

BETWEEN: Mariana Lal
Claimant

AND: Josiah Kuatpen
First Defendant

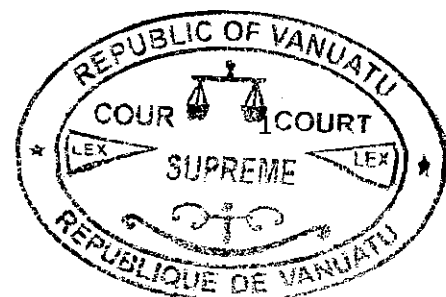
AND: Attorney General
Second Defendant

Date: 25 November 2024
Before: Justice V.M. Trief
Counsel: Claimant – Mr N. Morrison
Defendants – Mr T. Loughman

JUDGMENT

A. Introduction

1. The First Defendant Acting Director of the Vanuatu Financial Intelligence Unit ('VFIU') Josiah Kuatpen by letters dated 2 November 2023 and 24 March 2024 stated that the Claimant Mariana Lal was not a fit and proper person under the *Anti-Money Laundering and Counter-Terrorism Financing Act* No. 13 of 2014 (the 'Act') to occupy the position of Acting Chief Executive Officer ('CEO') of the Wanfuteng Bank Limited (the 'Bank') (the 'Decision').
2. By the Claim, Mrs Lal has sought judicial review of the Decision. She is seeking declarations that there were no reasonable grounds for Mr Kuatpen to determine that she did not meet the fit and proper person criteria under the Act, and that before Mr Kuatpen made the Decision, she was not afforded natural justice and/or procedural fairness. She is also seeking a declaration that the Decision was unlawful and costs on an indemnity basis.

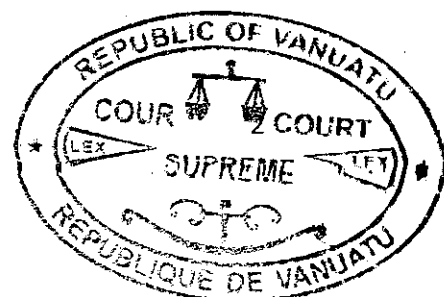


3. The Claim is disputed: First and Second Defendants' Defence and Sworn statement of Josiah Kuatpen filed on 25 July 2024.
4. The defence case is that Mr Kuatpen's letter dated 2 November 2023 was directed to the reporting entity the Bank following the VFIU's investigation concerning certain breaches of the Act by Mrs Lal. Further, that Mr Kuatpen did not act unlawfully in making the Decision as he was carrying out his functions under the Act in regard to the Bank as a reporting entity.
5. On 19 August 2024, I ruled on the rule 17.8 matters and directed that the matter proceed to hearing of the Claim: Lal v Kuatpen [2024] VUSC 244.
6. At the hearing of the Claim on 18 October 2024, counsel agreed that there would be no cross-examination and the hearing should proceed by way of submissions then the Court issue its decision.

B. Background

7. The Bank was Mrs Lal's employer and is a 'reporting entity' pursuant to para. 2(b) of the Act.
8. The VFIU must supervise reporting entities for compliance with the Act pursuant to subs. 8A(1) of the Act.
9. The Director is charged with establishing and maintaining a register of reporting entities: subs. 9(1) of the Act.
10. At all material times, the Bank was registered in the register of reporting entities.
11. At all material times, the Bank was regulated by a domestic regulatory authority the Reserve Bank of Vanuatu ('RBV').
12. Prior to the Decision, the VFIU was engaged in an on-site investigation of the Bank's compliance with the requirements of the Act and liaised directly with the Bank and not Mrs Lal.
13. By letter to the Director of the Bank dated 2 November 2023, Mr Kuatpen referred to five allegations then stated that Mrs Lal was not a fit and proper person within the legislative requirements of the Act and required the Bank to arrange for an interim replacement as Acting CEO of the Bank, stating as follows [**Attachment "M2"**, Sworn statement of Mariana Lal]:

Upon review of Mrs Lal's AML&FTF Fit and Proper status, this office notes the following:

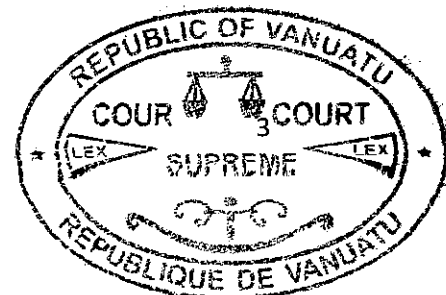


- Mrs Lal was found to be influencing HR functions as opposed to enabling an independent Human Resource function. This in contrary to clause 15B(f) of the AML&CTF Regulations;
- During the follow-up onsite visit to WBL, this office noted that Mrs Lal did not contribute in implementing the recommendations of the first onsite report. Mrs Lal was allocated tasks as part of WBL's remedial actions, however, she showed wilful ignorance to comply. This is contrary to clause 15B(f) of the AML&CTF Regulations;
- Mrs Lal has breached protection and secrecy provisions under the AML&CTF Act by exposing Mrs Sharlene Rajah's confidential discussions to unauthorized persons and thereby tarnishing her professional work relationships and endangering her personal safety;
- Mrs Lal was found to being dishonest with this office. She claimed, in almost all meetings with this office, that she will be compliant with all of FIU instructions and will ensure WBL rectifies all issues identified. This office has evidence that Mrs Lal was opposing FIU's instructions via emails to influence the EXCO team. This is contrary to clause 15B(e) of the AML&CTF Regulations; and
- Mrs Lal has demonstrated actual conflict of interest in relation to WBL's AML&CTF Compliance Officer's work permit. Recent developments in relation to said work permit suggests that Mrs Lal has been feeding confidential information to the Department of Labour with the intention that it will affect the status of the work permit. This is contrary to clause 15B(g) of the AML&CTF Regulations.

As such, I do not find Mrs Lal as being a fit and proper person in accordance with the Anti-Money Laundering and Counter-Terrorism Financing Fit & Proper criteria.

Given that she is occupying a position that is significant to the ongoing operations of the bank, kindly arrange for an interim replacement in the role of Acting CEO and provide for our AML&CTF fit and proper review at the earliest.

14. The following day, the Director of the Bank instructed Mrs Lal to vacate her office as Acting CEO of the Bank. This reflected the legislative framework that a person who is not a fit and proper person cannot occupy a position defined in s. 1 of the Act as a "key person" which includes managers and CEOs.
15. On 6 November 2023 – four days after Mr Kuatpen's letter – Mrs Lal resigned from the Bank.
16. By letters dated 18 December 2023 and 20 March 2024, Mrs Lal via her lawyer requested further and better particulars of the Decision (more specific information about the Decision) [**Attachments "M3" and "M4"**, Sworn statement of Mariana Lal].
17. By letter to Mrs Lal's lawyer dated 24 March 2024, Mr Kuatpen responded to the requests for further and better particulars. He did not provide the particulars requested but stated as follows:



I have given careful reviewed [sic] and assessed the issue and noted the following: ‘

- a) *The Fit and proper review were made and directed to the Reporting entity pursuant to section 9 and 15B of regulation.*
- b) *Reporting entity accepted the review and responded to this office without contesting the review.*
- c) *Your client tendered her resignation with the entity.*
- d) *This office never recommend for your client to be remove from the entity as it is still an act of compliance with the requirements.*
- e) *Your client is not a reporting entity to the FIU.*

Given the above points, I regret to inform you that this office will no longer dealt [sic] with your clients request, therefore your client may pursue this matter with the reporting entity.

C. The Law

18. “Key person”, “Regulations” and “reporting entity” are defined in s. 1 of the Act as follows:

“key person” of a reporting entity means a beneficial owner, owner, controller, director or manager of the reporting entity;¹

....

“Regulations” means the regulations made under this Act;

...

“reporting entity” has the meaning given by section 2:

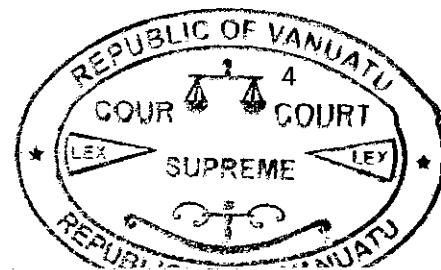
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19. Section 2 of the Act provides as follows:

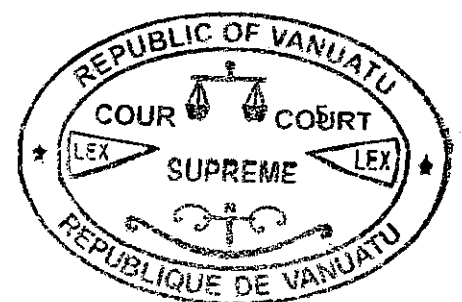
2. *Each of the following is a reporting entity:*

- (a) *the Reserve Bank of Vanuatu;*
- (b) *a licensee within the meaning of the Financial Institutions Act [CAP 254];*
- (c) *a licensee within the meaning of the International Banking Act [CAP 280];*
- (d) *a company licensed under the Vanuatu Interactive Gaming Act [CAP 261];*
- (e) *a person licensed under the Casino (Control) Act [CAP 223];*

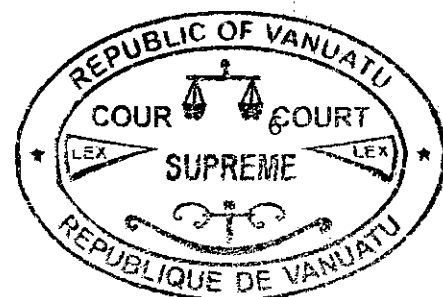
¹ Inserted by the *Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act No. 16 of 2017.*



- (f) a person carrying on a business under the Gaming (Control) Act [CAP 172] or the Lotteries Act [CAP 205];
- (g) a foundation within the meaning of the Foundation Act No. 38 of 2009;
- (h) an association within the meaning of the Charitable Associations (Incorporation) Act [CAP 140];
- (i) a person carrying on electronic business under the E-Business Act [CAP 264];
- (j) a licensee within the meaning of the Company and Trust Services Provider Act No. 8 of 2010;
- (k) a credit union registered under the Credit Unions Act [CAP 256] or a co-operative society registered under the Co-operative Societies Act [CAP 152];
- (l) a person carrying on a business:
 - (i) of administering or managing funds on behalf of an international company within the meaning of the International Companies Act [CAP 222] or any other person; or
 - (ii) as a trustee in respect of funds of other persons; or
 - (iii) as a trustee or manager of a unit trust;
- (m) a person carrying on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker;
- (n) a person (other than a person mentioned under paragraph (a), (b) or (c)), carrying on a business of:
 - (i) exchanging currency or value; or
 - (ii) collecting, holding, exchanging or transferring currency or value, or otherwise negotiating transfers of currency or value, on behalf of other persons; or
 - (iii) preparing payrolls on behalf of other persons in whole or in part from currency collected; or
 - (iv) delivering currency including payroll;
- (o) a lawyer, notary or accountant that provides services to a client relating to all or any of the following:
 - (i) buying or selling of real estates, business entities or properties;
 - (ii) managing of currencies, securities or other assets;
 - (iii) managing of banks, savings or securities accounts;
 - (iv) organising contributions for the creation, operation or management of legal persons or legal arrangements;
 - (v) creating, operating or managing legal persons or legal arrangements;



- (p) a person (whether or not the person is a trust or company service provider) providing all or any of the following services:
- (i) forming or managing legal persons or legal arrangements;
 - (ii) acting (or arranging for another person to act) as a director or secretary or an agent of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (iii) providing a registered office, a business address or accommodation, correspondence or an administrative address for a company, a partnership or any other legal person or legal arrangement;
 - (iv) acting (or arranging for another person to act) as a trustee of a trust or a similar position in other form of legal arrangements;
 - (v) acting (or arranging for another person to act) as a nominee shareholder for another person;
- (q) a person carrying on a business of:
- (i) dealing in bullions, precious metals or precious stones; or
 - (ii) issuing, selling or redeeming traveller's cheques, money orders or similar instruments; or
 - (iii) collecting, holding and delivering currency as part of a business or providing payroll services;
- (r) a person carrying on the business of:
- (i) lending, including consumer credit or mortgage credit, and financing of commercial transactions; or
 - (ii) financial leasing; or
 - (iii) issuing and managing means of payment (such as credit and debit cards, cheques, bankers' drafts and electronic money); or
 - (iv) issuing financial guarantees and commitments; or
 - (v) trading for the person's own account or for the account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, commodity futures trading or transferable securities; or
 - (vi) participating in securities issues and providing financial services relating to such issues; or
 - (vii) money brokering; or
 - (viii) mutual funds or, individual or collective portfolio management; or
 - (ix) safekeeping and administration of cash or liquid securities on behalf of other persons; or



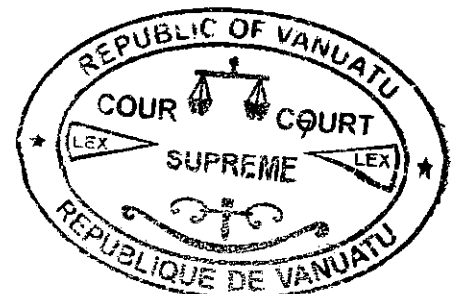
- (x) trustee administrator or investment manager of a superannuation scheme, other than a scheme under which contributions are made by salary deductions and withdrawals are for limited purposes such as retirement; or
 - (xi) dealing in real estate or sale or hire of motor vehicles; or
 - (xii) dealing in property (other than real estate) exceeding VT1 million or such other amount as may be prescribed;
- (s) any other person prescribed for the purpose of this provision.

20. Section 8A of the Act provides as follows:

- 8A. (1) *The Unit must supervise reporting entities for compliance with this Act.*
- (2) *The Unit has the following functions in relation to the supervision of reporting entities:*
- (a) *to monitor and assess the level of AML and CTF risk across reporting entities;*
 - (b) *to monitor reporting entities for compliance with this Act and the Regulations, and for this purpose to develop and implement a risk-based supervisory programme;*
 - (c) *to provide guidance and feedback to reporting entities in order to assist those reporting entities to comply with this Act and the Regulations;*
 - (d) *to specify such forms and notices as are necessary in the implementation of this Act;*
 - (e) *to produce guidelines for compliance with this Act and Regulations;*
 - (f) *to monitor and enforce compliance with this Act and Regulations;*
 - (g) *to co-operate with the National Coordinating Committee, domestic regulatory authorities, law enforcement agencies and foreign government agencies to ensure the consistent, effective, and efficient implementation of this Act;*
 - (h) *to provide training programs for reporting entities in relation to customer due diligence obligations, record keeping obligations and reporting obligations.*

21. Section 9 of the Act provides as follows:

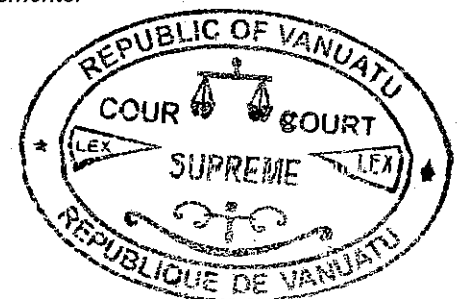
9. (1) *The Director must establish and maintain a register of reporting entities.*
- (2) *A reporting entity must not provide a service or establish a business relationship with a customer unless the reporting entity is registered on the register.*
- (3) *An application for registration by a reporting entity must be made to the Director in the prescribed form, including its name and such other details as are prescribed by the Regulations.*



- (4) *If a reporting entity is regulated by a domestic regulatory authority under a regulatory law, the Director must not enter the reporting entity on the register unless:*
- (a) *the application complies with the requirements in subsection (3); and*
 - (b) *the reporting entity meets the requirements of the regulatory law; and*
 - (c) *the reporting entity meets the fit and proper criteria prescribed by the Regulations.*
- (5) *If a reporting entity is not regulated by a domestic regulatory authority, the Director must not enter the reporting entity on the register unless:*
- (a) *the application complies with the requirements in subsection (3); and*
 - (b) *the reporting entity meets the fit and proper criteria prescribed by the Regulations; and*
 - (c) *the Director is satisfied that the source of funds used to pay the capital of the applicant is acceptable.*
- (6) *In deciding under paragraph (4)(c) or (5)(b) whether a reporting entity meets fit and proper criteria, the Director must have regard to whether any of the key persons of the reporting entity:*
- (a) *have been convicted of an offence or are subject to any criminal proceedings; or*
 - (b) *are listed on a United Nations financial sanctions list, a 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.*
- (7) *If a reporting entity contravenes subsection (1), the reporting entity commits an offence punishable upon conviction by:*
- (a) *if the reporting entity is a natural person - a fine not exceeding VT25 million or imprisonment not exceeding 15 years, or both; or*
 - (b) *if the reporting entity is a body corporate - a fine not exceeding VT125 million.*

22. Sections 9A and 9B of the Act provide as follows:

- 9A. (1) *If a reporting entity registered on the register changes its name or any of its other details required for the purposes of registration, the reporting entity must give the Director written notice of the change within 14 days after the change occurs.*
- (2) *The Director upon receiving the notice:*
- (a) *must consider whether the reporting entity continues to meet the requirements for registration in subsection 9(4) or (5); and*
 - (b) *may, by notice in writing to the reporting entity, remove the reporting entity from the register if the Director is not satisfied that the reporting entity continues to meet the registration requirements.*



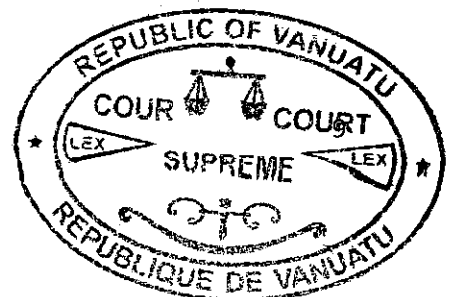
- (3) *If a reporting entity fails to comply with subsection (1), the reporting entity commits an offence punishable upon conviction by:*
- (a) *if the reporting entity is a natural person - a fine not exceeding VT25 million or imprisonment not exceeding 15 years, or both; or*
 - (b) *if the reporting entity is a body corporate - a fine not exceeding VT125 million.*

9B. (1) *This section applies if:*

- (a) *a reporting entity is not regulated by a domestic regulatory authority; and*
 - (b) *there is a change:*
 - (i) *of a key person of the reporting entity, or in the circumstances of a key person that may affect whether he or she meets the fit and proper criteria; or*
 - (ii) *to the source of funds used to pay the reporting entity's capital.*
- (2) *The reporting entity must give the Director written notice of the change within 14 days after the change occurs.*
- (3) *The Director may, by notice in writing to the reporting entity, remove the reporting entity from the register if the Director is not satisfied that:*
- (a) *the key person concerned meets the fit and proper criteria prescribed by the Regulations; or*
 - (b) *the source of funds used to pay the reporting entity's capital is acceptable.*
- (4) *If a reporting entity fails to comply with subsection (2), the reporting entity commits an offence punishable upon conviction by:*
- (a) *if the reporting entity is a natural person - a fine not exceeding VT25 million or imprisonment not exceeding 15 years, or both; or*
 - (b) *if the reporting entity is a body corporate - a fine not exceeding VT125 million.*
- (5) *To avoid doubt, this section does not limit section 9A.*

23. Sections 50I and 50J of the Act provide as follows:

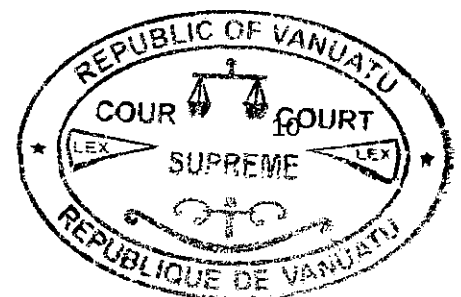
- 50I. (1) *The Director may in writing direct a reporting entity to remove a person who is a director, manager, secretary or other officer of the reporting entity if the Director is satisfied that the person is a disqualified person within the meaning of section 50J.*
- (2) *Before issuing a direction, 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.

50J. (1) A person is a disqualified person if, at any time, the person:

- (a) has been convicted of an offence under this Act; or
 - (b) has been a director or directly concerned in the management of a reporting entity in Vanuatu or any other country which has had its licence revoked or has been wound up by the Court; or
 - (c) has been convicted by a court for an offence involving dishonesty; or
 - (d) is or becomes bankrupt; or
 - (e) has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (f) has compounded with his or her creditors; or
 - (g) is listed on a United Nations financial sanctions list, a 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; or
 - (h) does not meet any other fit and proper criteria prescribed by the Regulations.
- (2) 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 gives his or her written approval for the person to do so.
 - (3) If a person contravenes subsection (2), the person commits an offence punishable upon conviction by:
 - (a) in the case of an individual – a fine not exceeding VT15 million or imprisonment for a term not exceeding 5 years, or both; or



(b) *in the case of a body corporate – a fine not exceeding VT75 million.*

(my emphasis)

24. "Regulations" is defined in s. 1 of the Act to mean the regulations made under the Act. The Prime Minister makes Regulations pursuant to s. 53 of the Act. The Regulations were first made by way of the *Anti-Money Laundering and Counter-Terrorism Financing Regulation Order No. 122 of 2014*. Subsequently, this has been amended by Orders No. 2 of 2015, No. 153 of 2015, No. 37 of 2017 and No. 72 of 2017 (collectively, the 'Regulations').

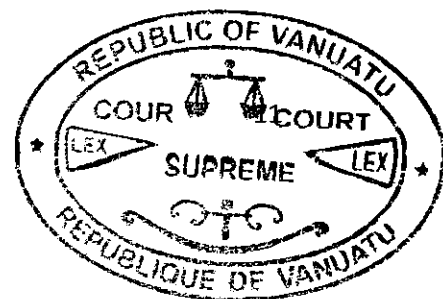
25. Clause 15B of the Regulations provides the fit and proper criteria as follows:

15B. *For the purposes 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 criteria²:*

- (a) *whether the person has been convicted of any criminal offence particularly dishonesty, fraud, financial crime or offence against legislation relating to banking, financial service, legal person, legal arrangements, insurance and high value property and fund management; and*
- (aa) *whether the person is listed on a United Nations financial sanctions list, a 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; and³*
- (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 requirements 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*

² Inserted by the *Anti-Money Laundering and Counter-Terrorism Financing Regulation (Amendment) Order No. 72 of 2017*.

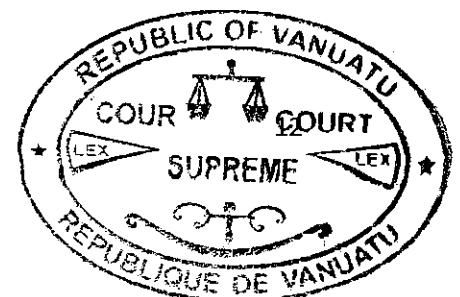
³ Inserted by the *Anti-Money Laundering and Counter-Terrorism Financing Regulation (Amendment) Order No. 72 of 2017*.



- (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.*

D. Defendant's Application for the Bank to be joined as an Interested Party

- 26. On 17 October 2024, the day before trial, the Defendant filed Application to be Joint [sic] as a Party to this Proceeding seeking an order joining the Bank as an Interested Party to the proceeding.
- 27. The grounds of the Application are that Mr Kuatpen issued the Decision to the Bank which was Mrs Lal's employer, that the VFIU's work which resulted in the Decision involved directly liaising with the Bank and not Mrs Lal, that the Bank should be added as a party to answer to Mrs Lal's allegations as the Decision was issued to it, and that there is no prejudice to Mrs Lal for the Court to grant the application.
- 28. It is undisputed that the Decision was addressed to the Bank.
- 29. It is also undisputed that the VFIU had been conducting compliance work with the Bank in the lead-up to the Decision and it had been liaising directly with the Bank and not Mrs Lal.
- 30. However, there is simply no merit to the ground that the Bank should be added as a party to answer to Mrs Lal's allegations as the Decision was issued to it. This is because Mr Kuatpen made the Decision, not the Bank. Therefore, only Mr Kuatpen can answer Mrs Lal's allegations set out in the Claim as to lack of natural justice and there being no reasonable grounds for his decision that she was not a fit and proper person. It was misconceived to suggest otherwise.
- 31. I set out in the Decision as to Rule 17.8 Matters dated 19 August 2024 that it would be futile Mrs Lal to raise her concerns with the Bank about lack of natural justice afforded by Mr Kuatpen or the absence of reasonable grounds for Mr Kuatpen's decision as it did not make the decision under challenge: Lal v Kuatpen [2024] VUSC 244 at [14]. Despite this, the Defendants saw fit to make the Application for joinder of the Bank asserting that the Bank be joined in order to answer the allegations in the Claim.
- 32. In the circumstances, the Defendants have without good cause engaged in conduct that resulted in increased costs therefore I order that the Defendants pay the



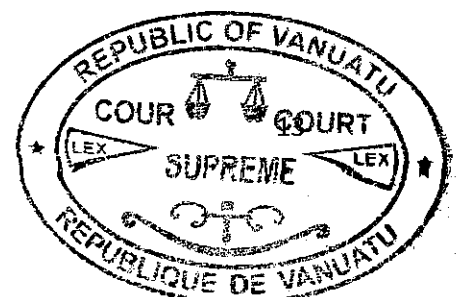
Claimant the costs of the Application on an indemnity basis pursuant to rule 15.5(5)(c) of the *Civil Procedure Rules*.

33. Mr Loughman also submitted for the Defendants that it was necessary for the Bank to be joined so that it can explain what it did *vis-à-vis* Mrs Lal after it received Mr Kuatpen's letter dated 2 November 2023 as the VFIU was waiting to hear back from the Bank its response to that letter. There was no evidential basis for such submission as Mr Kuatpen in his letter dated 2 November 2023 did not ask the Bank to review matters and revert to him – he set out 5 grounds, stated that Mrs Lal was not a fit and proper person under the Act and required an interim replacement as Acting CEO.
34. For the reasons given, joinder of the Bank is not necessary for the Court to make a decision fairly and effectively in the proceeding, and no question of prejudice arises. The Application must be declined and dismissed.
35. Costs must follow the event. The Defendants are to pay the Claimant's costs of the Application on an indemnity basis as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.
36. I turn now to the issues.

E. Was Mrs Lal given an opportunity to be heard before Mr Kuatpen made the Decision?

37. Mrs Lal's case is that she was not given an opportunity to be heard before Mr Kuatpen made the Decision therefore she was not afforded natural justice and/or procedural fairness.
38. Mrs Lal's evidence in her Sworn statement filed on 6 June 2024 is that the VFIU did not give her any opportunity to be heard before Mr Kuatpen made the Decision by way of his 2 November 2023 letter [**Attachment "ML2"** to Mrs Lal's Sworn statement]. The letter is addressed to the Director of the Bank. It was not copied to Mrs Lal. Mr Kuatpen referred in the letter to five allegations which have never been particularized or put to Mrs Lal, stated that he did not find Mrs Lal to be a fit and proper person and required that she be replaced, "... kindly arrange for an interim replacement in the role of Acting CEO".
39. Mrs Lal deposed as to this as follows in the last paragraph of her sworn statement:

I consider the VFIU decision unsubstantiated and defamatory, and the process in which neither [the Bank] or the VFIU allowed me to respond as a breach of natural justice. This has put [me] in a situation where I was left without a voice in the matter. This is completely unfair to any person. I have lost my job as well as future opportunities...



40. There is no evidence from the Defendants to the contrary to prove that Mrs Lal was given an opportunity to be heard before Mr Kuatpen decided that she was not a fit and proper person and that she be replaced as Acting CEO of the Bank.
41. Accordingly, I find on the evidence that Mr Kuatpen did not give Mrs Lal an opportunity to be heard prior to making the Decision that she was not a fit and proper person for the purposes of the Act.

Was there a breach of natural justice and/or procedural fairness?

42. The Court of Appeal held in Michel v President of the Republic of Vanuatu [2015] VUCA 14 at [25]-[26] as follows:

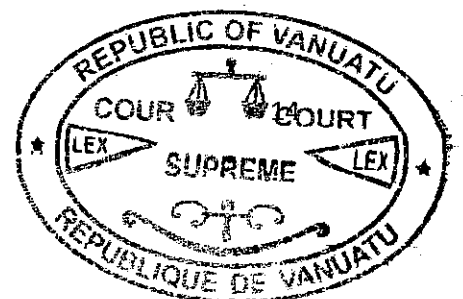
25. *Article 5(1)(d) of the Constitution recognizes that all persons to which the Article applies are entitled as a fundamental right to the "protection of the law". The appellant was entitled to that right which refers to a system of law which incorporates the fundamental rules of natural justice that part and parcel of the common law: Attorney General v Timakata [1993] VUCA 2; Boulekone v Timakata [1986] VUSC 13.*

26. *... The content of natural justice or procedural fairness will depend on all the circumstances of the particular case and will include the nature of the inquiry, the rules or statute under which the decision maker is acting, and the subject matter: Kioa v West [1985] HCA 81; (1985) 159 CLR 550 at 584-5; Durayappah v Fernando (1967) 2 AC 330 at 349.*

43. The Court of Appeal held in Minister of Education and Training v Tabi [2023] VUCA 30 at [31] as follows:

31. *It is now widely recognised in the field of public administration, and employment that procedural fairness, often referred to as natural justice, requires that a reason and an opportunity to be heard be given before a decision affecting personal rights is made. The obligation is recognised by statute in Vanuatu in the Employment Act [CAP. 160] (s. 53) and in the Public Service Act [CAP. 246] s. 19B, to give two examples. Unless a statute specifically provides otherwise procedural fairness now requires that an opportunity be given to be heard. The extent of that requirement will depend on all the circumstances of the case: Michel v President of the Republic and Others [2015] VUCA 14 [at] [25]-[26].*

44. The VFIU's power to remove an officer of a reporting entity is set out in ss 50I and 50J of the Act. The VFIU Director may in writing direct a reporting entity to remove a person as its manager or other officer if the Director is satisfied that the person is a disqualified person within the meaning of s. 50J: subs. 50I(1). However, before issuing such direction, the Director must give a written notice to the reporting entity requiring the reporting entity and the person concerned to make submissions to the Director on the matter within a reasonable time provided: subs. 50I(2) of the Act.



Then the Director must review any submission received and decide whether or not to issue the direction: subs. 50I(3) of the Act. If the Director directs a reporting entity to remove a person, the Director must give a copy of the direction to the person removed: subs. 50I(5) of the Act.

45. The process prescribed in s. 50I of the Act for the VFIU Director to follow to remove an officer of a reporting entity ensures that natural justice or procedural fairness is afforded to that officer.
46. However, Mr Kuatpen did not comply with any of the provisions of s. 50I of the Act. He did not give a written notice to the Bank and Mrs Lal requiring them to make submissions to him on the 5 allegations he set out in his 2 November 2023 letter. Consequently, he did not receive any submission from them. Instead, he wrote the letter setting out the 5 allegations and concluding that Mrs Lal was not a fit and proper person without giving either her or the Bank an opportunity to be heard. Mr Kuatpen did not even give a copy of his direction to remove Mrs Lal as Acting CEO to Mrs Lal herself as required by subs. 50I(5) of the Act.
47. Accordingly, I find and hold that in making the Decision, Mr Kuatpen did not afford natural justice and/or procedural fairness to Mrs Lal.
48. It was also pleaded in the Defence⁴ that in accordance with para. 9B(1)(b)(i) and (ii) of the Act, if there was a change of a key person of the reporting entity and the VFIU Director was not satisfied that the key person meets the fit and proper criteria prescribed in the Regulations, he may pursuant to subs. 9B(3) of the Act remove the reporting entity from the register of reporting entities.
49. Did s. 9B of the Act apply?
50. Subsection 9B(1) of the Act provides as follows:

9B. (1) This section applies if:

(a) a reporting entity is not regulated by a domestic regulatory authority; and

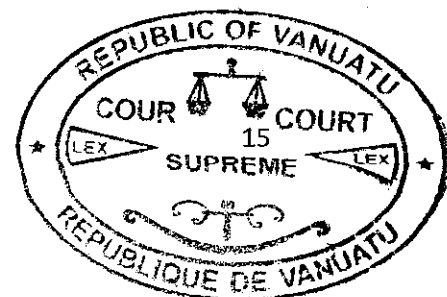
(b) there is a change:

(i) of a key person of the reporting entity...

(my emphasis)

51. The opening words of subs. 9B(1) of the Act provide that, "This section applies if..." the circumstances in both paras (a) and (b) of that subsection exist. In the facts of the present case, para. 9B(1)(b) applied because there was a change in a key person

⁴ In paras. 2(t) and (u) of the Defence filed on 25 July 2024.



of the reporting entity the Bank when Mrs Lal became its Acting CEO. However, para. 9B(1)(a) did not apply because the Bank was at all material times regulated by a domestic regulatory authority the RBV. Accordingly, “*This section...*” meaning s. 9B of the Act did not apply in the present case and in the circumstances, the VFIU Director could not exercise any power under s. 9B of the Act. I reject this aspect of the defence case.

52. The Defendants also submitted that s. 50I of the Act prescribed an ‘enforcement process’ which did not apply due to the following:

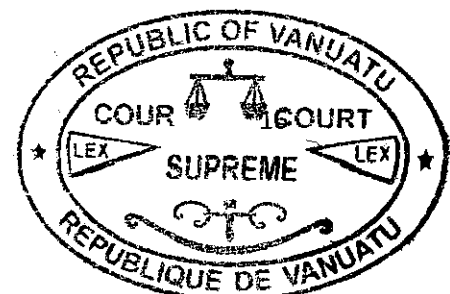
- a) That on 25 June 2023, the VFIU received notice by way of an email from the Director of the Bank that on 23 June 2023, Mrs Lal had been appointed as Acting CEO of the Bank [**Attachment “JK6”**, Sworn statement of Josiah Kuatpen filed on 25 July 2024];
- b) Having received notice of Mrs Lal’s appointment as Acting CEO, the VFIU Director had to consider in accordance with para. 9A(2)(a) of the Act whether the Bank continued to meet the requirements for registration in subs. 9(4) of the Act;
- c) If the VFIU Director was not satisfied that the Bank continued to meet the registration requirements, he could by notice in writing to the Bank remove the Bank from the register of reporting entities pursuant to para. 9A(2)(b) of the Act; and
- d) That, therefore, Mr Kuatpen wrote the 2 November 2023 letter to the Bank to remove Mrs Lal as Acting CEO to avoid him exercising the VFIU Director’s power under para. 9A(2)(b) of the Act to remove the Bank from the register of reporting entities.

53. Did s. 9A of the Act apply?

54. Yes, it did. Subsection 9A(1) of the Act provides that, “*If a reporting entity registered on the register changes... any of its details required for the purposes of registration, it must give the Director written notice of the change...*” At all material times, the Bank was registered in the register of reporting entities. Accordingly, s. 9A of the Act applied.

55. By subs. 9(3) of the Act, a reporting entity must apply to the Director in the prescribed form for registration as a reporting entity.

56. The change in the CEO of the Bank was a detail required for the purposes of registration as the name and details of the Bank’s senior management officials is information required in the prescribed Registration Form for Reporting Entity set out



in Schedule 1 by the *Anti-Money Laundering and Counter-Terrorism Financing Regulation (Amendment) Order No. 37 of 2017*.

57. Subsection 9A(2)(a) of the Act provides that the VFIU Director upon receiving notice of, in this case, a change in the CEO of the Bank, must consider whether the Bank continued to meet the requirements for registration in subs. 9(4) or (5) of the Act.
58. Did subs. 9(5) of the Act apply? It did not because that subsection applied to reporting entities which were not regulated by a domestic regulatory authority. The Bank, of course, was regulated by such authority therefore subs. 9(5) did not apply.
59. Did subs. 9(4) of the Act apply? It applied because that subsection applies to reporting entities which are regulated by a domestic regulatory authority. At all material times, the Bank was regulated by such authority the RBV therefore subs. 9(4) applied.
60. Paragraph 9(4)(c) of the Act provides, relevantly, as follows:

9. ...

(4) If a reporting entity is regulated by a domestic regulatory authority under a regulatory law, the Director must not enter the reporting entity on the register unless:

...

(c) the reporting entity meets the fit and proper criteria prescribed by the Regulations.

(my emphasis)

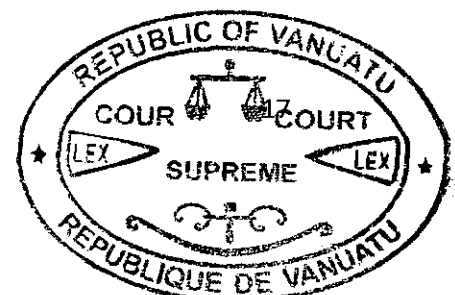
61. Relevantly, subs. 9(6) of the Act provides as follows:

9. (6) In deciding under paragraph (4)(c) or (5)(b) whether a reporting entity meets fit and proper criteria, the Director must have regard to whether any of the key persons of the reporting entity:

(a) have been convicted of an offence or are subject to any criminal proceedings; or

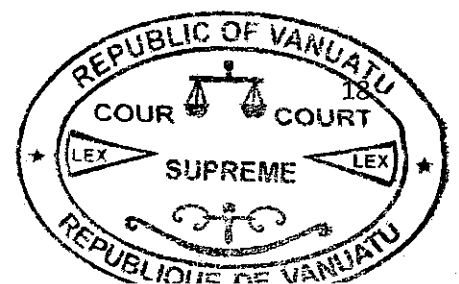
(b) are listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction.

62. The VFIU Director therefore in deciding under para. 9(4)(c) of the Act whether or not the Bank met the fit and proper criteria prescribed in the Regulations, must have regard to whether or not, in this case, Mrs Lal had been convicted of an offence or was subject to criminal proceedings (para. 9(6)(a) of the Act) or was listed on one of the prescribed financial sanctions lists (para. 9(6)(b) of the Act). There is no evidence



that Mrs Lal had been convicted of an offence or was subject to criminal proceedings, or that she was listed on one of the prescribed financial sanctions lists.

63. Returning to the provision of para. 9(4)(c) of the Act, this required the VFIU Director to assess whether or not the reporting entity meets the fit and proper criteria prescribed by the Regulations. Paragraph 9(4)(c) of the Act provides that the 'reporting entity' meet the prescribed criteria, not a key person of a reporting entity – in contrast to subs. 9(6) of the Act which requires the VFIU Director to consider the prescribed matters in relation to 'the key persons of the reporting entity'.
64. 'Reporting entity' is defined in s. 1 of the Act as having the meaning given by s. 2 of the Act. Section 2 of the Act provides a long list of entities which are a reporting entity including the RBV, banks, casinos, charitable associations, lawyers and accountants. The definition of 'reporting entity' does not include 'key person' of a reporting entity, which is separately defined in s. 1 of the Act to mean a beneficial owner, owner, controller, director or manager of the reporting entity.
65. Accordingly, the question arising from para. 9(4)(c) of the Act is whether the reporting entity (not a key person of the reporting entity) meets the fit and proper criteria prescribed by the Regulations.
66. The fit and proper criteria for the purpose of para. 9(4)(c) of the Act is set out in rule 15B of the Regulations. Each of the criteria set out in paras 15B(a)-(i) apply to a "person". As a matter of statutory interpretation, the "person" referred to in rule 15B of the Regulations, for the purposes of para. 9(4)(c) of the Act, refers to "reporting entity".
67. However, instead of assessing for the purposes of para. 9(4)(c) of the Act whether or not the reporting entity the Bank met the fit and proper criteria prescribed by the Regulations, Mr Kuatpen assessed whether or not Mrs Lal met the fit and proper criteria prescribed by the Regulations. In doing so, Mr Kuatpen acted *ultra vires* or beyond the power that he had under para. 9(4)(c) of the Act therefore he acted unlawfully to apply para. 9(4)(c) of the Act to Mrs Lal when he could only apply that provision of the Act to the Bank itself.
68. For the reasons given, I reject the Defendants' submission that s. 50I of the Act did not apply as the VFIU Director was discharging his functions under s. 8A, 9 and 9A of the Act. On the contrary, there is no dispute that subs. 8A(1) of the Act requires the VFIU to supervise reporting entities for compliance with the Act. However, Mr Kuatpen applied para. 9(4)(c) and para. 9A(2)(a) of the Act to Mrs Lal when each of those provisions applies only to a reporting entity, therefore he acted *ultra vires* or beyond the power of those provisions. The only power that the VFIU Director had to remove a manager or officer of the Bank was in s. 50I of the Act however, as already



held, Mr Kuatpen failed to comply with s. 50I and as a result, Mrs Lal was not afforded natural justice and/or procedural fairness. It follows that the Decision is unlawful. Declarations will be made to that effect.

69. The Claim succeeds on this ground alone however I now turn to the other aspect of the Claim.

F. Were there reasonable grounds for Mr Kuatpen to determine that Mrs Lal did not meet the fit and proper person criteria under the Act?

70. Mrs Lal's case is that there were no reasonable grounds for Mr Kuatpen to determine that she did not meet the fit and proper person criteria under the Act.

71. The fit and proper criteria are set out in rule 15B of the Regulations.

72. Mr Kuatpen set out 5 allegations in his 2 November 2023 letter following which he decided that Mrs Lal was not a fit and proper person. However, he had not given notice of any of these allegations to the Bank or Mrs Lal, and not required them to make submissions to him about those allegations as required by s. 50I of the Act. In the premises, it follows that there were no reasonable grounds for Mr Kuatpen to determine that Mrs Lal did not meet the fit and proper person criteria under the Act. A declaration will be made to this effect.

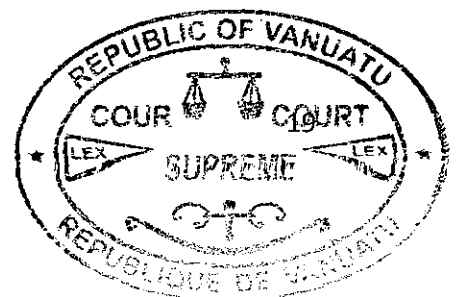
G. Result and Decision

73. The Defendants' Application to be Joint [sic] as a Party to this Proceeding filed on 17 October 2024 is **declined and dismissed**.

74. Costs must follow the event. The Defendants are to pay the Claimant's costs of the joinder Application on an indemnity basis as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

75. Judgment is **entered** for the Claimant and it is declared as follows:

- a) Declaration that there were no reasonable grounds for the decision of the First Defendant by letters dated 2 November 2023 and 24 March 2024 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 'Act');
- b) Declaration that before the First Defendant made his decision by letters dated 2 November 2023 and 24 March 2024 determining that the Claimant was not




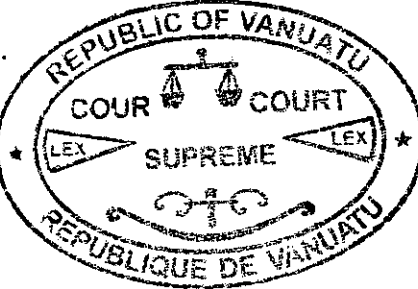
a fit and proper person under the Act, the Claimant was not afforded natural justice and/or procedural fairness; and

- c) Declaration that the First Defendant's decision by letters dated 2 November 2023 and 24 March 2024 determining that the Claimant was not a fit and proper person under the Act was unlawful and is quashed.

76. Costs must follow the event. The Claimant seeks costs on an indemnity basis. The Defendants are to file and serve submissions as to costs **by 4pm on 6 December 2024**. Any submissions in reply are to be filed and served **by 4pm on 13 December 2024**. The Court will decide the costs of the proceeding on the papers after that.

**DATED at Port Vila this 25th day of November 2024
BY THE COURT**


.....
Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written in a larger font. On the left and right sides of the seal, the word "LEX" is written in smaller fonts, flanking a central decorative element.