

**BETWEEN:** Emma Loise Ruth Moses

Claimant

**AND:** Toara Suran Joshua

First Defendant

**AND:** Serah Willy, Leipakoa Daisy Moses Daniel, James Matariki, Roy  
Seule Fred, Henry Charlie

Second Defendants

**Date:** 26<sup>th</sup> February 2024

**Before:** Justice Oliver A Saksak

**Counsel:** Ms Manen Mala for the Claimant  
Mr Andrew Bal for the Defendants

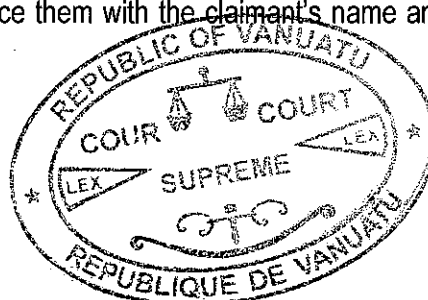
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## **DECISION ON APPLICATION FOR SUMMARY JUDGMENT**

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### **Introduction and Background**

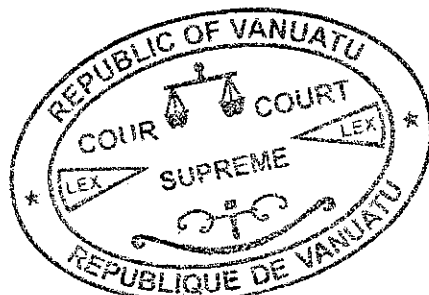
1. The claimant filed her Supreme Court claim on 10<sup>th</sup> September 2021 claiming orders that-
  - a) The first and second Defendants be permanently restrained from holding themselves out as the authorized or appointed national executive committees of the New Covenant Church of Vanuatu.
  - b) The Defendants immediately vacate the church premises and Head quarters contained within Lease Title 11/0H24/082.
  - c) The claimant takes up her position and duties within the official church head quarters and premises as the lawfully elected and ordained National Coordinator of the Church.
  - d) The Defendants be removed from the Vanuatu Financial Services Commission registry as committee members of the church and to replace them with the claimant's name and her appointed members of the National Executive.



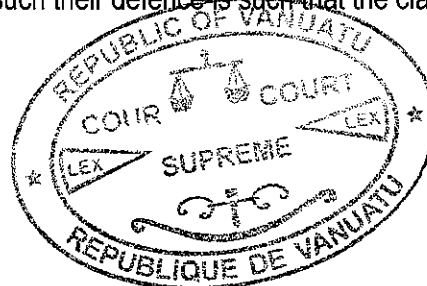
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- e) The Defendants be restrained permanently from using the name "New Covenant Church of Vanuatu if they no longer wish to be part of the existing church.
  - f) The Defendants choose another name for their group if they no longer wish to be part of the New Covenant Church of Vanuatu.
  - g) The Defendant pay the costs of the action.
2. The defendants filed their Defence on 27 October 2021 denying that the claimant is entitled to the position of National Coordinator as claimed and therefore is not entitled to the orders that she is seeking.
  3. The claimant filed 2 applications for summary judgment first on 4<sup>th</sup> February 2022 asserting the Defendants had no real prospects of defending her claims because they had not filed any evidence in support of their defence.
  4. That application was not heard due to the parties coming up with an offer of reconciliation which did not occur. The defendants have not not filed any other sworn statements in support of their defence in their intervening period.
  5. The claimant however filed the second application for summary judgment on 13 October 2023 asserting again that the defendants had filed any evidence in support of their defence of 27 October 2021 and that they had failed to comply with direction orders issued in December 2021.
  6. The claimant asserts that she believes the Defendants have no real prospects of defending her claim. She seeks judgment summary.

### Discussion

7. I deal with the applications for summary judgment as one application and this is the application dated 13<sup>th</sup> October 2023.
8. The basis of the application is Rule 9.6 (1) , (2) and (3).



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9. The claimant relied on her sworn statements filed on 13<sup>th</sup> October 2023 in support of her application. Further she relied on the evidence by sworn statements filed on 1<sup>st</sup> October 2021 by herself and Pastor James Daniel. She relies also on her evidence by sworn statement filed on 22 September 2023 and of Pastor Moses Martin filed on the same date.
  10. In opposition to the summary judgment application the Defendants relied on their sworn statements filed on 26 October 2021 by Toara Suran Joshua, Roy Fred Seule and Henry Charley. They say the claimant was never elected and ordained as the National Coordinator. They say further that their Constitution has been amended under which the First Defendant was appointed and ordained in 2017 as the Superintendent in place of the National Coordinator as was the case previously. They further say that their respective appointments were made pursuant to the new structure of government under a new Constitution which established an Executive body registered formally with the Vanuatu Financial Services Commission with a Certificate of Incorporation issued in their favour. They say that the claimant was a member of the former National Executive body which appointed the First Defendant as the Superintendent in 2017 and formally endorsed in 2018 when he made his pledge and vow.
  11. Finally the Defendants alleged that due to the claimants acts of insubordination, the Church National Convocation resolved in August 2021 to terminate her completely from the New Covenant Church and as such the Defendants contend the claimant is not entitled to any of the orders she seeks and that her claim should be dismissed with costs.
  12. I now consider whether or not the Defendants can defend the claimant's claim. It is my view the Defendants have a strong defence. The contention that they have not filed any sworn statement is not tenable. Whilst it is true the defendants did not file any evidence to support their defence, they filed three sworn statements in opposition to the restraining orders. Those statements remain their evidence unless the Court rules otherwise.
  13. The evidence of the Defendants show that the position of the National Coordinator does no longer exist. This position is superceded by the position of Superintendent which is now occupied by the First Defendant. This position was created by a new Constitution which has been registered with the Vanuatu Financial Services Commission. That makes the position of the First Defendant as superintendent a legal one and as such their defence is such that the claim of the claimant is defeated .She has no cause of action.



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14. The position she is disputing over with the Defendants does not exist. If it does, it is not a legal issue to be brought before this Court for determination. The claimant has no cause of action against the defendants.
15. The application for summary judgment is therefore dismissed.
16. The Defendants sought orders that the claim should be dismissed. I accept their submission. The claim is not worthy of any legal consideration in the absence of any evidence that her organization has any legal status, being registered as any incorporated body with the Financial Services Commission.
17. This is a case where there will be no orders as to costs. Each party will bear their own costs.

DATED at Port Vila this 26<sup>th</sup> day of February 2024  
BY THE COURT

  
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Hon. Oliver A Saksak  
Judge

