other officer of any reporting entity unless the Director (FIU) gives his or her written approval for the person to do so.

Consequently, to aid your decision regarding Mrs. Vocor's fitness and suitability as the country director, a copy of the identified breaches and a list of regulatory requirements which Mrs. Vocor had not met is enclosed for your perusal.

Pursuant to section 50I of the AML & CTF Act, this office is requesting you to make a written submission to the Director (FIU) regarding the matter by **Tuesday 17th September 2024**. Upon the Director's (FIU) review and decision over your submission, the FIU may continue to exercise its enforcement powers under section 50I of the Act.

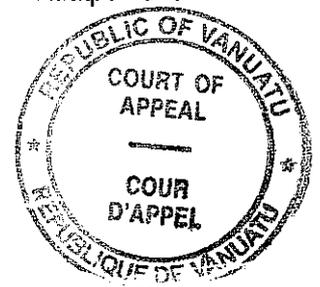


Should you require further information, do not hesitate to contact Mr. Mackenzie Bani, Compliance Officer (CTSP) of this office.

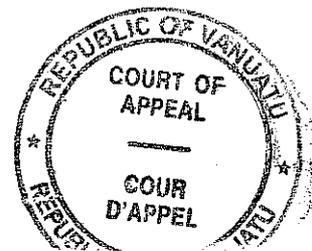
Yours faithfully,

For Josiah Kuatpen
Acting Director FIU

23. As is apparent, by this letter, Mr Kuatpen asserted three matters:
- (1) that Ms Vocor had been suspended from her employment with WBL, and eventually terminated, for serious confidentiality breaches and serious misconduct during her tenure as General Manager;
 - (2) that the FIU had determined that Ms Vocor had thereby breached conditions in her employment contract and in WBL's Staff Handbook, resulting in the disciplinary action taken against her;
 - (3) that, in the light of these matters, Ms Vocor did not satisfy the fit and proper criteria in reg. 15B.
24. In its response to the FIU of 17 September 2024, CIC noted (relevantly):
- (a) the termination of Ms Vocor's employment with WBL had been based on s.49 of the Employment Act, that is, without cause;
 - (b) the allegations against Ms Vocor seemed to be unproven and should be treated with caution;
 - (c) Ms Vocor denied that she had engaged in any unauthorized disclosure of information or dishonest conduct; and
 - (d) its strong belief that Ms Vocor was the right person to be its Country Director in Vanuatu.
25. Ms Vocor's lawyer, Mr Morrison, met with Mr Kuatpen in mid-September 2024. He followed up that meeting with a letter on 23 September 2024 in which he confirmed what he had said at the meeting, that is, that Ms Vocor had not been dismissed by WBL for misconduct but instead had been terminated pursuant to s.49 of the Employment Act. He sought further discussions after his return from leave on 9 October 2024. It seems that there was no further meeting between Mr Kuatpen and Mr Morrison.



26. In his next letter to CIC on 9 October 2024, Mr Kuatpen repeated some matters and raised additional matters. He said that he was "satisfied" that Ms Vocor was a disqualified person based on the following "findings":
- (1) Ms Vocor had been "disqualified (suspended later terminated)" from acting as General Manager of WBL "for serious misconduct charges" which included the handling of AML reports contrary to a direction of the FIU "as stated in the suspension letter", thereby attracting the criteria in reg. 15B(c) and (d);
 - (2) Ms Vocor had, while an employee of WBL, contravened the requirements and standards of the FIU by providing misleading information to the FIU, by failing to comply with directions of the FIU, by disseminating the FIU report without authorization, by contravening "equivalent requirements of a government Body which is the Employment Act" and by contravening "a professional requirement by breaching the employment contract with [WBL]". These matters were said to bring Ms Vocor within reg. 15B(f);
 - (3) Ms Vocor had in her previous employment "demonstrated personal actual conflicts of interest that had influence[d] her ability to carry out her role and functions with appropriate probity and competence", thereby bringing her within reg.15B(g).
27. The Acting Director attached to his letter annexures said to relate to these 'findings', but those annexures were not in evidence at first instance nor sought to be placed before this Court.
28. The Acting Director went on in the letter of 9 October 2024 to inform CIC of his intention to issue a direction pursuant to s.50I(1) of the AML Act that CIC remove Ms Vocor as its Country Director. He invited submissions to "justify any reasons to the contrary" by 18 October 2024. It is of significance presently that the Acting Director did not seek submissions in relation to the matters which were the subject of his "findings", only with respect to his foreshadowed intention to issue a direction for Ms Vocor's removal.
29. Also on 9 October 2024 the Acting Director sent a letter in relevantly identical terms to Ms Vocor.
30. The CIC responded on 18 October 2024 stating that it relied on its previous submissions.
31. Having obtained an extension of time, Mr Morrison responded to the FIU on 25 October 2024. He asserted that Mr Kuatpen's first allegation was "factually incorrect" and denied the truth of the second and third allegations. Mr Morrison also protested that Ms Vocor had been denied natural justice. He encouraged Mr Kuatpen to refrain from any action until the decision of the Supreme Court in another matter (which was expected imminently) had been delivered. It is evident that Mr Morrison was referring to *Lal v Kuatpen* [2024] VUSC 354, delivered on 25 November 2024.



32. Despite Mr Morrison's urging of restraint, the FIU Acting Director issued the letter of 14 November to which we referred at the commencement of these reasons. In that letter, Mr Kuatpen referred to the earlier correspondence to, and from, CIC and to the correspondence to, and from, Ms Vocor and Mr Morrison. The Acting Director then set out s.50J of the AML Act and reg.15B of the AML Regulations and concluded:

"After all the review of submissions, I am satisfied that Ms Vocor within the meaning Section 50J(h) of the AML & CTF Act and clause 15B of the AML & CTF Regulation, is a disqualified person.

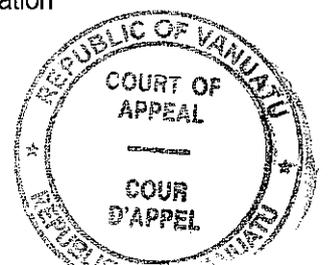
Therefore, pursuant to section 50I(3) I am satisfied that Mr. Vocor does not meet the prescribed fit and proper criteria and as such is a disqualified person and hereby direct your entity to remove Mrs Vocor as Country Director of Care International Committee."

33. As noted, the CIC complied with the FIU's direction of 14 November 2024 by terminating Ms Vocor's employment on 25 November 2024. Ms Vocor commenced her proceedings for judicial review two days later.

The Reasons of the Primary Judge

34. In the primary judgment, the Chief Justice found that:

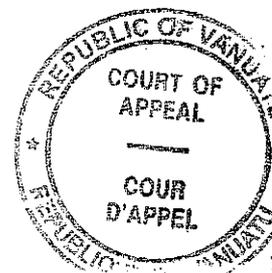
- (a) the FIU had "significantly misconstrued or misunderstood" the basis on which Ms Vocor's employment at WBL had been terminated and that she had not been terminated for serious misconduct, at [23], [24];
- (b) that Ms Vocor had never been determined to be not a fit and proper person at WBL, at [24];
- (c) it was a matter of concern that FIU's misconception had continued even after Mr Morrison's meeting with Mr Kuatpen in September 2024 and even after his letter of 23 September 2024, at [24];
- (d) that after Mr Sugden's letter of 28 June 2023, WBL had not pursued the allegations of serious misconduct and that these had effectively been withdrawn when Ms Vocor was terminated without cause under s.49 of the Employment Act, at [33];
- (e) the FIU had not listened to, nor enquired into, the submissions made on behalf of Ms Vocor and instead had relied on unproven, untested and mistaken information in issuing its direction to CIC for the removal of Ms Vocor, at [40];



- (f) FIU's "inability to listen to or understand the basic facts and the corresponding processes" gave rise to real concerns about the veracity and integrity of its other two "findings", at [25];
- (g) there had accordingly been no reasonable grounds for the decision of the FIU that Ms Vocor was not a fit and proper person under the AML Act, at [42(1)];
- (h) Ms Vocor's evidence that the annexures to the FIU's letter of 9 October 2024 was the first time that she had been privy to the documents referring to allegations of conflict of interest was uncontested, at [28]-[29];
- (i) Ms Vocor had accordingly been denied procedural fairness.

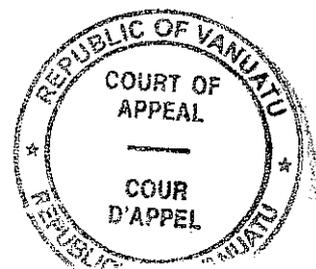
Discussion

- 35. The three grounds of appeal can conveniently be considered together as in essence they are variations or aspects of the one complaint.
- 36. The Appellants contended first that there had been no misconception or misunderstanding because, contrary to the conclusion of the Chief Justice, WBL had in fact relied upon the allegations of serious misconduct in its decision to terminate Ms Vocor's employment under s. 49 of the Employment Act.
- 37. The Appellants accepted that the only evidence supporting an assertion that Ms Vocor had been dismissed for misconduct was WBL's letter of suspension of 23 June 2023 and the termination letter itself. They submitted that, when these two letters were read together, they supported an inference that, despite the terms of the letter of 12 July 2023, the termination on 12 July 2023 had been for the reasons set out in the letter of suspension and accordingly had been for serious misconduct. A related submission was that the Chief Justice had erred by finding, at [33], that the allegations of serious misconduct had not been pursued by WBL and effectively withdrawn.
- 38. We consider that the Chief Justice was correct to reject these submissions. It does not follow from the fact that Ms Vocor had been charged with serious misconduct that she was later dismissed for the very same reasons. Reasoning in that way is to ignore the response to the charges made by Mr Sugden on 28 June 2023, the terms of the termination letter of 12 July 2023 itself, and the prospect that WBL had been satisfied that the charges were not made out.
- 39. The termination letter made it plain that WBL was terminating Ms Vocor's employment in accordance with cl. 8.1.2 of the employment contract and s.49 of the Employment Act. Each of those provisions concerns termination on notice and without cause. Neither concerned



termination for serious misconduct. Termination on that basis was provided for in cl 8.1.4 of the employment contract and in s. 50 of the Employment Act and it is plain from the terms of the letter of 12 July that WBL was disavowing reliance on those provisions. Considered objectively (as it should be), the termination letter indicated that the termination was without cause. If the FIU wished to have the Court find that WBL's subjective state of mind had been different from its communicated reason, it should have led evidence from WBL to that effect, and it did not do so.

40. Secondly, it is a natural inference that, whatever may have been WBL's view on 26 June 2023, Mr Sugden's submissions of 28 June 2023 had had their intended effect, that is, they dissuaded WBL of the merit of the claim of serious misconduct. While it is not necessary for this Court to express any concluded view, it does seem to us that Mr Sugden's characterization of two of the charges as "*trivial*" had some force. WBL may well have accepted that that was so and have decided to proceed with a termination on notice and without cause.
41. The Appellants made a further submission, seemingly in the alternative. This was to the effect that it was immaterial whether Ms Vocor's termination had been for serious misconduct because reg. 15B(d) does not require that a dismissal had been for misconduct. The criteria in (c) is only "*whether the person had been dismissed, or asked to resign and resigned, from employment or from employment or for a position of trust, for this reappointment or similar*". The evidence showed that Ms Vocor had been dismissed, so the Appellants contended, and that was sufficient by itself to satisfy the criteria in reg. 15B(d).
42. It is not at all clear that this submission was made at first instance, but even if it was, it cannot succeed.
43. In the first place, Mr Kuatpen did not in his decision to give the direction to CIC rely on this view of the matter. Instead, while he did refer to reg. 15B(c) and (d) in the letters of 9 October 2024, he went on to assert that Ms Vocor had been suspended and later terminated by WBL "*for serious misconduct charges*" and that it was that aspect which brought her within reg. 15B(c) and (d).
44. Secondly, and in any event, it is significant that reg. 15B(c) uses the term "*dismissed*", and not the term "*terminated*". In the common law, the former expression usually connotes a termination for cause, whereas the latter does not. Whilst caution is required in construing one enactment by reference to another, we think it pertinent (and of assistance presently) that s.49 of the Employment Act when speaking of termination of a contract of employment on notice uses the term "*terminate*" and its cognate. Section 50, on the other hand, which provides for termination for misconduct, uses the term "*dismiss*" and its cognates.



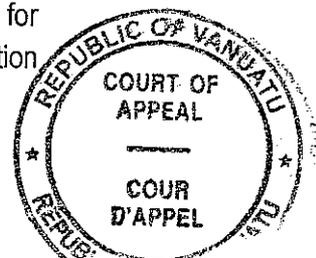
45. This Court discussed the inter-relationship between ss 49 and 50 of the Employment Act in *Kalambae v Air Vanuatu (Operations) Ltd* [2014] VUCA 34, and it is helpful to repeat what was then said:

19. The **Employment Act** which provides for general principles relating to contracts of employment and matters incidental therefore establishes or recognizes two separate and distinct processes or avenues by which an employer may bring an employment contract to an end – (1) By **Notice of termination** pursuant to **Section 49(1) and (2)** By dismissal under **Section 50** in the case of "serious misconduct" by any employee...

.....

21. We agree with the trial judge that termination by notice (as opposed to dismissal) does not require any work-related reason or cause to be given to the employee for the issuance of the notice. Nor does it require a charge or allegation of "serious misconduct" to be proffered against the terminated employee.
22. To accept the appellant's submission of requiring a charge to be laid and an opportunity to be given to the employee to answer the charge either in or before a notice of termination can issue, would improperly introduce an element of "cause" or "misconduct" into **Section 49** that Parliament has not seen fit to include in it and which is already provided for in **Section 50**.
23. In our view the separation and wording of section 49 and 50 was intentional and clearly reflects the differences in the processes for ending an employment contract. This is evident from the section headings as well as the use of "notice", "terminate" and "termination" in Section 49 versus "serious misconduct", "dismissed" and "dismissal" in Section 50.
24. The distinction is further exemplified by the process required to effect a termination by notice and a dismissal for serious misconduct. **Section 49** merely requires a notice of intention to terminate to be given or payment in lieu. **Section 50** on the other hand, can be invoked "... without notice and without compensation in lieu of notice" and requires a charge(s) to be made against the employee who must be given an adequate opportunity to answer and, even if proven, dismissal can only occur if the employer cannot in good faith be expected to take any other course. Furthermore unreasonable delay by an employer constitutes a waiver of the right to dismiss for serious misconduct.
25. In our view **Section 49** is entirely consistent with **Article 5 (1)(d)** of the **Constitution** in that it is a provision contained within "a law" namely the **Employment Act** and is protective of an employee in the event of the premature termination of his employment contract by his employer. This protection takes the form of imposing a minimum length of notice to be given and financial compensation in lieu of notice.

46. In our view, reg. 15B(c) uses the term "dismissed" with a meaning akin to that with which it is used in s. 50, namely, dismissal for cause. It is improbable that the regulation intended to encompass any termination of employment at all, irrespective of the reason for it, for example, a termination for redundancy, or because of a downturn in work, or the termination



of a temporary employee filling a position pending the return of an employee from a period of leave. Numerous other examples could be given. In our view reg. 15B(c) should be construed in the context of Regulation 15B as a whole having regard to its evident purpose. That is to ensure that persons of good character, suitability and competence are appointed to positions in reporting entities. The literal construction of reg.15B(c) for which the FIU contends is inconsistent with that context and purpose.

47. For these reasons, we do not accept that the Chief Justice erred by failing to apply the somewhat simplistic construction of reg.15B(c) for which the Appellants now contend.
48. Counsel for the Appellants also submitted that the criterion in reg.15B(d) was applicable here because Ms Vocor had been 'disqualified' from acting in a managerial position and that the Chief Justice had erred by not recognizing that that was so. When asked how Ms Vocor had been 'disqualified', counsel referred to the termination of her employment by WBL. This was an unmeritorious submission, as the termination by WBL of Ms Vocor's employment was just that, a termination of employment. It did not disqualify her from anything.
49. In our view, the conclusion of the Chief Justice that the FIU's direction of 14 November 2024 was so unreasonable as to make the exercise of power unlawful was correct. Mr Kuatpen proceeded on the basis of a serious factual misconception despite that misconception having been pointed out to him more than once. It was unreasonable for him to do so.

Conclusion

50. For these reasons, the appeal is dismissed.
51. The Appellants are to pay Ms Vocor's costs of and incidental to the appeal fixed in the sum of VT200,000.

DATED at Port Vila, this 14th day of November, 2025.

BY THE COURT



Hon. Justice Ronald Young

