

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

**Judicial Review**  
**Case No. 20/1901 SC/JUDR**

**BETWEEN: Vanuatu Ferry Limited**  
Claimant

**AND: Republic of Vanuatu**  
Defendant

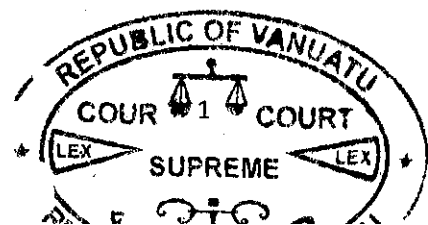
*Date:* 17 February 2022  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr M. Hurley  
Defendant – Mr L. Huri

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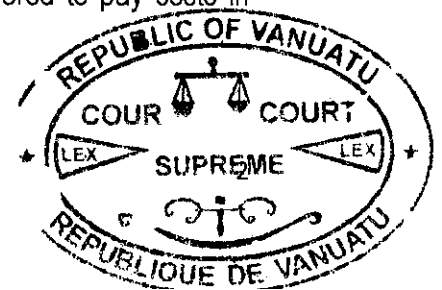
**DECISION AS TO COSTS**

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1. The Claimant Vanuatu Ferry Limited ('VFL') sought judicial review of decisions by the Defendant State's Director of the National Disaster Management Office and Director of Immigration to refuse entry into Vanuatu of its maritime vessel the *Vanuatu Cargo* and its crew.
2. On 10 December 2021, I entered judgment for the Claimant and made the following declarations at para. 147 of *Vanuatu Ferry Ltd v Republic of Vanuatu* [2021] VUSC 328 (the 'judgment'):
  - a) *Declaration that the decision of the Defendant, through its Director of the National Disaster Management Office, of 2 July 2020 by reliance on Orders No. 71 and 77 of 2020 or otherwise to refuse to allow the Claimant's vessel registration no: RV-6443 known as Vanuatu Cargo to enter the port of Port Vila, Efate, Republic of Vanuatu, was unlawful;*
  - b) *Declaration that the decision of the Defendant, through its Director of Immigration and Passport Office, of 2 July 2020 to refuse entry for all passengers on board Vanuatu Cargo to enter the port of Port Vila, Efate, Republic of Vanuatu, was unlawful; and*
  - c) *Declaration that Orders No. 71, 77 and 94 of 2020 with reference to locally registered ships were of such unreasonableness as to warrant the Court's intervention under Wednesbury principles and were unlawful.*



3. I then required the parties' submissions as to costs.
4. Rule 15.1 of the *Civil Procedure Rules* ('CPR') provides as follows:
  - 15.1 (1) *The court has a discretion in deciding whether and how to award costs.*
  - (2) *As a general rule, the costs of a proceeding are payable by the party who is not successful in the proceeding.*
  - (3) *However, nothing in this Part prevents the parties to a proceeding from agreeing to pay their own costs.*
  - (4) *The court may order that each party is to pay his or her own costs.*
5. Mr Hurley relied on rule 15.1(2) of the CPR and submitted that there is not any reasonable basis for VFL to be denied an order for costs in its favour having regard to VFL's numerous letters to State entities which went unanswered (as recorded in the judgment), that VFL then had to seek urgent interlocutory relief from the Court which costs were reserved, and VFL succeeded with each of the grounds of relief it sought. Finally, VFL has been put to the trouble and expense of litigating this proceeding. Hence in accordance with the general rule costs should follow the event and the State pay VFL's costs.
6. Mr Huri submitted that the Court should exercise its discretion under rule 15.1(4) of the CPR and order the parties to bear their own costs as Orders No. 71, 77 and 94 of 2020 by the Minister of Climate Change under which the decisions challenged were made were deemed to be lawful. Mr Huri also submitted that this is a matter of public interest as the judgment affected orders by the Minister which were adhered to by everyone and were deemed to be lawful.
7. I agree with Mr Hurley's submissions opposing the State's submissions. With respect, Mr Huri's first submission is incorrect. In the judgment, not only were the decisions based on the Orders held to be unlawful and irrational, the declaration was made at para. 147(c) that Orders No. 71, 77 and 94 of 2020 with reference to locally registered ships were unlawful.
8. It is irrelevant that at the time of making the orders the Minister deemed that they were lawful in relation to locally registered ships. The Court's declaration that they were unlawful means that they were unlawful *ab initio*. It follows that as a matter of law they could never be 'deemed to be lawful'. I reject the submissions made.
9. As to the remaining submission for the State, it can never be a matter of public interest if unlawful orders/decisions are sought to be enforced. Further, there is no evidence that they were "adhered to by everyone and were deemed to be unlawful". Even if (in respect of which there is no evidence), other locally registered ships adhered to the orders, that does not mean that the State should not be ordered to pay costs in relation to the unlawful decisions made in respect of VFL.



10. In the result and in accordance with the general rule, costs are to follow the event.
11. The Defendant is to pay the Claimant's costs on a standard basis as agreed, within 21 days, failing which costs are to be taxed by the Master.

**DATED at Port Vila this 17<sup>th</sup> day of February 2022  
BY THE COURT**

*VM Trief*  
Justice Viran Molisa Trief

