

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

Civil Appeal
Case No. 25/3336 COA/CIVA
[2026] VUCA 6

BETWEEN: JOSEPH YASIFU
Appellant

AND: MYSTERY ISLAND TOURISM HOLDINGS
LIMITED
Respondent

Date of Hearing: 3 February 2026

Before: Hon. Chief Justice Vincent Lunabek
Hon. Justice Mark O'Regan
Hon. Justice Michael Wigney
Hon. Justice Oliver Saksak
Hon. Justice Viran Molisa Trief
Hon. Justice Maree MacKenzie
Hon. Justice Josaia Naigulevu

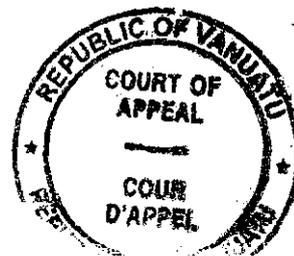
Counsel: Mr Jona Mesao for the Appellant
No appearance for the Respondent
Mr Avock Godden for the joinder applicant, Anietyum Trustees and Tourism Ltd and
Anietyum Tourism Ltd

Date of Judgment: 13 February 2026

JUDGMENT OF THE COURT

Introduction

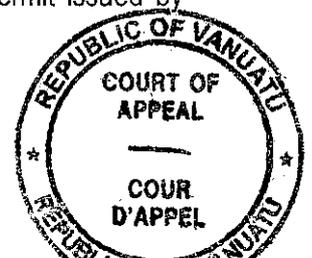
1. The appellant, Mr Joseph Yasifu, conducted a tourism business in and around Mystery Island. The respondent, Mystery Island Tourism Holdings Ltd, conducted a business which included issuing permits that purported to allow tourism operators to conduct tours in and around Mystery Island. In October 2023, shortly after incidents that resulted in drowning deaths of two tourists during tours conducted by Mr Yasifu, Mystery Island Tourism purported to suspend a permit it had issued to Mr Yasifu. Mr Yasifu failed or refused to comply with Mystery Island Tourism's demand that he stops conducting tours on and around Mystery Island.



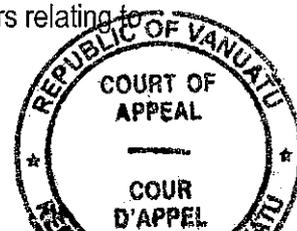
2. In July 2024, Mystery Island Tourism commenced proceedings in the Supreme Court seeking to evict Mr Yasifu from Mystery Island and to restrain him from conducting any business on or around Mystery Island. After a trial at which Mr Yasifu did not appear, the primary judge in the Supreme Court gave judgment in favour of Mystery Island Tourism and made the orders sought by it.
3. Mr Yasifu applied for an extension of time in which to appeal the Supreme Court decision. He claimed that the primary judge erred in giving judgment for Mystery Island Tourism. The critical issue for determination in the appeal, if an extension of time is granted, is whether there was a sound or proper basis for the primary judge to find, in effect, that Mystery Island Tourism had the lawful power or authority to govern all tour operations on Mystery Island and that tour operators on Mystery Island, like Mr Yasifu, were subject to instructions and directions given by Mystery Island Tourism.
4. For the reasons that follow, despite Mr Yasifu's failure to file a defence or appear at the trial, there was no sound or proper basis for those critical findings. The time within which Mr Yasifu was able to file an appeal will accordingly be extended and the appeal will be allowed.

The Supreme Court proceeding

5. The key allegations pleaded by Mystery Island Tourism in its Supreme Court Claim (SCC) may be summarised as follows.
6. First, Mystery Island Tourism was licensed to operate a tourism business in various locations in Vanuatu, including Mystery Island: SCC [2].
7. Second, Mystery Island Tourism had the "exclusive right to operate any commercial business on Mystery Island" and operate a "licensing system under which it allows other persons to engage or operate their respective business on Mystery Island" and surrounding areas "during tourist cruise ship calls": SCC [3]. The SCC does not include any particulars of the legal basis upon which it was alleged that Mystery Island Tourism had the exclusive right to operate any commercial business on Mystery Island, or the source of that right, or any particulars of the status of the licenses it purported to issue, or the source of the power to issue those licenses.
8. Third, in May 2023 a tourist drowned during a tour conducted by Mr Yasifu's business: SCC [20].
9. Fourth, at the time of the May 2023 drowning, Mr Yasifu did not have a permit issued by Mystery Island Tourism which permitted him to operate his business on or around Mystery Island and did not have in place any adequate safety measures or equipment, or employ any sufficiently trained or experienced personnel: SCC [6] and [8]. The SCC does not include any particulars of the basis upon which it was alleged (expressly or impliedly) that Mr Yasifu required a permit issued by Mystery Island Tours which permitted him to conduct his tourism business.



10. Fifth, after the May 2023 drowning, Mystery Island decided to suspend all tours around Mystery Island and advised Mr Yasifu that he was banned from operating any business on Mystery Island and that he should cease his business activities there: SCC [9] and [10]. The SCC does not include any particulars of the basis upon which it was alleged (expressly or impliedly) that Mystery Island Tourism had the lawful power or authority to suspend tours on Mystery Island, or the lawful power or authority to ban Mr Yasifu from operating any business on and around Mystery Island.
11. Sixth, in June 2023, Mystery Island Tourism issued a permit to Mr Yasifu which permitted him to conduct his tourism business on and around Mystery Island: SCC [11]. It also decided to set aside its decision to suspend Mr Yasifu's business on and around Mystery Island and its decision to suspend all sea going tours on and around Mystery Island: SCC [12] and [13].
12. Seventh, In September 2023, another tourist drowned during a snorkelling tour conducted by Mr Yasifu's business: SCC [14].
13. Eighth, following the September 2023 drowning, Mystery Island Tourism again purported to suspend Mr Yasifu's permit: SCC [15]. A subsequent investigation by Mystery Island Tourism supposedly identified various safety issues including that Mr Yasifu and his employees had inadequate training: SCC [18].
14. Ninth, the suspension of Mr Yasifu's permit meant that he was "estopped" from carrying on or operating his business on or around Mystery Island: SCC [19] and [22]. The SCC does not provide any particulars of the factual or legal basis for the assertion that the suspension of Mr Yasifu's permit resulted in him being estopped from operating his business on or around Mystery Island. As already noted, there were no particulars of the status of such permits or the power or authority that Mystery Island Tourism purportedly had to issue them.
15. Tenth, Mr Yasifu failed or refused to comply with Mystery Island Tourism's decision to suspend his permit and continued to operate his business on or around Mystery Island: SCC [20].
16. It was on the basis of those ten allegations that Mystery Island Tourism sought an order evicting Mr Yasifu and his employees from Mystery Island and its surrounding seas and an order restraining Mr Yasifu from engaging in any business or commercial activity on or around Mystery Island. Exactly how Mystery Island Tourism's suspension of a permit relating to Mr Yasifu's tourism activities legally supported an order evicting Mr Yasifu from Mystery Island, or an order restraining Mr Yasifu from conducting any business (not just a tourism business) in or around Mystery Island, was left largely unexplained in the SCC. As has already been noted, the SCC contained no particulars of the status of such permits or Mystery Island Tourism's power or authority to issue them.
17. It should also be noted in this context that the SCC contained no pleading or particulars relating to



the tort of negligence. It was not asserted that Mr Yasifu owed a duty of care to Mystery Island Tourism, or that it breached any such duty, or that the breach of any such duty caused Mystery Island Tourism to suffer any loss or damage, or that Mr Yasifu's negligence towards Mystery Island Tourism somehow supported the orders sought by it. Nor, it might be added, was it alleged that Mr Yasifu owed a duty of care to his customers, or that he breached any such duty, or that the breach caused his customers to suffer any loss or damage, or that Mr Yasifu's negligence in that regard somehow supported the orders sought. The significance of the absence of any pleading of negligence on the part of Mr Yasifu will become apparent in due course.

18. The SCC was served on Mr Yasifu on 28 August 2024. Mr Yasifu did not, however, file any defence to the claim.
19. The Court listed the matter for several conferences, though Mr Yasifu did not attend any of them. He may not have been aware of some of the earlier conferences.
20. Mystery Island Tourism in due course filed a statement in support of its claim sworn by Mr Barry Nagia, a director and chairman of the company's board. The key elements of Mr Nagia's evidence may be summarised as follows.
21. First, Mystery Island Tourism was licenced by the Tafea Provincial Government Council to carry on business in several locales, including Mystery Island.
22. Second, Mystery Island Tourism had "*exercised* exclusive right to establish and/or operate its own commercial businesses in its own name for its own benefits on Mystery Island or to permit any other person or entity to carry on any other business on Mystery Island subject to such terms and conditions which [it] may from time to time make" (emphasis added). Beyond the bare assertion that Mystery Island Tourism had exercised those supposed rights, the statement did not assert that the company had any statutory, contractual or other legal right or authority to permit other persons to carry on business on Mystery Island, or seek to explain the factual or legal basis upon which it was asserted that the company possessed any such right or authority.
23. Second, Mystery Island Tourism operated a "licensing system under which any entity intending to operate business on Mystery Island may apply to [it] for a permit to do so". Beyond the bare assertion that Mystery Island Tourism had put in place such a licensing system, the statement did not assert that the company had any particular statutory, contractual or other legal right or authority to require other businesses to apply or permits under that system, or seek to explain the legal basis of any such right or authority, or seek to explain the legal status of any permit it might issue.
24. Third, it was Mystery Island Tourism's "policy" that it had and exercised the "exclusive right to operate any commercial businesses on Mystery Island and that no other person or entity is allowed to operate any business of any kind on Mystery Island without a valid permit issued by it. Beyond the bare assertion that Mystery Island Tourism had such a "policy", the statement did not assert

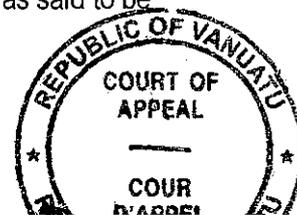


that there was any particular statutory, contractual or other legal basis for it to be able to enforce that policy. No attempt was made to explain the legal or factual basis upon which it was asserted that no person or entity could operate any business on Mystery Island unless it had a permit issued by Mystery Island Tourism.

25. Mr Nagia's statement also included a brief narrative account of various other facts relevant to Mystery Island Tourism's pleaded case. It is unnecessary to consider that evidence in any detail because it does not bear on the central issue raised by the appeal. In summary, the evidence addressed the following topics, albeit in very general terms: Mystery Island Tourism's investigation of that incident and the outcome of that investigation; the May 2023 drowning incident; Mystery Island Tourism's demand that Mr Yasifu cease conducting his business on Mystery Island; Mystery Island Tourism's subsequent issue of a permit purporting to permit Mr Yasifu to conduct his business on or around Mystery Island and its decision to "set aside" its earlier decision to suspend the conduct of Mr Yasifu's business on Mystery Island; the September 2023 drowning incident; Mystery Island Tourism's subsequent decision to suspend Mr Yasifu's permit; Mystery Island Tourism's investigation of the September 2023 incident and the outcome of that investigation; and Mr Yasifu's failure and refusal to comply with Mystery Island Tourism's decision to suspend his permit.
26. A copy of Mr Nagia's statement was served on Mr Yasifu on 10 April 2025. On 7 May 2025, the primary judge ordered that the matter be set down for trial at 9.00 am on 25 June 2025 at the Dumbea court rooms and that her minute and order be served on Mr Yasifu by 28 May 2025. There is evidence that an attempt was made to serve the minute and order on Mr Yasifu on 7 May 2025, however he refused to accept the documents. The evidence indicated that he was eventually personally served on 21 June 2025.
27. Mr Yasifu did not appear when the matter was called on for hearing on 25 June 2025. No legal representative appeared on his behalf. On the application of counsel for Mystery Island Tourism, the primary judge decided to proceed with the trial in the absence of Mr Yasifu pursuant to rule 12.9(1)(c) of the *Civil Procedure Rules*, having been satisfied that Mr Yasifu was aware of the proceeding and the trial date.

Supreme Court decision

28. The primary judge held that Mystery Island Tourism had proved its claim and was entitled to the relief it had sought. Judgment was accordingly entered in its favour and orders were made evicting Mr Yasifu from Mystery Island and its surrounding seas and restraining him from engaging in or operating any business or commercial activity of any kind on Mystery Island and its surrounding seas.
29. In her judgment (J), the primary judge identified two issues that she was required to decide. The first issue was said to be "whether there was any negligence" and the second issue was said to be

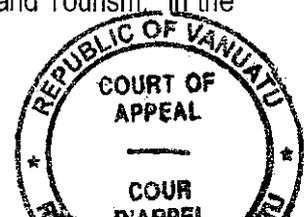


“whether the decision of [Mystery Island Tourism] was lawful”: J [6]. It is apparent from the primary judge’s subsequent reasoning that she considered that the first issue she had to decide was, in effect, whether the tourists who had drowned may have had a cause of action in negligence against Mr Yasifu and that the second issue was whether Mystery Island Tourism’s decision to effectively ban Mr Yasifu from conducting tours on and around Mystery Island was lawful.

30. It is not entirely clear why the primary judge considered that she had to decide whether Mr Yasifu had been negligent, particularly given that negligence had not been pleaded by Mystery Island Tourism. In particular, Mystery Island Tourism did not plead that it somehow had the lawful power or authority to issue or revoke the permits it had issued to Mr Yasifu, or the power or authority to instruct or direct Mr Yasifu not to conduct tours on or around Mystery Island, simply because Mr Yasifu had been negligent. In any event, the primary judge went on to find that Mr Yasifu owed a duty of care to tourists, that he breached that duty because he “failed safety standards of operation and employed an underage as a tour guide”, that the drowning death of the tourists resulted from that breach, and that the tourists suffered damage because they had drowned and as a result did not “enjoy the rest of the cruise”: J [10].
31. In relation to the issue whether Mystery Island Tourism’s decision to ban Mr Yasifu from conducting tours on or around Mystery Island was lawful, the primary judge found that Mystery Island Tourism was “recognized to govern all tour operations on Mystery Island” and that Mr Yasifu and other tour operators “are subject to instructions and directions” by Mystery Island Tourism: J [11]. It was on that basis that the primary judge concluded that Mystery Island Tourism’s decisions to ban Mr Yasifu from operating on Mystery Island, including after the second drowning incident, were lawful: J [11]-[12].
32. The primary judge’s conclusion that Mystery Island Tourism had made out its claim and was entitled to the relief it sought appeared to flow from the findings that Mr Yasifu had been negligent as regards the tourists and that its decision to ban Mr Yasifu were lawful.

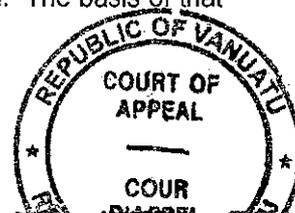
Preliminary issues

33. It is necessary to briefly address three preliminary issues before addressing the grounds of appeal and submissions.
34. The first issue concerns the hearing of the application for an extension of time and the appeal in the absence of Mystery Island Tourism. On the eve of the hearing date, the Court received a communication which suggested that Mr Nagia’s legal representative was ill, that Mr Nagia had been unable to secure the services of another legal representative, that he had difficulties getting to Court for the hearing and that he accordingly wanted an adjournment. The Court responded to that communication by advising that, if Mr Nagia wanted to apply for an adjournment, he or a legal representative would have to appear at the hearing and apply for an adjournment. When the matter was called on for hearing, there was no appearance on behalf of Mystery Island Tourism. In the



circumstances, the Court decided to proceed to hear the application for an extension of time and appeal. It is entirely unreasonable and unacceptable for a party to expect the Court to adjourn an appeal on the basis of correspondence sent on the eve of the appeal.

35. It should also be noted in this context that Mystery Island Tourism failed to comply with the Court's orders concerning the filing of submissions. It filed no submissions in opposition to the application for an extension of time or the prospective appeal.
36. The second issue is whether Mr Yasifu should be granted an extension of time within which to lodge his appeal. The judgment was handed down on 25 August 2025. An appeal from a judgment of the Supreme Court must be filed within 30 days: rule 20 of the *Court of Appeal Rules*. Mr Yasifu did not file an appeal within that time period. He was accordingly required to seek an extension of time within which to lodge an appeal. He filed an application seeking leave to appeal out of time on 3 November 2025.
37. The principles that apply in considering whether to grant an extension of time are well-established. The relevant considerations are, in summary: the length of the delay; whether the party seeking the extension has given an adequate explanation for the delay; whether the opposing party has suffered any prejudice as a result of the delay; and whether the appeal has reasonable prospects of success: *Laho v QBE Insurance Vanuatu Ltd* [2003] VUCA 26.
38. Mr Yasifu's application for an extension of time was effectively unopposed given Mystery Island Tourism's failure to file any submissions and non-appearance at the hearing.
39. It is appropriate to grant the extension of time sought by Mr Yasifu. His delay in filing his appeal was short and there was no suggestion or basis for finding that Mystery Island Tourism was somehow prejudiced in any way by the delay. In a sworn statement filed in support of his application, Mr Yasifu stated that his delay in filing the appeal was not intentional but was due to circumstances beyond his control. Those circumstances were said to be his remoteness and isolation on Aneityum Island, the lack of available legal assistance on that island, his lack of understanding of the legal process and the "limited communication and transport access to Port Vila or Tanna". Given the relatively short delay, that explanation may be regarded as reasonable in all the circumstances. It is also important to note that the judgment was only served on Mr Yasifu on 7 October 2025, so he essentially took steps to institute his appeal within 30 days of being served.
40. The most significant consideration in this case, however, is that Mr Yasifu's appeal clearly has good prospects of success. Indeed, for the reasons that follow, the appeal must be allowed. That alone would warrant the grant of an extension of time in the circumstances.
41. The third issue concerns an application by Aneityum Trustee Holdings Limited and Aneityum Tourism Ltd (together Aneityum Tourism) to be joined as a party to this appeal. The basis of that



application was that Mystery Island Tourism has commenced Supreme Court proceedings against Aneityum Tourism in which it makes similar allegations to those made in these proceedings about its power or authority to issue and revoke permits in respect of tourism operations on and around Mystery Island and its ability to effectively ban tourist operators from conducting tours on and around Mystery Island. Aneityum Tourism contended that the findings made by the primary judge in this matter have a binding effect on it even though it is not a party to this proceeding. Aneityum Tourism also submitted that the findings made by the primary judge in this matter were inconsistent with the findings made in another Supreme Court matter. The apparent point of seeking leave to be joined as a party was to bring that other decision to the Court's attention and submit that the primary judge in this matter was wrong to make the findings she did.

42. The application by Aneityum Tourism is misconceived. Aneityum Tourism has no direct or indirect interest in this proceeding or its outcome. The findings made by the primary judge in this matter were based on the evidence before the primary judge and have no binding effect in any other proceedings. The factual and legal issues that might arise in other proceedings concerning Mystery Island Tourism's power and authority to issue permits and to decide who can conduct tours on and around Mystery Island must be decided on the basis of the particular facts and circumstances of those proceedings. The Court has, in any event, been made aware of the judgment in the other proceeding upon which Aneityum Tourism would propose to rely and the applicant in this matter has essentially adopted the submissions that Aneityum Tourism would otherwise have put if joined as a party. The Court is therefore unlikely to be materially assisted by Aneityum Tourism's joinder.
43. There is accordingly no sound basis upon which to join Aneityum Tourism as a party to this appeal. The application accordingly must and will be dismissed.

Grounds of appeal and submissions

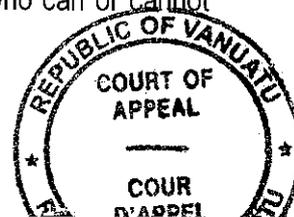
44. For reasons that will become apparent, it is unnecessary to dwell on Mr Yasifu's grounds of appeal and submissions. Many of them missed what was the main issue with the primary judge's findings and conclusion.
45. The main thrust of Mr Yasifu's appeal grounds and submissions was that the primary judge erred in finding not only that Mr Yasifu owed Mystery Island Tourism a duty of care, but also in effect that he breached that duty and that Mystery Island Tourism suffered loss and damage as a result. In Mr Yasifu's submission, there was no legal or factual basis for finding that Mr Yasifu owed Mystery Island Tourism and no proof that Mr Yasifu either breached that duty or suffered any loss or damage as a result of that breach. It followed, so it was submitted, that the orders made by the primary judge were legally unsustainable.
46. Mr Yasifu did, however, also contend, independently of his grounds and arguments concerning negligence, that Mystery Island Tourism lacked any statutory authority to regulate or interfere with his business and that it could not rely on its "internal documents", including its Memorandum of



Association, as somehow giving it authority to control tourism businesses that operated on or around Mystery Island. It submitted, in effect, that the primary judge erred in finding otherwise.

Resolution of the appeal

47. It is unnecessary to address in detail Mr Yasifu's contention that the primary judge erred in finding not only that he owed Mystery Island Tourism a duty of care, but that he also breached that duty and thereby caused Mystery Island Tourism to suffer loss or damage. That is because the primary judge made no such findings. The only findings made by the primary judge concerning negligence were that Mr Yasifu owed tourists a duty of care, that he breached that duty of care in the case of the tourists who drowned, that those tourists suffered loss or damage and that therefore the tourists, in effect, had available to them a claim in negligence against Mr Yasifu.
48. As adverted to earlier, it is not clear from the record why the primary judge considered that she needed to make any findings in respect of negligence. Mystery Island Tourism's claim did not include any allegations concerning negligence on the part of Mr Yasifu and did not seek any damages from him. It might perhaps be accepted that Mr Yasifu owed a duty of care to the two tourists who drowned, that he breached that duty (though the evidence in respect of the supposed breach was very sparse indeed) and that the tourists suffered damage. Even if those findings were available on the evidence that was before the primary judge, however, that would be irrelevant to whether Mystery Island Tourism was entitled to the relief it had sought. The remedy for negligence is damages and the parties who may have been able to seek damages against Mr Yasifu were the tourists or their personal representatives, not Mystery Island Tourism.
49. It might also be added that even if Mystery Island Tourism had alleged that Mr Yasifu owed it a duty of care and breached that duty, and even if it was open on the evidence before the primary judge to find that those allegations had been made out, that would not have supported the relief sought by Mystery Island Tourism and granted by the primary judge. That is because there is no cause of action in negligence unless it is established that the breach of duty caused the claimant to suffer loss or damage. Mystery Island Tourism did not plead or allege that any breach of duty by Mr Yasifu caused it to suffer any loss or damage. Nor was there any evidence before the primary judge that was capable of supporting any such finding. More importantly, the mere fact that Mr Yasifu might have owed Mystery Island Tourism a duty of care and might have breached that duty would not provide any support for the relief sought by Mystery Island Tourism and granted by the primary judge.
50. The relief sought by Mystery Island Tourism and granted by the primary judge was, in effect, an order evicting Mr Yasifu from Mystery Island and its surrounds and an order restraining him from carrying on any business on or around Mystery Island. The only possible basis upon which such relief might be available would be if Mystery Island Tourism established that it had the lawful power or authority to not only control who may carry on business activities (not just tourist activities) on and around Mystery Island, but also the lawful power or authority to decide who can or cannot



reside on or around Mystery Island. There was, however, no evidence before the primary judge which was capable of establishing that Mystery Island Tourism had any such power or authority. To the extent that it could be said that the primary judge found that Mystery Island Tourism possessed any such power or authority, that finding was in error.

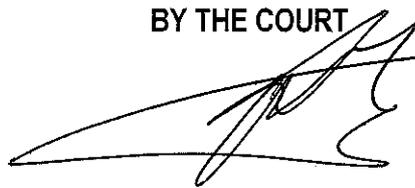
51. The evidence that was before the primary judge, which was essentially the sworn statement of Mr Nagia, was summarised earlier. It amounted to little more than the bare assertion by Mr Nagia that Mystery Island Tourism had operated a licencing system which essentially required other tourism operators to seek a permit from it and that it had made it known to others that it exercised the exclusive right to operate commercial businesses on Mystery Island and that nobody else could operate any business on Mystery Island without one of its permits. The fact that Mystery Island Tourism had taken it upon itself to operate a licencing system and had told others that it had the exclusive right to determine who can and cannot operate a business on Mystery Island says nothing whatsoever about whether Mystery Island Tourism had any lawful basis to assert or exercise any such power or authority. Mystery Island Tourism did not attempt to identify any statutory, contractual or other legal basis upon which it was able to exercise any such power or authority.
52. It must follow that the primary judge was wrong to enter judgment in favour of Mystery Island Tourism and wrong to grant it the relief that it had sought.

Conclusion and disposition

53. Mr Yasifu has succeeded in establishing that the primary judge erred in ordering that he be evicted from Mystery Island and its surrounds and that he be restrained from conducting any business activities on or around that island. The appeal must accordingly be allowed and the orders made by the primary judge must be set aside.
54. There is no reason why costs should not follow the event. It was submitted on Mr Yasifu's behalf that an appropriate costs order would be that Mystery Island Tourism pay Mr Yasifu costs in the sum of VT50,000. That would, in all the circumstances, be a reasonable assessment of costs. An order is accordingly made that Mystery Island Tourism pay Mr Yasifu's costs of VT50,000.

DATED at Port Vila, this 13th day of February 2026

BY THE COURT



Honourable Chief Justice Vincent Lunabek

