

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

Civil
Case No. 25/184 SC/CIVL

BETWEEN: Mystery Island Tourism Holdings Limited
First Claimant

**AND: Barry Nagia, Silas Naukae represented by
Laurence Silas, Francois Waneyeg
represented by Roger Nagareng & Robert
Naraneheg represented by Robertson
Lennie**
Second Claimants

AND: Aneityum Trustees and Holdings Limited
First Defendant

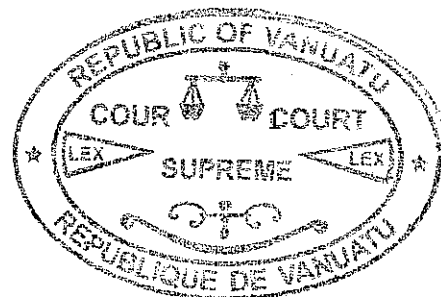
AND: Aneityum Tourism Limited
Second Defendant

AND: Carnival Vanuatu Limited
Third Defendant

AND: Vanuatu Financial Services Commission
Fourth Defendant

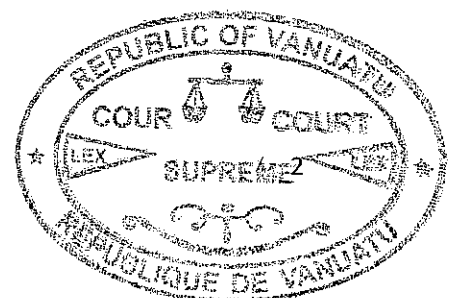
Date of Hearing: 19 March 2025
Before: Justice V.M. Trief
In Attendance: Claimants – Mr E. Nalyal
First and Second Defendants – Mr A. Godden
Third Defendant – Mr M. Hurley
Fourth Defendant – Mr J.S. Tougon

**EX TEMPORE DECISION AS TO FIRST CLAIMANT'S URGENT INTERLOCUTORY
APPLICATION**

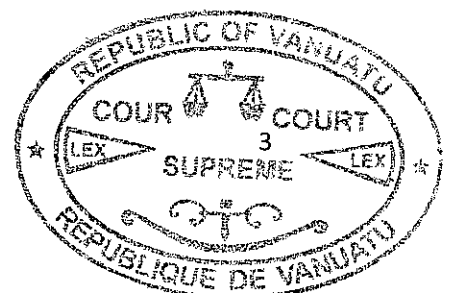


1. On 10 March 2025, the First Claimant company, Mystery Island Tourism Holdings Limited ('MITHL') filed its Urgent Interlocutory Application for restraining orders to allegedly maintain the *status quo* between the parties (the 'Application'), namely:
 - a) The Second Claimants Barry Nagia, Silas Naukae represented by Laurence Silas, Francois Waneyeg represented by Roger Nagareng, and Robert Naraneheg represented by Robertson Lennie were at one time declared to be the custom owners of Mystery Island by the TAFEA Island Court. Although it was not pleaded, the Claimants' own evidence shows that that decision of the TAFEA Island Court has already been set aside. Accordingly, the custom ownership of Mystery Island has not yet been determined;
 - b) The First Defendant Aneityum Trustees and Holdings Limited ('ATHL') and the Second Defendant Aneityum Tourism Limited ('ATL') are local companies which were incorporated on 15 November 2024;
 - c) The Third Defendant Carnival Vanuatu Limited is a local company and a subsidiary of an international cruise company operating from Australia and the United States of America; and
 - d) The Fourth Defendant the Vanuatu Financial Services Commission is responsible for incorporating and regulating companies.

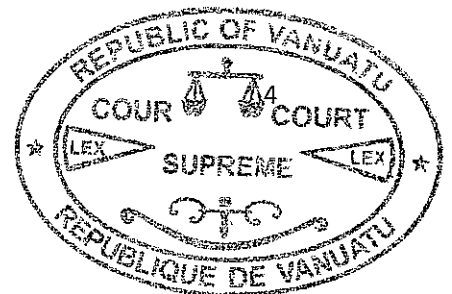
2. The Claimants filed the following:
 - a) Claim filed on 14 February 2025;
 - b) Urgent Interlocutory Application on 10 March 2025 (the 'Application');
 - c) Undertaking as to Damages by Barry Nagia filed on 10 March 2025;
 - d) Undertaking as to Damages by Roger Nagareg filed on 10 March 2025;
 - e) Sworn Statement of Robertson Lennie in support of Urgent Application, Claim, and of Urgency filed on 10 March 2025;
 - f) Sworn Statement of Roger Nagareg in support of Urgent Application, and Claim filed on 10 March 2025;
 - g) Sworn Statement of Richard Willie in support of Urgent Application and Claim filed on 10 March 2025;



- h) Sworn Statement of Barry Nangia in support of Urgent Application, and Claim filed on 10 March 2025;
 - i) Second Sworn Statement of Barry Nangia in support of Urgent Application, and Claim filed on 13 March 2025;
 - j) First Claimant's submissions on Urgent Interlocutory Application filed on 13 March 2025; and
 - k) First Claimant's submissions on Urgent Interlocutory Application filed on 19 March 2025.
3. In response, the First and Second Defendants filed submissions (titled "Response") and the Sworn statement of Savier Nesenwei on 19 March 2025. Also on 19 March 2025, the Third Defendant filed submissions opposing the Application.
 4. The Application is stated to be made pursuant to rule 7.6 of the *Civil Procedure Rules* ('CPR'). However, that rule applies to oral applications therefore it is not applicable.
 5. It was also submitted that the Application is made pursuant to rule 7.5 of the CPR. That rule applies to applications which are made before a proceeding has started. However, the Claimants filed a Claim on 14 February 2025 hence the proceeding has already started therefore that rule also is not applicable.
 6. The principles to be applied to grant interim restraining orders or injunctions have been set out in numerous cases, which Mr Hurley helpfully summarised in his submissions. In *Tropical Rainforest Aromatics Ltd v Minister for Agriculture, Quarantine, Forestry & Fisheries* [2006] VUSC 116 at [6], and *Irririki Island Holdings Ltd v Ascension Ltd* [2007] VUSC 74 at [7] (by Tuohy J) and the Court of Appeal in *Valele Family v Touru* [2002] VUCA 3, the Courts have applied the well-known tests formulated by Lord Diplock in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, [1975] 1 All ER 504, [1975] UKHL 1.
 7. First, there must be a serious question to be tried, in the sense that it is not frivolous or vexatious ([1975] AC at 407G).
 8. Secondly, damages must be an insufficient remedy ([1975] AC at 406E, *Tropical Rainforests* (supra) at [25]).

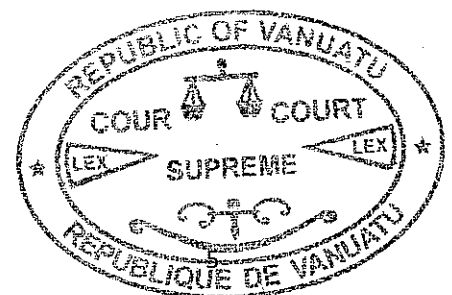


9. Thirdly, the balance of convenience must favour the granting of an injunction [1975] AC at 408B).
10. As to the first test, it is pleaded in the Claim that the MITHL was incorporated specifically to manage tourism business on Mystery Island pursuant to Article 3 of MITHL's Memorandum of Association. It is also alleged that ATHL and ATL were incorporated to illegally take over the Claimants' tourism business and that this is an "illegal enterprise".
11. The balance of the Claim alleges a number of matters in custom which this Court cannot decide in the present case. These are a matter for the Island Court or another customary institution to determine.
12. In terms of the allegation that MITHL was incorporated specifically to manage tourism business on Mystery Island, MITHL's Memorandum of Association is binding only as against the members of that company (MITHL's directors and shareholders) but is not binding on any of the Defendants. Accordingly, that aspect of the Claim is erroneously premised.
13. In addition, there is no contract pleaded between MITHL or the Second Claimants and any Defendant(s), much less any breach of contract. Finally, there is no legislation or other law pleaded which restricts ATHL and ATL from carrying on business, including tourism business on Mystery Island.
14. Accordingly, I consider that there is no cause of action disclosed in the Claim against the Defendants.
15. It follows that there is no serious question to be tried.
16. As to the second test, although there is no contract pleaded in the Claim between the First or Second Claimants and any Defendant, the evidence shows that there was a contract between MITHL and the Carnival Australia (who is not a party to the present proceedings). The evidence also shows that by letter dated 1 January 2025, Carnival Australia gave MITHL notice of termination of their agreement, and that by letter dated 27 January 2025, MITHL in turn gave notice to Carnival Australia to terminate all its services to Carnival Australia [Attachment "BN5", Sworn statement of Barry Nagia filed on 10 March 2025].
17. That contract is the only contract shown on the evidence so far. If Carnival Australia were added as a party to the proceeding and if that contract was pleaded




in the Claim, then damages would be the appropriate remedy. Put another way, MITHL cannot say that damages would not be an adequate remedy.

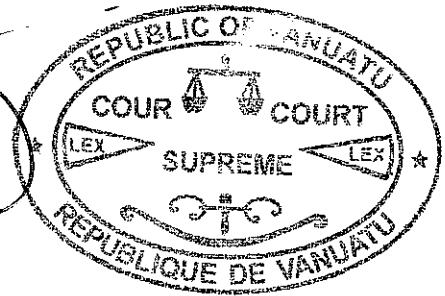
18. In addition, a Court makes restraining orders to protect the *status quo*, that is, the situation between the parties that the applicant alleges another party's actions are interfering with. However, the evidence shows only one contract, between MITHL and Carnival Australia. The evidence also shows that both of them have already given the other notice of termination of their contract. Accordingly, there is no longer any contractual relationship in existence between them for the Court to issue restraining orders to protect such *status quo* between them. Even if there were, Carnival Australia is not even a party to the proceedings for such orders to issue against it.
19. As to the third test, I take into account that MITHL continues as a local company whose purpose is to manage tourism on Mystery Island, that MITHL and Carnival Australia had a contract which has since been terminated, that MITHL and ATL are local companies also set up for tourism business on Mystery Island, and that ATL and Carnival Australia have a contract in place for tourism services [Attachment "BN8", Second Sworn statement of Barry Nagia filed on 13 March 2025]. In the circumstances, I consider that the balance of convenience does not favour the granting of restraining orders.
20. For the foregoing reasons, the First Claimant company, Mystery Island Tourism Holdings Limited ('MITHL') filed its Urgent Interlocutory Application filed on 10 March 2025 is **declined and dismissed**.
21. Costs shall follow the event. Having heard counsel, I ordered that given the documents filed by the parties, and the two and a half hour hearing today, the First Claimant is to pay the First and Second Defendants' costs totalling VT80,000 and the Third Defendant's costs of VT120,000 **by 4pm on 2 April 2025**.
22. The Second Claimants are to bear their own costs of the Application.
23. The Fourth Defendant's costs are reserved.



24. The Claimants are granted leave to file and serve Amended Claim **by 4pm on 2 April 2025** or to file and serve a Notice of Discontinuance by the same date and time.

**DATED at Port Vila this 19th day of March 2025
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, separated by two small stars. The inner circle features a central emblem of a scale of justice. Above the scale are the words "COUR" and "COURT". Below the scale is the word "SUPREME". On either side of "SUPREME" are the letters "LEX" inside a small triangle.