

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

**Judicial Review**  
**Case No. 23/2774 SC/JUDR**

**BETWEEN:** 1. Hugo Brugger; 2. Marcel Brugger;  
3. Fabienne Brugger; 4. Olivier  
Brugger; 5. Pascal Brugger; 6. Chloe  
Brugger; 7. Sandra Daly Brugger; and  
8. Birgit Mettel

Claimants

**AND:** **Republic of Vanuatu**  
Defendant

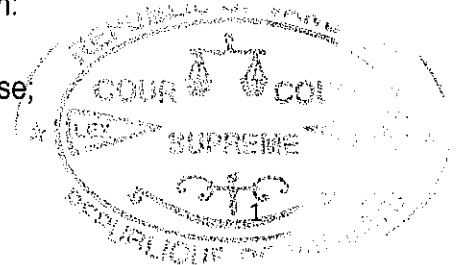
*Date of Hearing:* 8 November 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimants – Mr M. Fleming  
Defendant – Mr S. Aron & Mr F. Bong  
*Date of Decision:* 10 November 2023

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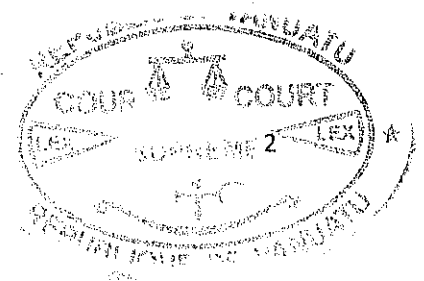
**DECISION AS TO CLAIMANTS' URGENT APPLICATION FOR STAY**

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1. This was an Urgent Application for Stay filed on 3 November 2023 (the 'Application') by the Claimants who on or about 27 August 2023, were removed from Vanuatu pursuant to the *Removal of Non-Citizens from Vanuatu* Order No. 169 of 2023 dated 17 August 2023 by the Minister of Internal Affairs (the 'decision').
2. The Claimants relied on the Sworn statements of Marcel Brugger and Fabienne Brugger.
3. The following were advanced as the grounds of the Application:
  - a. That the Claimants have a strong and compelling case,



- b. In the meantime, substantial injustice will occur to the Claimants as they cannot enter Vanuatu, appear personally to prosecute the Claim or protect their property;
  - c. The children's rights continue to be affected as they cannot go to their homes and the Court, which has a duty to ensure a child's interests are not affected, cannot make appropriate Orders and directions to ensure that they get the legal assistance they are lawfully allowed;
  - d. The State will not be injuriously affected by the grant of the stay;
  - e. The public interest in the proceeding given the importance of the application of immigration law to other expatriates living in Vanuatu;
  - f. The overall balance of convenience favours the grant of a stay; and
  - g. The interest of justice favours the grant of a stay.
4. In response, Mr Aron submitted that all 8 Claimants were declared by the Director of Immigration as prohibited immigrants. Further, they are seeking a stay of the Minister's decision but the Director's declaration of them as prohibited immigrants has never been challenged and is therefore still valid so even if such stay is granted, the Director's decision would prevent their return to Vanuatu. He submitted therefore that the Claimants may have a serious question to be tried but that they cannot show that they would be seriously disadvantaged if the stay is not granted. Mr Aron submitted that for that same reason, if the Claimants' evidence remains as it is, they cannot succeed on the Claim.
5. In reply, Mr Fleming cited *Mocha Ltd v Irririki Island Holdings Ltd* [2017] VUSC 132, *Lowe v Markson* [2022] VUCA 34 and *Rizwan v Government of the Republic of Vanuatu* [2019] VUCA 10. He submitted that the Claimants' rights to natural justice, the serious disadvantage they have suffered, the balance of convenience and the interest of justice where they did not even know that they had been declared prohibited immigrants favour grant of the stay order sought.
6. The Claim includes pleadings that the Minister made the decision *ultra vires* his power in paras 53A(1)(ab) and (ac) of the *Immigration Act* No. 17 of 2010 (the 'Act') as none of the Claimants had been declared prohibited immigrant that they know of, that none of the Claimants has been given opportunity to be heard as to allegation that they have breached conditions of their visas on three different occasions, that the Claimants were not afforded natural justice in being given notice of the decision and opportunity to seek its review, that the Claimants were not given the opportunity to seek review of the decision in accordance with subs. 55(3) of the Act, that as to any order declaring them prohibited immigrants – that this was without regard to the terms of reg. 19(1) of the *Immigration Regulation Order* No. 180 of 2011, and that the Minister did not analyse whether or not notice was required pursuant to subs. 53A(2) of the Act.



7. It is also pleaded in the Claim that Claimant 7 was on a tourist visa and there are no grounds for her arrest and deportation, and that Claimant 8 was not named in the decision by the Minister therefore it is unknown on what grounds she was arrested and deported.
8. The Defendant's case as pleaded in the Defence is that the Minister made his decision on the grounds that the Claimants 1-8 were prohibited immigrants and had breached condition of their visas on three different occasions. Further, that in 2021, they were served the Director of Immigration's decision declaring them as prohibited immigrants and its lawfulness has never been challenged therefore it is a valid order and part of the basis for the decision by the Minister. It was also pleaded in the Defence that penalty notices were subsequently served on the Claimants for residing illegally in Vanuatu without a valid visa. It was pleaded too that the Minister decided not to give notice of the decision to the Claimants as they were already aware that they had been declared prohibited immigrants.
9. As set out in the Claim, the Claimants allege that they do not know of any order declaring them as prohibited immigrants. Such order has now been pleaded in the Defence as having been made on 7 April 2021. The existence of the Director's decision, and whether or not there was a factual basis for it, have been squarely raised in para. 1 of the Claim. If necessary, the Court can make any other Order deemed just including as to the lawfulness or otherwise of the Director's decision.
10. Accordingly, I am satisfied that the Claimants have a serious question to be tried, that they would be seriously disadvantaged if the stay is not granted and that if the Claimants' evidence remains as it is, that they could succeed on the Claim.
11. In terms of the matters relevant to a stay application, I consider that the Claimants' have a more than arguable case therefore good prospects of success, the State will not be prejudiced by the stay order sought to allow the Claimants to return to Vanuatu, the Claimants' by the Claim and evidence filed show the serious disadvantage and damage that they have suffered, and the interest of justice favours the grant of stay to allow the Claimants to be present in Vanuatu to challenge on judicial review the underlying factual determinations as being made in breach of natural justice and/or being unreasonable. I consider that the balance of convenience favours the making of the order sought.
12. For the reasons given, the Claimant's Urgent Application for Stay filed on 3 November 2023 is **granted** and it is ordered as follows:
  - a. The Removal of Non-Citizens from Vanuatu Order No. 169 of 2023 dated 17 August 2023 by the Minister of Internal Affairs, and subsequently effected on 27 August 2023, is **stayed**;
  - b. Any Order or Notice in respect of the deportation of Claimant 8 is **stayed**;
  - c. Claimants 1-8 are **immediately** allowed to freely enter Vanuatu.



13. Costs reserved.

DATED at Port Vila this 10<sup>th</sup> day of November 2023  
BY THE COURT

*VM Trief*  
Justice Viran Molisa Trief

