

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

Civil
Case No. 20/2053 SC/CIVL

BETWEEN: Jong Phil Shin & Juan Yeun Yu
Claimants

AND: Republic of Vanuatu
First Defendant

**AND: Vanuatu Investment Promotion
Authority**
Second Defendant

AND: National Bank of Vanuatu Limited
Interested Party

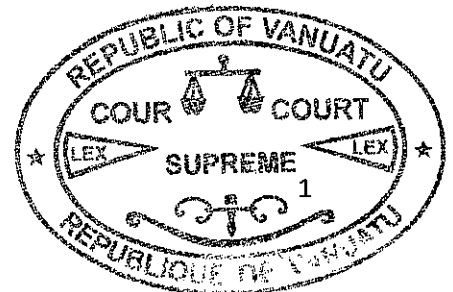
Date: 17 July 2025
Before: Justice V.M. Trief
Counsel: Claimant – Mrs S. Motuliki
Defendants – Mr F. Bong
Interested Party – Mr M. Hurley

DECISION AS TO QUANTUM OF DAMAGES

[with corrections to paras 154(i), (ii) & (iii), and 155, under the 'slip rule']

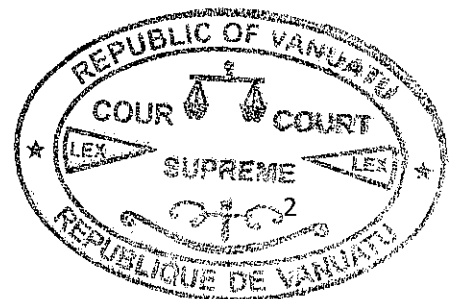
A. Introduction

1. In 2012, the First Defendant the State granted citizenship to the Claimants Mr Jong Phil Shin (also known as Harry) and his wife Ms Jung Yeun Yu (also known as Liz Yu). By their Claim, the Claimants alleged that they have suffered loss and damage as a result of the State's revocation of their citizenship certificates and by the Second Defendant the Vanuatu Investment Promotion Authority's ('VIPA') subsequent refusal to grant them a foreign investor approval certificate. They are seeking damages, interest, costs and any other order deemed fit.
2. The Defendants did not file a defence to contest liability. Hence the Court entered default judgment for an amount to be determined.



3. By decision dated 31 August 2021, the Court determined the quantum of damages payable to the Defendants. The State appealed this decision.
4. By judgment dated 19 November 2021, the Court of Appeal admitted new evidence from the State and allowed the appeal. It set aside the decision dated 31 August 2021 and remitted the proceeding back to this Court for a further hearing as to the quantum of damages: Republic of Vanuatu v Jong Phil Shin [2021] VUCA 51.
5. It took until October 2022 for the parties to resolve the costs ordered by the Court of Appeal. The Claimants changed counsel to Mrs Motuliki. I listed the matter for conference in February 2023 to manage the matter for the further hearing as to quantum of damages.
6. By May 2023, I was informed that settlement negotiations were underway. I continued listing the matter for hearing as to quantum of damages.
7. On 23 May 2023, the National Bank of Vanuatu Limited ('NBV') was added as Interested Party.
8. The hearing could not proceed on 2 November 2023 as the parties had not advanced their settlement negotiations. I noted in the Minute and Orders that the Court of Appeal judgment had been delivered in November 2021 and now 2023 would end with no hearing yet as to quantum of damages. I stated that I would list the matter for the last time for hearing on 23 April 2024.
9. At the hearing on 23 April 2024, the Defendants conceded that the State could not produce evidence for the rehearing as to quantum of damages. The Defendants indicated that they were conceding to the quantum in the decision dated 31 August 2021. Accordingly, I directed the parties to forward signed consent orders by 4pm on 14 May 2024.
10. By Minute and Orders dated 16 September 2024, I raised serious concerns that the Defendants had misled the Court regarding its representations that the matter would be settled by consent and that this had caused further delay in adjudicating the matter.
11. On 17 and 18 October 2024, the Claimants filed their Sworn statements as to quantum of damages of the Claimant Jong Phil Shin and their younger daughter respectively.
12. On 17 December 2024, I ordered VT300,000 wasted costs against the Defendants.
13. In the meantime, on 15 November 2024, the Defendants filed a Memorandum stating that they would rely on the following sworn statements – all of which were filed prior to the decision dated 31 August 2021 as to quantum:

a) Gordon Willie filed on 27 July 2021 [Exhibit D3];



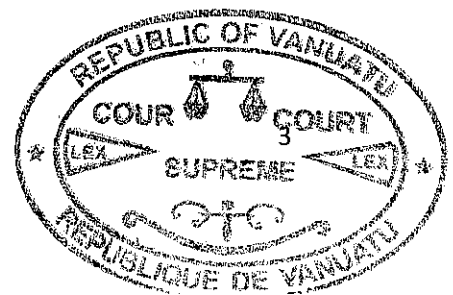
- b) Denny Virahake Gaua filed on 27 July 2021 [Exhibit D1] and on 29 July 2021 [Exhibit D4];
 - c) Jimmy Sano filed on 27 July 2021 [Exhibit D2]; and
 - d) Melton Aru filed on 3 August 2021 [Exhibit D5].
14. The Defendants have therefore, despite successfully appealing the 31 August 2021 decision on the basis of fresh evidence, not relied on any fresh evidence for the rehearing of the quantum of damages. Nor have they filed any new evidence to contradict the Claimants' evidence filed in October 2024.
15. On 13 December 2024, the Claimants filed the Sworn statement of Mr Shin in reply.
16. In the circumstances, the Defendants successfully appealed the 31 August 2021 decision as to quantum on the basis of fresh evidence, then 3 years later have not relied on any of the fresh evidence for the rehearing as to quantum of damages. This has caused delay to the Claimants obtaining a decision as to quantum of damages. I will return to this later on in this decision but I foreshadow at this point that it needs to be put to the Defendants to show cause as to why they should not bear costs on an indemnity basis for the unnecessary delay caused by their conduct in prolonging the proceedings.

B. The Claim

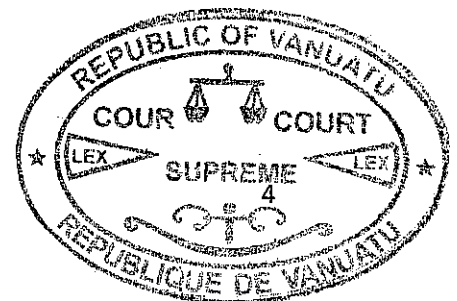
17. In 2012, the Claimants were granted citizenship on the grounds of customary adoption.
18. Around September 2013, the Police CID interviewed the Claimants as part of their investigation into the issuance of citizenships. They ordered the Claimants to hand over their citizenship certificates and passports.
19. On 16 October 2014, the Citizenship Office wrote to the Vanuatu Immigration Department setting out a list of people which included the Claimants, for revocation of their citizenships.
20. In 2014, VIPA advised the Claimants that their VIPA certificate could not be renewed based on the State's letter that their citizenships were subject to revocation.
21. The Claimants had to close their businesses as they no longer had the authority to operate them.
22. In 2017, the State issued the Claimants a formal revocation of citizenship letter confirming that their citizenship certificates were revoked in October 2014.
23. It is pleaded that as a result of the revocation of citizenships, the Claimants lost the following:

PARTICULARS

- Their Garage located at Korman, Tassiriki from which they operated their business:
 - Repairing vehicles such as buses and cars;



- Selling second hand buses and cars;
 - Selling spare parts.
 - Their Restaurant and Takeaway business titled, “Territory Bar and Family Karaoke” located also at Korman, Tassiriki.
11. The Claimants lost their property Title No. 11/OE44/022.
 12. The Claimants are currently stateless.
24. The relief sought includes special damages, general damages, interest, costs and such orders that the Court may deem fit.
 25. The State accepts that it revoked the Claimants' citizenship certificates. It contests the heads of damages, and quantum of damages, sought.
- C. The Issues
26. **Issue 1** for determination is when the Claimants' citizenship certificates were revoked. The Claimants alleged that revocation occurred in 2014. The Court of Appeal stated in its judgment that the actual revocation took place after 8 November 2016: *Republic of Vanuatu v Jong Phil Shin* [2021] VUCA 51 at [4]. The date that the citizenship certificates were revoked is relevant to the assessment of damages, hence a finding of such fact is required.
 27. It is alleged in the Claim that as a result of the revocation of their citizenships, the Claimants lost: (i) their garage business at Korman, Tassiriki; (ii) their restaurant and takeaway business titled “Territory Bar and Family Karaoke” also located at Korman, Tassiriki (iii) their leasehold property title no. 11/OE44/022; and (iv) that they are currently stateless.
 28. The issues arising are:
 - a) **Issue 2:** What damages and quantum is payable in respect of the Claimants' garage business at Korman, Tassiriki?
 - b) **Issue 3:** What damages and quantum is payable in respect of the Claimants' restaurant and takeaway business titled “Territory Bar and Family Karaoke” also located at Korman, Tassiriki?
 - c) **Issue 4:** What damages and quantum is payable in respect of the Claimants' leasehold property title no. 11/OE44/022?
 - d) **Issue 5:** Are general damages for pain and suffering payable to the Claimants?
 - e) **Issue 6:** Have the Claimants proved that Mr Shin is currently stateless as a result of the revocation of his citizenship, and if yes, what order does the Court deem fit?
 - f) **Issue 7:** Are special damages payable to the Claimants?
- D. Submissions



29. The parties filed and relied on the following submissions:

- a) Claimants' Submissions on Quantum of Damages filed on 4 February 2025;
- b) Defendants' Supplementary Submissions filed on 14 February 2025;
- c) Defendants' Memorandum and Submissions in response to the Claimants' Submissions on Quantum of Damages, filed on 14 February 2025;
- d) First Defendant's Submissions on the Issue of Quantum of Damages filed on 20 August 2021; and
- e) Claimants' Reply Submissions filed on 19 February 2025.

E. The Law

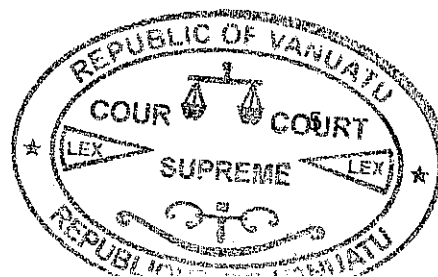
30. The Claimants must prove their case, on the balance of probabilities.

31. It is trite law that a party who asserts a loss must identify the loss and prove it: *Remy v Kyong Sik Jang* [2018] VUCA 5 at [13]. The Claimants must satisfy the Court both as to the fact of damage (for example, the loss of their garage business) and as to its amount: *McGregor on Damages* (17th ed.) (2003, Sweet & Maxwell) at para. 8-002.

32. The Defendants will only be liable to pay damages if their conduct has caused the damage alleged, and that damage is not too remote: *Pacoil Fiji Ltd v Attorney-General of Fiji* [1999] FJHC 133 at p. 14.

33. I adopt the Court of Appeal's comments in *Remy v Kyong Sik Jang* [2018] VUCA 5 at [30]-[34] on the principles guiding a court that is required to assess damages:

- 30. *When a court is required to assess damages, the court starts from the principle that it is for the Claimant to identify the losses which are claimed, and to lead evidence to establish them. However experience shows that in reality the claimant frequently falls short in fulfilling this requirement, and the greater the shortfall the more difficult it is for the damages to be assessed on a reliable basis.*
- 31. *If the court is not satisfied by evidence that any significant loss has resulted from the respondent's wrongdoing the claim will be dismissed on the ground that the claimant has not discharged the onus of proving loss and damage.*
- 32. *The more frequent situation is that the circumstances of the claimant and the nature of the wrongdoing will satisfy the court that some loss must have been suffered by the claimant, but the state of the evidence fails to scope out the extent of the loss or to provide the evidence necessary to enable the loss to be reliably quantified in money terms. In this type of case the court in the quest for justice will endeavor to quantify the damages suffered as best it can on the limited evidence available. Of necessity the court will have to make broad common sense estimates based on experience and likelihood to fill gaps left in the evidence.*
- 33. *This is the situation which the trial judge faced in each of the assessments. In cases of this kind an appellate court will be reluctant to interfere with the award entered in the court below and*



will do so only when it is satisfied that the final judgment sum is outside the range of damages that was open on the limited evidence before the trial court. In the appeal against the first assessment this Court was satisfied that the judgment sum of over VT59 million could not be so justified, and allow the appeal. But the amount awarded on the re-assessment is of a different order, and, as we have noted, the Court is not satisfied that the judgment was either too high or too low.

34. Litigants and their lawyers must realize and fulfill their obligation to properly present their cases in a timely manner according to the recognized procedural processes. If they do not they must realize that the consequences of their failure will rest on them and this Court cannot redeem their disappointment by simply ordering that the result be set aside and that the trial process be repeated afresh.

[emphasis added]

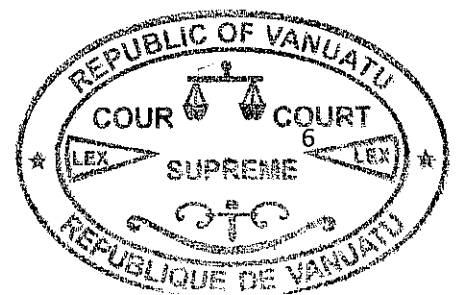
34. *McGregor on Damages* (17th ed.) (2003, Sweet & Maxwell) stated as follows at para. 8–002:

... where it is clear that some substantial loss has been incurred, the fact that an assessment is difficult because of the nature of the damage is no reason for awarding no damages or merely nominal damages. As Vaughan Williams L.J. put it in *Chaplin v Hicks* [[1911] 2 K.B. 786, CA], the leading case on the issue of certainty: “The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages.” Indeed if absolute certainty were required as to the precise amount of loss that the claimant has suffered, no damages would be recovered at all in the great number of cases. This is particularly true since so much of damages claimed are in respect of prospective, and therefore necessarily contingent, loss. Of course, as Devlin J. said in *Biggin v Permanite* [[1951] 1 K.B. 422 at 438]: “Where precise evidence is obtainable, the court naturally expects to have it, [but] where it is not, the court must do the best it can.”

[emphasis added]

F. **Issue 1: When did the Citizenship Commission revoke the Claimants’ citizenship certificates?**

35. Mr Shin’s evidence is that he and his wife Ms Yu and their two children arrived in Vanuatu in 2008. They were attracted to the laid-back island lifestyle and that is one of the many reasons they moved to Vanuatu with good intention to invest and live here. In 2009, they were officially adopted in custom by the late Member of Parliament Harry Iauko. In 2012, the Claimants were granted citizenship of Vanuatu on the grounds of customary adoption. Their two children went to school in Port Vila. Later on the older daughter Woorin headed to France for university studies [Sworn statement filed on 17 October 2024].
36. Mr Shin also stated that in late 2013 their adoptive brother Harry Iauko passed away and in early 2014, Police CID entered the Claimants’ property at Korman Stadium and questioned them on their citizenship status. They were made to feel like criminals. The Police demanded to look at their Vanuatu citizenship certificates and passports. Once they produced them, the Police confiscated them without any warning and have never returned them. They were then interrogated in separate rooms at the Police station. The CID officers kept asking them if they paid money (a bribe) to get their citizenships. Later on, the Claimants approached the licensing office to renew their business licence and were told that the State had issued a letter stating that their citizenship would be revoked and their business licence should not be issued. They then approached VIPA for a foreign investor approval certificate and were told that VIPA could not issue a certificate because of the letter from the State dated 16 October



2014 with list of people whose citizenship certificates had been revoked [Sworn statement filed on 17 October 2024].

37. Mr Shin adduced into evidence a copy of the letter dated 16 October 2014 [**Attachment "JPS9"**]. It was from John Enock Ware, Secretary General of the Citizenship Commission to the Director of the Immigration Department, relevantly, as follows:

Dear Sir,

SUBJECT: REVOCATION OF CITIZENSHIP

This letter is served to inform you that the Vanuatu Citizenship Commission on its 1st Extraordinary meeting of 10th October 2014 made the following decisions relating to the listed named persons.

1. That the citizenship CERTIFICATE which was issued to each of them was not approved by the commission.
2. The Citizenship certificate was issued contrary to section 12 and section 5 of the Citizenship Act, CAP. 112.

1. Mr Jing Pil

2. Mrs Jung Yeon

...

In exercise of its powers under Cap 112 – subsection 5(3)(b) powers to revoke citizenship, the commission has decided to revoke the citizenship certificate.

...

Passport office is hereby advice to proceed with cancellation of their Vanuatu passport if each one of them is found in possession of one.

[emphasis added]

38. It is plain from the letter dated 16 October 2014 that the Citizenship Commission decided at its meeting on 10 October 2014 to revoke the Claimants' citizenship certificates; the Claimants were named at the top of the list of the names in the letter.
39. Mr Shin also adduced into evidence a copy of the letter to him dated 7 June 2017 from Samuel Garae, Acting Secretary General of the Citizenship Office, relevantly, as follows [**Attachment "JPS12"**]:

Dear Sir,

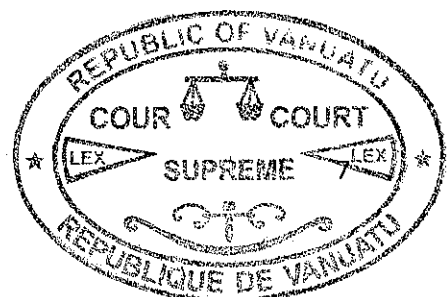
SUBJECT: REVOCATION OF BOTH YOU AND YOUR WIFE CITIZENSHIP CERTIFICATE

This letter is served to inform you and your wife (Mrs Yu Jung Yeon) that your Citizenship Certificate numbers EC 0128/12 & EC 0127/12 issued on the 26th of January 2012 have been revoked on the 10th of October 2014 based on the following grounds:

1. The Citizenship Certificates issued were not approved by the Commission contrary to section 12 of the Citizenship Act CAP. 112.

...

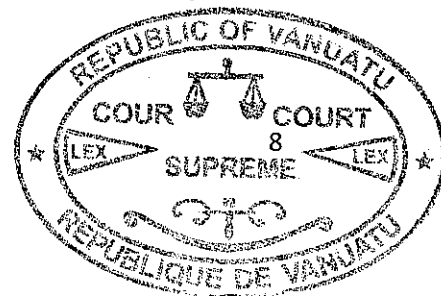
[emphasis added]



40. For reasons known only to the State, it was not until the letter dated 7 June 2017 that it wrote to the Claimants to inform them that their citizenship certificates had been revoked on 10 October 2014. The 10 October 2014 date is the same date referred to in the 16 October 2014 letter from the Secretary General of the Citizenship Commission to the Director of the Immigration Department.
41. There is no evidence by the Defendants to contradict any of these matters in the Claimants' evidence.
42. Accordingly, I accept the Claimants' evidence and find that:
- a) In 2012, the Claimants were granted citizenship;
 - b) That in early 2014, the Police CID interviewed the Claimants as part of their investigation into the issuance of citizenships. The Police confiscated their citizenship certificates and Vanuatu passports, and have never returned them;
 - c) On 16 October 2014, the Citizenship Commission wrote to the Vanuatu Immigration Department stating its decision to revoke the Claimants' (amongst others') citizenship certificates;
 - d) In 2014, the Claimants went to the Customs Department to renew their business licences and were told that the State had issued a letter stating that their citizenship would be revoked and their business licence should not be issued;
 - e) The Claimants then approached VIPA for a foreign investor approval certificate and were told that VIPA could not issue a certificate because of the letter from the State dated 16 October 2014 with list of people, including the Claimants, whose citizenship certificates had been revoked; and
 - f) In 2017, the State issued the Claimants a formal revocation of citizenship letter confirming that the Citizenship Commission revoked their citizenship certificates on 10 October 2014.
43. Accordingly, I answer **Issue 1** that the Citizenship Commission revoked the Claimants' citizenship certificates on 10 October 2014.

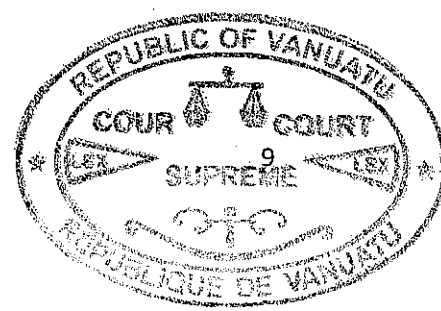
G. **Issue 2:** What damages and quantum is payable in respect of the Claimants' garage business at Korman, Tassiriki?

44. The Claimants must prove that the loss of their garage business at Korman, Tassiriki resulted from the revocation of their citizenships, and that the damage is not too remote. If that is proved, the Court must next consider what damages are payable and in what amount.
45. Mr Shin's evidence is that he and his wife operated a garage business at Korman, Tassiriki. They set up a company Woorin Motors Limited for the garage business. Their services included selling and repairing vehicles such as buses and cars, and selling spare parts. They were registered for VAT and paid VAT in respect of this business. The Claimants rely on the



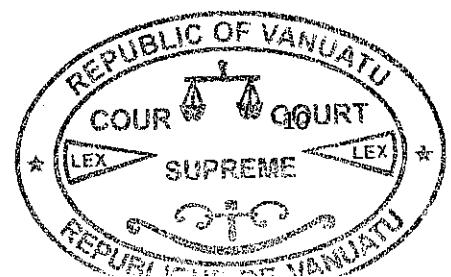
VAT records for the garage business in the Defendants' evidence [Exhibits D4 and D5] [Sworn statement filed on 17 October 2024].

46. The VAT records show the following total sales and income of Woorin Motors Limited from 2009 to March 2016:
 - a) 2009 – VT8,120,000;
 - b) 2010 – VT18,420,150;
 - c) 2011 – VT18,864,611;
 - d) 2012 – VT13,178,628;
 - e) 2013 – VT3,480,300;
 - f) 2014 – VT1,346,000;
 - g) 2015 – VT3,439,755; and
 - h) 2016 (Jan-Mar) – VT320,200.
47. Mr Shin's evidence is that their Vanuatu citizenship provided them with one less expense in operating their business like any other Ni-Vanuatu citizens, namely, VIPA approval [Sworn statement filed on 17 October 2024 at [6]].
48. After their Vanuatu citizenships were revoked, the Claimants again had to comply with Vanuatu's foreign investment laws.
49. However, when the Claimants approached VIPA in 2014 for a foreign investor approval certificate, VIPA declined to issue them a certificate because of the letter it had received from the Citizenship Commission which included a list of names, including of the Claimants'. That is, the letter dated 16 October 2014 from the Citizenship Commission to the Immigration Department [Attachment "JPS9"].
50. Mr Shin included in his evidence details of the garage business activities from the incorporation of Woorin Motors Limited in October 2008 to 2016. He stated that by 2015 and 2016, the instalment payments from customers for vehicle purchases were disrupted gravely due to the revocation of their citizenship certificates and their inability to work especially as he was stateless and their shop was forced to close due to the revocation.
51. None of this is contradicted by the Defendants' evidence.
52. The State's own records in its VIPA approval certificates and VAT records since 2008 showed that the Claimants had been operating businesses in Vanuatu since 2008.
53. For the foregoing reasons and on the evidence, I find that the Claimants operated a garage business at Korman, Tassiriki under the name of Woorin Motors Limited.



54. It is plainly foreseeable that the Defendants revoking the Claimants' citizenship certificates and then declining to issue them a VIPA approval certificate and business licence would (and indeed, did) result in the Claimants ceasing to operate their businesses as they no longer had the authority to do so. Put another way, the Claimants' loss of the garage business is not too remote, for the Defendants knew or ought to have known that the Claimants would suffer the loss of their businesses as a result of their actions to revoke their citizenship certificates and to decline to issue them a VIPA foreign investor approval certificate. I so find.
55. It is clear from Mr Gaua and Mr Aru's evidence that the Claimants continued to operate the garage business and lodge VAT returns until March 2016. It is also clear from Mr Aru's evidence that Woorin Motors Ltd's business licence was effective from 9 December 2008, and cancelled on 31 December 2014, and its VAT registration was effective from 1 July 2009 and the business ceased on 31 March 2016. I so find.
56. I find that, but for the revocation of their citizenship certificates, VIPA would not have declined to issue an approval certificate to the Claimants to allow them to lawfully conduct business in Vanuatu, and the Claimants would have been able to obtain a business licence and continue their commercial activities. Without those, it had no choice but to close down their garage business thus causing them to lose that business and its profits.
57. For the reasons given, the Claimants have proved that the loss of their garage business at Korman, Tassiriki resulted from the revocation of their citizenship certificates, and that that damage is not too remote.
58. What damages are payable and in what amount?
59. Mrs Motuliki submitted that general damages based on economic loss and loss of profit be awarded for the loss of the garage business, citing Pacoil Fiji Ltd v AG of Fiji [1999] FJHC 133.
60. She submitted that given the absence of independently prepared financial statements for the garage business, that the VAT records should be regarded as the primary source for determining quantum. She submitted that the average profit of the business from 2009-2016 be used to estimate future economic loss, or alternatively only the income and sales figures after 2014 to estimate the future economic loss.
61. As for the average profit of the business, Mrs Motuliki set out in the submissions the "Total Sales and Income" figures from every VAT record in evidence, for the period July 2009 to March 2016, which totalled VT67,169,644. She also set out in the submissions the "Total Purchases and Expenses" figures from every VAT record plus the "Total VAT Paid to Customs" figures from every VAT record, totalling VT33,768,795 for that period. She submitted that Woorin Motors Limited's profit from July 2009 to March 2016 could be calculated from the VAT records as follows:

Total Sales and Income	less Total Sales and Income	= Profit
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VT67,169,644	less VT33,768,795	= VT33,400,849
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62. She submitted, therefore, that Woorin Motors Limited's average profit from July 2009 to July 2015 (6 years) was VT5,566,808. She submitted that this accords with the threshold for VAT registration, namely businesses that earn more than VT4,000,000 a year.
63. Alternatively, the Claimants submitted that the Court take into account only the income and sales figures after 2014 to estimate the future economic loss. From the VAT records, the income and sales for 2015 was VT3,439,755.
64. The Defendants submitted that it is clear from the VAT records for the garage business that the business' income was reducing since 2012 and that it did not make more than VT3,480,300 income per year. Hence the estimated future economic loss should be calculated at VT1,500,000 from April 2016 to 2020 (when Covid-19 affected businesses), thus VT6,000,000.
65. In *Admiralty Commissioners v S.S. Susquehana* 1926 AC 658 at 661, cited in *Pacoil Fiji Ltd v AG of Fiji* [1999] FJHC 133 at p. 15, Lord Dunedin said:

... the common law says that damages due either for breach of contract or for tort are damages which, so far as money can compensate, will give the injured party reparation for the wrongful acts, and for all natural and direct consequences of the wrongful act.

66. In the present case, the Claimants are claiming losses as a direct consequence of the wrongful acts on the part of the Defendants, and have suffered 'economic loss.' I adopt the following passage from *Pacoil Fiji Ltd v AG of Fiji* [1999] FJHC 133 at pp 15-16 as apposite in the present matter:

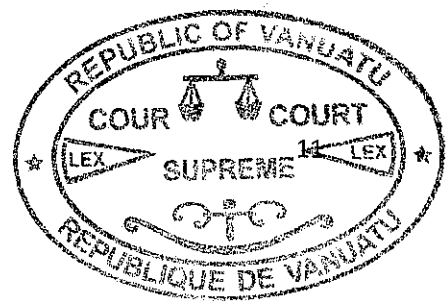
... The plaintiff has suffered 'economic loss' and in this regard Lord Wilberforce in a patents case in General Tire & Rubber Co (supra) at 824 said:

"As in the case of any other tort (leaving aside cases where exemplary damages can be given) the object of damages is to compensate for loss of injury. The general rule at any rate in relation to "economic" torts is that measure of damages is to be, so far as is possible, that sum of money which will put the injured party in the same position as he would have been in if he had not sustained the wrong." (Livingstone v Rawyards Coal Co (1880) 5 App. Cas. 25, per Lord Blackburn, at p. 39).

He went on to say at 824:

"The measure of damages will then normally be the profit which would have been realized by the owner of patents if the sales had been made by him (United Horse-Shoe & Nail Co Ltd v John Stewart & Co 1888 13 Appeal Cases 401)." (emphasis added)

67. The Court of Appeal held in *Enterprise Dinh Van Tu Ltd v Kaltak* [2013] VUCA 4 at [23] that the assessment of the damages arising out of an undertaking given in support of an interim injunction granted by the Supreme Court should involve an estimate of loss of profits.

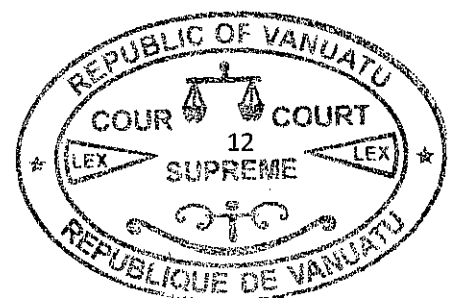


68. Similarly, in Remy v Kyong Sik Jang [2018] VUCA 5, the Supreme Court and the Court of Appeal assessed damages for wrongful seizure of property under a Mareva Order in terms of loss of profits.
69. I accept, therefore, that the Claimants are entitled to the loss of profits in respect of their garage business, from the date on which they had to close the business to the present date (the date of the decision as to quantum of damages).
70. I reject the Defendants' submissions which focused wholly on the business' income per year, and did not address loss of profits.
71. The claim under this head is the amount of profit which the Claimants have lost out on from the garage business as a result of the revocation of their citizenship certificates. The following point was made by Lord Diplock in Mallett v McMonagle (1970) AC 166 at 176, cited in Pacoil Fiji Ltd v Attorney-General of Fiji [1999] FJHC 133 at p. 36:

The role of the court in making an assessment of damages which depends upon its view as to what will be and what would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past a court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend upon its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate as to what are the chances that a particular thing will or would have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.

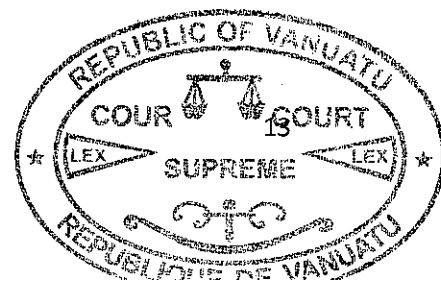
[emphasis added]

72. Assessing damages under this head is fraught with difficulty but as Deane J said in Commonwealth of Australia v Amann Aviation Pty Limited (1991) 174 CLR 64 at 125, cited in Pacoil Fiji Ltd v Attorney-General of Fiji [1999] FJHC 133 at p. 36, "the mere fact that damages cannot be assessed without difficulty and uncertainty does not, however, relieve a court from the responsibility of attempting to assess them as best it can."
73. In assessing future loss of profits, therefore, I must assess them as best I can on the evidence before the Court.
74. Mr Gaua and Mr Aru attached the same VAT records to their sworn statements [**Exhibits D4 and D**] and summarized in their sworn statements Woorin Motors' total sales and income for each quarter from July 2009 to March 2016. However, each VAT record includes not only figures for "Total sales and income" but also for, "Total Purchases and Expenses" and "VAT Owed/To Pay." I am grateful to Mrs Motuliki for summarizing in the Claimants' submissions the "Total sales and income" and Total Expenses (comprising both "Total Purchases and Expenses" and Total VAT paid) from the VAT records. This is the best evidence before the Court as to the garage business' income and expenses from 2009 to 2016. I accept that the business' profit will be its income less expenses.
75. There is only one full year of VAT records following the revocation of the citizenship certificates – for 2015. The sales and income for 2015 VT3,439,755 less Total expenses



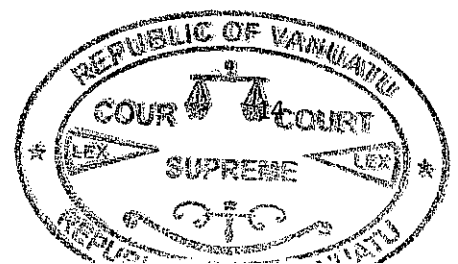
VT3,288,592 = profit VT151,163 for that year. On the other hand, the garage business' average profit over the 6-year period from July 2009 to July 2015 was VT5,566,808.

76. The business was profitable up until the Claimants' citizenship certificates were revoked. I find that, but for the citizenship revocations, the business would have continued to be profitable. However, allowing for contingencies, I assess the loss of profits of the garage business at VT4,000,000 per year (the minimum threshold for VAT registration, which the business was registered for throughout its operation) from 2015 to this year, 2025 (11 years), totalling VT44,000,000.
77. For the foregoing reasons, there will be a general damages award of VT44,000,000 for the loss of the Claimants' garage business at Korman, Tassiriki.
78. The Claimants are entitled to pre-judgment interest from the date of the cause of action (October 2014) to the date of judgment at 5% p.a.: s. 3(1)(a) of the *Law Reform (Miscellaneous Provisions) Act 1934* (UK); *Enterprise Roger Brand v Hinge* [2005] VUCA 21. I calculate that to be VT23,650,000.
- H. **Issue 3:** What damages and quantum is payable in respect of the Claimants' restaurant and takeaway business titled, "Territory Bar and Family Karaoke" also located at Korman, Tassiriki?
79. The applicable law is set out above under **Issue 2**.
80. The Claimants must prove that the loss of their restaurant and takeaway business titled "Territory Bar and Family Karaoke", also located at Korman, Tassiriki resulted from the revocation of their citizenships, and that that damage is not too remote. If that is proved, the Court must next consider what damages are payable and in what amount.
81. Mr Shin deposed that in early 2013, he and Ms Yu established another business, a restaurant and food takeaway called "Territory and Karaoke." The business was set up in the front part of the property at Korman, Tassiriki with three private karaoke rooms fitted with surround sound, projector screens and TV screens, microphones as well as couches, tables and lights to make customers feel more comfortable. He stated that they put a lot of effort into creating this business to assist with their loan repayments together with Woorin Motors Limited [Sworn statement filed on 17 October 2024 at [17]]. He attached copies of the importation documents for the chattels and equipment to fully renovate and furnish the restaurant [Sworn statement filed on 17 October 2024 – **Attachment "JPS8"**].
82. Mr Shin adduced into evidence the business name certificate of renewal for "Teritory [sic] Bar and Family Karaoke" dated 11 October 2013 and a VAT return for Territory Bar Restaurant for the period January to March 2014 disclosing "Total sales and income" of VT752,200 for that quarter [Sworn statement filed on 17 October 2024 – **Attachment "JPS9"**]. There is a VAT Office stamp on the VAT return marking it as received on 28 April 2014. Mr Shin stated that he could not find all of their VAT returns but only the one for January-March 2014 that he attached to his statement. He stated that the restaurant business made good income,



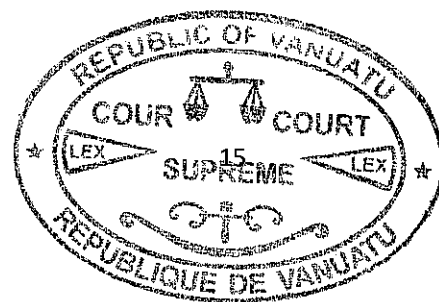
most weekends were fully booked, people enjoyed the privacy of the karaoke rooms and the Korean dishes available [Sworn statement filed on 17 October 2024 at [18]].

83. At the time that Mr Gaua swore his evidence [Exhibit D1], he was the Secretary General of the Citizenship Office. Mr Gaua stated that there is no record of VAT returns for the karaoke restaurant business. He also stated that he had requested the Customs Department to disclose the VAT records for the Claimants' businesses but they advised that he had to fill up certain forms in order to obtain them. He stated that he was currently doing this and would disclose them once approval was received.
84. However, it is telling that Mr Aru, then Manager Taxpayer Services of the Customs Department, confirmed disclosing the VAT records for Woorin Motors to the Citizenship Office but did not mention VAT records for the restaurant business or that he had been asked to disclose records for the restaurant business.
85. As it is, Mr Gaua's evidence is contradicted by the VAT return in Mr Shin's evidence. Accordingly, I accept and find that there is at least one VAT return for the restaurant business, and that that the Claimants lodged VAT returns for the restaurant business.
86. The State's own records in its business name certificate and VAT record showed that the Claimants operated their restaurant business in Vanuatu commencing in October 2013.
87. For the foregoing reasons and on the evidence, I find that the Claimants operated a restaurant business at Korman, Tassiriki under the name of Territory Bar and Family Karaoke commencing in October 2013.
88. The Defendants submitted that there is no evidence that the business name was renewed after 30 September 2014, or that it was operating or entitled to operate after 30 September 2014, therefore the Claimants are not entitled to "loss of business" of the restaurant business. I reject these submissions as a mere 10 days later, the Citizenship Commission revoked the Claimants' citizenship certificates. In the absence of evidence to the contrary, I find that the Claimants operated their restaurant business until they were forced to close it following the revocation of their citizenship certificates and VIPA's refusal to grant them a foreign investor approval certificate.
89. It is plainly foreseeable that the Defendants revoking the Claimants' citizenship certificates and then declining to issue them a VIPA approval certificate and business licences would (and indeed, did) result in the Claimants ceasing to operate their businesses as they no longer had the authority to do so. Put another way, the Claimants' loss of the restaurant business is not too remote, for the Defendants knew or ought to have known that the Claimants would suffer the loss of their businesses as a result of their actions to revoke their citizenship certificates and to decline to issue them a VIPA foreign investor approval certificate. I so find.
90. Mr Shin's evidence is uncontradicted that the Claimants continued to operate the restaurant business until they had to close it due to the revocation of their citizenship certificates. In the



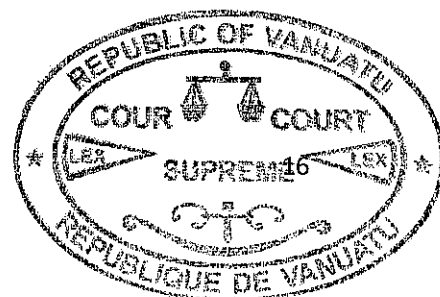
absence of evidence to the contrary, I find that similar to the garage business, they had to close the restaurant business in March 2016.

91. I find that, but for the revocation of their citizenship certificates, VIPA would not have declined to issue an approval certificate to the Claimants to allow them to lawfully conduct business in Vanuatu, and the Claimants would have been able to obtain a business licence and continue their commercial activities. Without those, they had no choice but to close down their restaurant business thus causing them the loss of that business and its profits.
92. For the reasons given, the Claimants have proved that the loss of their restaurant business at Korman, Tassiriki resulted from the revocation of their citizenship certificates, and that that damage is not too remote.
93. What damages are payable and in what amount?
94. The Claimants are entitled to general damages for the loss of profits of the business.
95. Given the income of VT752,200 for the first quarter of 2014, and accepting Mr Shin's evidence that the restaurant business was in operation until it had to be closed down as a result of the revocation of the Claimants' citizenship certificates, I calculate the restaurant business income for 2014 as $VT752,200 \times 4 = VT3,008,800$. Allowing 40% for expenses is VT1,203,520, hence profit of VT1,805,280 for 2014.
96. I find, therefore, that the business was profitable in 2014 and including at the time that the Claimants' citizenship certificates were revoked.
97. I find that, but for the citizenship revocations, the business would have continued to be profitable. However, allowing for contingencies, I assess the loss of profits of the restaurant business at VT1,200,000 per year from 2015 to this year, 2025 (11 years), totalling VT13,200,000.
98. For the foregoing reasons, there will be a general damages award of VT13,200,000 for the loss of the Claimants' restaurant business at Korman, Tassiriki.
99. The Claimants are entitled to pre-judgment interest from the date of the cause of action (October 2014) to the date of judgment at 5% p.a.: s. 3(1)(a) of the *Law Reform (Miscellaneous Provisions) Act 1934 (UK)*; *Enterprise Roger Brand v Hinge* [2005] VUCA 21. I calculate that to be VT7,095,000.
- I. **Issue 4:** What damages and quantum is payable in respect of the Claimants' leasehold property title no. 11/OE44/022?
100. Mr Gordon Willie's evidence is that the Claimant Jung Yeun Yu was also known as Liz Yu. Mr Willie was the then Principal Registration Officer of the Department of Lands. I assume the spelling, "Jung Yeun Yu" is incorrect and this was meant to refer to the Claimant Juan

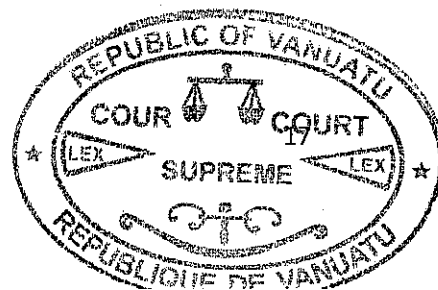


Yeun Yu as set out in the entitling of the parties. I accept and find that the Claimant Ms Yu was also known as Liz Yu.

101. It is common ground that the Claimant Ms Yu is the registered proprietor of leasehold title no. 11/OE44/022 at Korman/Tassiriki area. Mr Willie adduced into evidence a copy of the transfer of lease of leasehold property no. 11/OE44/022 to Liz Yu, registered on 5 June 2012 [**Exhibit D3 – Attachment “GW3”**]. The consideration for the transfer was VT2 million. I so find.
102. Mr Willie also adduced into evidence a copy of the lease for title no. 11/OE44/022 between the Minister of Lands (lessor) and Hebrida Holdings Limited (lessee). The lease term is 50 years commencing on 30 July 1980 [**Exhibit D3 – Attachment “GW1”**]. I so find.
103. The Claimants lived on leasehold property 11/OE44/022 as well as operating both their garage business and their restaurant business there. I so find.
104. It is also common ground that the Claimants obtained a loan from the NBV. This was secured by a registered mortgage over lease title no. 11/OE44/022. I so find.
105. Mr Willie attached the following to his sworn statement [**Exhibit D3**]:
 - a) The initial third party mortgage between Ms Yu (mortgagor), the Claimants (customers) and the NBV (mortgagee) for VT4,640,000, registered on 5 June 2012 [**Attachment “GW4”**];
 - b) On 9 June 2011, the parties varied the terms of the mortgage, increasing the principal sum secured to VT19,446,000, registered on 5 June 2012 [**Attachment “GW5”**];
 - c) On 12 April 2012, the parties varied the terms of the mortgage, increasing the principal sum secured to VT24,661,000, registered on 5 June 2012 [**Attachment “GW6”**];
 - d) On 17 September 2012, the parties varied the terms of the mortgage, increasing the principal sum secured to VT33,059,000, registered on 29 October 2012 [**Attachment “GW7”**];
 - e) On 28 February 2013, the parties varied the terms of the mortgage, increasing the principal sum secured to VT44,142,000, registered on 21 March 2013 [**Attachment “GW8”**]; and
 - f) On 6 September 2013, the parties varied the terms of the mortgage, increasing the principal sum secured to VT53,035,000, registered on 1 October 2013 [**Attachment “GW9”**].
106. I accept and find that the principal sum secured under the Claimants' third-party mortgage with the NBV is VT53,035,000.



107. In the judgment dated 6 April 2022 in *National Bank of Vanuatu Limited v Yu*; Civil Case No. 21/3114 ('CC 21/3114') at [1] (unpublished), Andrée Wiltens J referred to the NBV's evidence and to Ms Yu's regular lack of agreed repayments since 2014. Further, that the outstanding amounts as at 9 September 2021 was firstly VT15,677,213 with daily interest accruing at VT8,966; and secondly VT93,317,309 with daily interest accruing at VT20,377 [Mr Shin's sworn statement filed on 17 October 2024 – **Attachment "JPS11"**]. I accept and find that starting in 2014, the Claimants ceased to make regular repayments of their loan. I infer that this was in October 2014 as a result of the State's revocation of the Claimants' citizenship certificates and VIPA declining to grant them an approval certificate hence they had to close their businesses with the accompanying lack of income.
108. Mr Shin deposed that they were badly affected by the decisions to revoke their citizenship certificates, and refusing them business licences and VIPA approval certificate as it directly impacted on their loan repayment and the running of their business, not to mention his stateless position [Sworn statement filed on 17 October 2024 at [23]].
109. Mr Shin also stated that prior to the revocation of their citizenships, they were able to make the loan repayments. However, after the revocation, all avenues of generating income via their garage and restaurant businesses halted [at 28].
110. He stated that it was to a point where they could not adapt their situation because they had no means of gaining any income and could not repay their bank loan [at 24].
111. He stated that on top of all the horrible events already mentioned, in 2015, the NBV sued them as a result of their failure to pay the mortgage. He and Ms Yu could not afford to seek legal advice and were faced with language barriers as they could not speak much English or Bislama to assist them in the case. He stated that the Court held in favour of the NBV because he and Ms Yu had failed to pay the bank as they were out of business due to the Defendants' actions [at 29]. In April 2020, the Court issued an enforcement warrant granting the NBV possession of lease title no. 11/OE44/022 [at 30]. There is no evidence as to when the Claimants gave the NBV vacant possession of lease title no. 11/OE44/022, but they did so some time after April 2020 as Mr Shin and their younger daughter now live in rental accommodation. I so find.
112. Mr Shin also deposed that the NBV is now claiming from him and Ms Yu the overdue debt and they have nothing. He attached a copy of the Supreme Court judgment dated 8 April 2022 determining the NBV's claim filed on 23 September 2021 for the outstanding funds owed [Mr Shin's sworn statement filed on 17 October 2024 – **Attachment "JPS11"**]. I infer that the value of the leasehold property does not cover the full amount owed hence the later proceedings for the balance of the loan monies owed. I accept and find that as at 9 September 2021, the outstanding funds owed was firstly VT15,677,213 with daily interest accruing at VT8,966; and secondly VT93,317,309, totalling VT108,994,522 with daily interest accruing.
113. I find that, but for the revocation of their citizenship certificates, VIPA would not have declined to issue an approval certificate to the Claimants to allow them to lawfully conduct business in

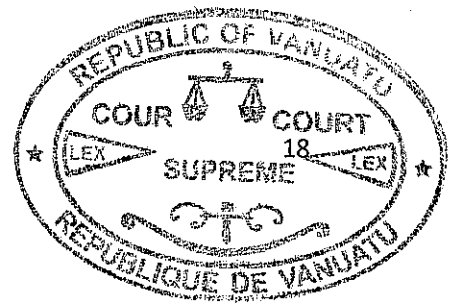


Vanuatu, and they would have been able to obtain a business licence and continue their commercial activities. Without those, the Claimants had no income to repay their loan leading to default and the NBV obtained Court orders for the seizure of their leasehold property title no. 11/OE44/022.

114. For the reasons given, the Claimants have proved that the loss of their leasehold property title no. 11/OE44/022 at Korman, Tassiriki resulted from the revocation of their citizenship certificates, and that that damage is not too remote.
115. What damages are payable and in what amount?
116. The Claimants are entitled to damages being the market value of the land at the time of eviction and therefore any increase in its value, including from improvements that they made on the land, will fall within the assessment figure: *McGregor on Damages* (17th ed.)(2003, Sweet & Maxwell) at paras 22-018 and 22-019; *Bunny v Hopkinson* (1859) 27 Beav. 565; *Dorsen v Brysten* [2001] VUCA 5 at [26].
117. The NBV has obtained vacant possession of the property from the Claimants. When it sells the property, the first priority for the sale proceeds will be to pay off the loan. The Court can assume that the sales proceeds will be the equivalent of the market value of the property. Accordingly, awarding the Claimant damages consisting of both the market value of the property *as well as the full balance of the loan* would be a windfall to the Claimants.
118. However, given that the Claimants have also proved that they could not repay their loan due to the revocation of their citizenship certificates, they are also entitled to the *difference* between the loan at the time of the revocation of their citizenship certificates and the current loan balance.
119. The Defendants submitted that given the Claimants used VT53,035,000 loan monies from the NBV to develop the property, they should not be awarded damages based on the property value but based only on the VT2,000,000 that they spent out of their personal funds as consideration for the transfer of lease title no. 11/OE44/022. However, the Defendants did not cite any authority that damages be limited to the lease purchase price. I reject those submissions.

Time of eviction

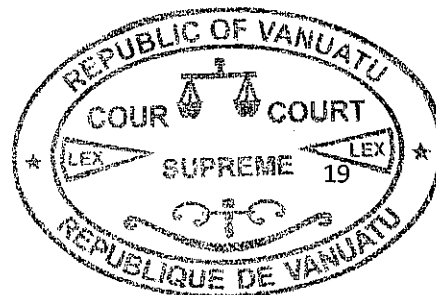
120. When were the Claimants evicted from the property?
121. In April 2020, the Court issued an enforcement warrant granting the NBV possession of lease title no. 11/OE44/022 [Mr Shin's sworn statement filed on 17 October 2024 at [30]]. M
122. Mr Jimmy Sano, Valuer General stated in his valuation report for lease title no. 11/OE44/022 that he inspected the property on 2 July 2021 [**Exhibit D2 – Attachment "JS2"**]. He did not state if the property was occupied or vacant.



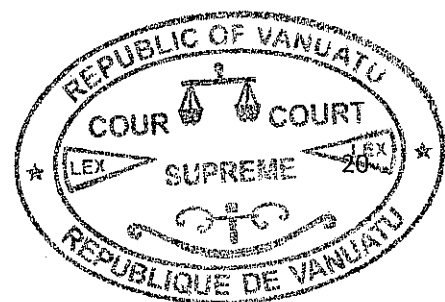
123. Land Logic stated in its valuation report dated 7 January 2021 for lease title no. 11/OE44/022 under "Occupancy Arrangement" and in relation to "Tenant", that the property was vacant.
124. Presumably the NBV could not obtain its own valuation of the property until it had gained possession of the property. The Land Logic valuation states that it received instructions on 22 December 2020 from Ben Dali of the NBV to prepare the valuation report. Accordingly, I find that the Claimants were evicted from the property in December 2020.

The market value of the leasehold property

125. As set out above, the Claimants are entitled to damages being the market value of the land at the time of eviction in December 2020. The question now is what was the market value of the leasehold property in December 2020?
126. There are three valuations in evidence as to the market value of the Claimants' leasehold property title no. 11/OE44/022 at Korman, Tassiriki:
- i) The Claimants obtained a valuation certificate dated 12 January 2015 for leasehold property 11/OE44/022 from registered valuer Levi Tarosa [Sworn statement of Mr Shin filed on 17 October 2024 – **Attachment "JPS15"**]. That certificate estimated the market value of the property to be VT219,700,000. The valuation certificate stated that the leasehold title number could also be 11/OE44/054 and was to be confirmed. That said, the contents of the valuation report relate to Liz Yu (Ms Yu) as the lessee and to the Claimants' leasehold property at Korman/Tassiriki area, that is, lease title no. 11/OE44/022. The valuation referred to a 75-year lease term, a lease commencement term of 13 July 2012 and to 71-year unexpired term of the lease;
 - ii) Property Report from Land Logic dated 7 January 2021 estimating the present market value of the property to be VT40,000,000 [**Exhibit D1 – Attachment "DVG1"**]; and
 - iii) Report by Jimmy Sano, Valuer General dated 9 July 2021 estimating the market value of the property to be VT52,000,000 [**Exhibit D2 – Attachment "JS2"**]. Mr Sano deposed that Mr Tarosa's valuation was erroneous because it referred to a lease term of 75 years, whereas it is 50 years. He stated that after 30 July 2021, there were 9 years remaining of the lease term.
127. The Claimants also submitted that there were also three other figures that could be used as the valuation of the property market value, including from a Council of Ministers ('COM') paper. However, the COM paper relies on the Tarosa valuation and is not itself a property valuation. And the other two figures are based on the asserted lending standards of NBV, but there is no independent evidence from the NBV or expert evidence of what its mortgage lending standards are. Accordingly, I reject those submissions.



128. The Defendants submitted that Mr Tarosa used a 75-year lease term in his valuation but in fact, it is a 50-year lease term. In addition, the valuation referred to the lease commencing on 13 July 2012 when in fact, it commenced on 30 July 1980. I have already found above that the lease term was for 50 years commencing on 30 July 1980. I accept these submissions.
129. In his valuation, Mr Tarosa estimated the market value of the property to be VT219,700,000 based on an adjusted unexpired lease term of 69 years. Accordingly, using a 75-year lease and 69-year adjusted unexpired lease term are material errors, resulting in a wholly unreliable valuation of the property's market value. Accordingly, I will have no further regard to it.
130. The Claimants submitted that the Land Logic valuation contradicts NBV's mortgage lending standards. However, there is no evidence from the NBV or any expert evidence as to what the Bank's mortgage lending standards are. The Claimants submitted that the valuation was only valid for 6 months therefore its use now is invalid. However, the 6-month period relates to relying on the report for marketing purposes. This does not affect the views in the report as to the market value of the property as at 7 January 2021. I reject these submissions.
131. The Claimants submitted that the Land Logic valuation takes into account questionable transaction costs, provides issues with valuation instructions and mortgage context and has illegible and or little physical evidence with respect to the property hence raising serious doubts about its accuracy and reliability as a fair representation of the property's market value. It is not explained how any of these matters are material to a valuation. I reject these submissions.
132. The Claimants submitted that omissions in the Valuer General's valuation make it unreliable and inaccurate. They submitted that Mr Sano omitted the security mortgage figure which is vital. However, there is no evidence establishing that the security mortgage figure is vital to include in a valuation. The Claimants also submitted that the Valuer General omitted structural and material features (relatively new building at the time, interior fittings and importation costs, amongst other factors) and critical infrastructure improvements (foundation of the property was significantly reinforced and elevated by two metres ending the poor draining flooding issues and the fact that all surface areas were cemented spaces). This may be a valid criticism of the Valuer General's valuation however the Claimants do not have any alternative valuation to rely on given that the Tarosa valuation has been held to be unreliable.
133. Having dealt with the submissions relating to the Land Logic valuation and the Valuer General's valuation, I am left with the position that the Court can rely on either one as to the market value of leasehold title no. 11/OE44/022. Both reports are from the Defendants evidence. The Defendants submitted that if the Court 'does not agree' with the Land Logic valuation then it had before it the Valuer General's valuation. They did not explain why the Court might not agree with the Land Logic valuation. Accordingly, I take into account that the Land Logic valuation is closest in time to the date of the Claimants' eviction and find that the market value of the Claimants' leasehold property title no. 11/OE44/022 in December 2020 was VT40,000,000.



134. For the foregoing reasons, there will be a general damages award of VT40,000,000 being the market value of the Claimants' leasehold property title no. 11/OE44/022 at the time of eviction.

The difference between the loan at the time of the revocation of their citizenship certificates and the current loan balance

135. As shown in the registered mortgage documents, on 6 September 2013, the principal sum secured under the mortgage was VT53,035,000 [**Exhibit D3 – Attachment “GW9”**]. There is no better evidence as to what the loan balance was in October 2014 when the State revoked the Claimants' citizenship certificates. I therefore find that the loan balance at the time of the revocation of the Claimants' citizenship certificates was VT53,035,000.
136. Mr Shin did not include the amount of the current loan balance in his sworn statements filed in October 2024 or December 2024. The most recent loan balance in the evidence is in the judgment dated 6 April 2022 in *National Bank of Vanuatu Limited v Yu*, CC 21/3114 that the outstanding loan amounts as at 9 September 2021 was firstly VT15,677,213 with daily interest accruing at VT8,966; and secondly VT93,317,309 with daily interest accruing at VT20,377, totalling VT108,994,522.
137. Accordingly, the difference between the loan at the time of the revocation of their citizenship certificates and the current loan balance is:

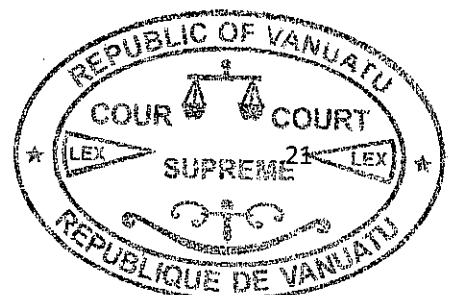
Current loan balance	less Loan as at October 2014	= Difference
VT108,994,522	less VT53,035,000	= VT55,959,522

138. For the foregoing reasons, there will be a general damages award of VT55,959,522 being the difference between the Claimants' loan at the time of the revocation of their citizenship certificates and the current loan balance.

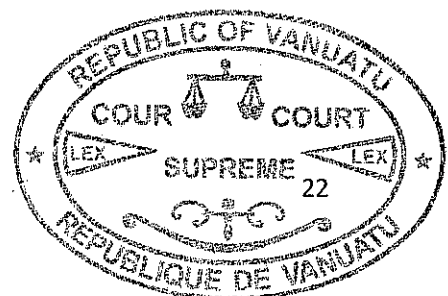
J. **Issue 5: Are general damages for pain and suffering payable to the Claimants?**

139. Mr Shin gave evidence of the following [his sworn statements filed on 17 October 2024 and 13 December 2024]:

- a) Loss of livelihood and opportunities:
 - i) The Claimants were stripped of the ability to engage in any form of business or secure employment within the Republic of Vanuatu;
- b) Impact on the Claimants' children's education:
 - i) Loss of opportunity by the Claimants' older daughter to attend her school of choice due to the difficulty of no longer having income from their businesses;

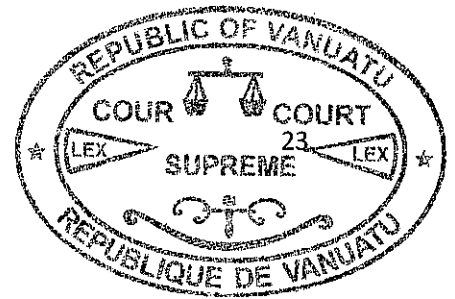


- ii) Inability to cover necessary school fees for the younger daughter, not limited to outstanding school fees;
- c) Family separation:
 - i) In 2019, Ms Yu had to leave Vanuatu and return to South Korea to look after her unwell mother who was in serious need of help. She has not seen her husband Mr Shin and her younger daughter since 2019. Only recently was she able to attend the older daughter's university graduation after several years of not being able to see her;
 - ii) In South Korea, Ms Yu has had to work three jobs to support Mr Shin and their daughters, and has had to take out loans in Korea so they can meet the most basic necessities for their family. This includes paying for their children's school fees, and to pay for Mr Shin and the younger daughter's living in Vanuatu including rent, electricity, food, transport and clothes. Their younger daughter, an A+ student, has had to endure all the struggles Mr Shin faces in Vanuatu and has never once complained. Sometimes they have no food because they have no way of earning an income;
 - iii) The younger daughter has had to grow up quickly without her mother since she was 11 due to the financial difficulties faced by the Claimants; and
 - iv) The older daughter has not been home since leaving Vanuatu and unable to see her father and sister and only recently her mother due to financial difficulties;
- d) Severe financial destitution and inescapable psychological suffering:
 - i) The Defendants' actions subjected the Claimants and their children to unrelenting hardship. The Claimants came to Vanuatu seeking a better life for their family, a dream that was cruelly taken from them;
 - ii) The foreclosure of their property and ultimately being evicted from their home due to the inability to repay their loan resulted in their losing all the savings and investments they had poured into building their home and businesses;
 - iii) The younger daughter, at just 11 years old, was thrust into adult responsibilities, forced to quickly learn legal concepts and assist her father in meetings, translating complex documents from English to Korean, and enduring significant psychological trauma as a result. The long-term effects of this burden have left deep emotional scars that have yet to be fully understood;
 - iv) To support her family, Ms Yu was forced to borrow funds in South Korea, incurring significant debts to provide for Mr Shin and their daughters and herself in South Korea;



- v) The Claimants and their family are the victims of a decade-long cycle of financial ruin and psychological suffering caused by the State's actions;
- vi) Mr Shin deposed as follows in his sworn statement filed on 17 October 2024 at [21]-[27] and [34]-[35]:

21. *Later on, we learnt that our citizenship had been revoked because when we approached the Licensing office for the renewal of our business licence, we were told that a letter was issued by first defendant stating that our citizenship will be revoked and business licence should not be issued.*
22. *We then approached the second defendant for an investor certificate, and we were verbally informed that they cannot issue us the certificate because of a letter they received from the first defendant...*
23. *We were badly affected by these decisions as it directly impacted on our loan repayment and the running of our business, not to mention my stateless position.*
24. *I gave up my Korean citizenship, which left me to be an individual without a nationality. I had become stateless individual due to what appears to have been a mistake with respect to how we had acquired Citizenship. Not to mention that instead of protecting an individual, they have completely left my family and I to lose everything. It was to a point where we could not adapt to our situation since we had no means of gaining an income, nor could we repay our bank loan. Additionally, this action has prevented me from traveling out of Vanuatu to see our family in Korea.*
25. *The complete shutdown of our income and continuous demand of the repayment of the loan have affected our family's mental state. We have been traumatized with all the events that have occurred. The constant fear of not being able to do the simplest things due to our extreme financial difficulty is beyond comprehension.*
26. *We have to live in a constant fear of so many things such as being evicted out of our current home because we are unable to pay rent, fear of continuously not being able to provide food for my daughter and I because we have no money to purchase food, have my daughter expelled from school due to unpaid school fees, the list goes on. The entire process for the past 10 years has constantly grown worse and worse and more traumatic not only for ourselves but our children. I would not wish this on my worst enemy.*
27. *My wife and I were so stressed that we could not sleep at all. I locked myself in the house most of the time and was too frightened to leave the house. No individual should feel so unprotected and in fear in a democratic country.*
- ...
35. *Due to the unreasonable actions by revoking two citizenship – we have lost everything. We were never given a legitimate reason, and therefore we have lost our business, our income and our savings. Due to this, I have become an individual without a nationality – I am a stateless human being, my children live in great fear of being forced out of our home and they were forced to become independent. As a father, I cannot do anything to*



fix this since I myself am suppressed by the power of certain individual without explanation. I cannot support my children as they grow.

36. *Taking citizenship away from an innocent family's life led to horrific consequences that people did not care to realize.*

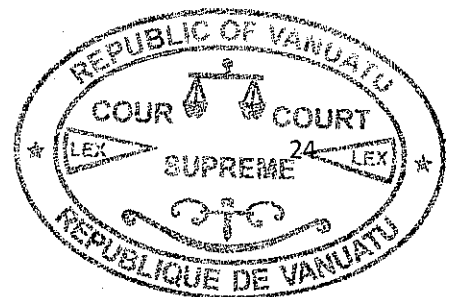
e) Ongoing financial deterioration:

- i) The Claimants' financial situation has continued to decline, placing an insurmountable strain on the younger daughter in Vanuatu. They struggle to pay her school fees as well as necessary stationery and textbooks;
- ii) They have been unable to afford extra-curricular activities or school excursions for her;
- iii) Meeting basic living expenses in Vanuatu for Mr Shin and their younger daughter including rent, transportation, food, water, hygiene products, clothing, cleaning supplies, medicine, doctor's visits and utilities – became an ongoing struggle;
- iv) The further burden to repay the mortgage outstanding debt despite the seizure of the Claimants' property;
- v) They could not afford for Mr Shin and their younger daughter to attend their older daughter's university graduation, missing a significant milestone in her life; and
- vi) They lacked the funds to bring their older daughter home to visit her family for over eight years, further compounding their emotional suffering; and

f) Detrimental reliance on assurances by the State:

- i) On the representation made by State counsel for a consent order in April 2024, Ms Yu resigned from her three jobs as they would finally receive funds to pay for all their financial obligations, bring Ms Yu and their older daughter to Vanuatu and they can restart their lives. Ms Yu's last day of work was 2 September 2024 but has been unsuccessful in getting a job since then. To add to this distressful situation, Ms Yu has been living in her father's house and he has decided to sell that property which now leaves her without a permanent place to live. Unsure of what to do, I am anxious as to what now we will do as Ms Yu no longer has an income, is about to no longer have a place to stay and they are in great financial difficulty;
- ii) Mr Shin deposed as follows in his sworn statement filed on 17 October 2024 at [33]:

33. *We are now living in a 1 bedroom in Erakor Village. I have been unable to pay school fees for my [younger] daughter... I have been relying on the Consent Order to pay for her school fees. I have communicated to the school previously that I was awaiting payment from the Republic of Vanuatu however, now I am left to again feel hopeless in not being able to provide the most basic necessities for my children. We have faced a downward spiral of financial difficulties since the revocation by the Government.*



140. The younger daughter's evidence is directed to the pain and suffering of her parents and family [Sworn statement filed on 18 October 2024:

1. *... I make this sworn statement to bring a different perspective as to the pain and suffering of my parents and my family.*
2. *At the age of 11 or 12 years old, I started to follow my father to different places and help him translate as he does not speak or understand English or Bislama very well. My mother left Vanuatu in 2018 and I was only 12 years old and so you can imagine with my mother away, it has been extremely difficult for my father to communicate and or understand other communications. That frustration alone has greatly affected him. I am currently 17 years old and I attend the French school...*
3. *For this case, at the beginning, I accompanied my father to every meeting with the Lawyers in 2020 and to date. I had to tried my very best to translate a lot of things, things that I did not understand as well.*
4. *I am writing this statement to tell the Court how the pain and suffering of my parents cannot be measured emotionally, mentally, physically...*

141. None of this evidence is contested.

142. The Defendants submitted, however, that the records of overseas money transfers to the Claimants shows that the Claimants are living in luxury, having much, much more money than the average Ni-Vanuatu. They submitted that one might conclude they are rich people. They also submitted that the older daughter attending university in France is inconsistent with Mr Shin and the younger daughter living in destitution in Vanuatu.

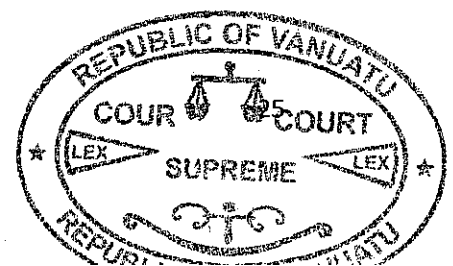
143. The Defendants' submissions are insensitive and contrary to the weight of the evidence.

144. The Claimants have proved on the balance of probabilities their pain and suffering caused by the Defendants' actions. It is difficult to articulate on their behalf the pain and suffering that they have experienced since the revocation of their citizenship certificates in October 2014 and the subsequent refusal to grant them the necessary business licences and foreign investor approval certificates which would have allowed them to continue to operate their businesses, to repay their loan and to live on their own property. In addition, they have suffered the pain and suffering of losing their home and Mr Shin being rendered stateless. The Claimants are entitled to VT7,500,000 damages **each** for pain and suffering.

K. **Issue 6:** Have the Claimants proved that Mr Shin is currently stateless as a result of the revocation of his citizenship, and if yes, what order does the Court deem fit?

145. Mr Shin's evidence is that he had to renounce his South Korean citizenship in order to take up Vanuatu citizenship as at the time, Vanuatu did not permit dual citizenship. I find on the evidence that Mr Shin is currently stateless as a result of the revocation of his citizenship.

146. The Claimants, in their submissions, sought reinstatement of their Vanuatu citizenship and passports. The Claimants could have filed judicial review proceedings for an order quashing the revocation of their citizenship certificates. Unfortunately, they did not. Without such order,



only the Citizenship Commission may revisit that decision. Similarly, reinstatement is a matter for the Citizenship Commission, not the Court.

147. However, the Claimants' evidence is uncontested that it took the Citizenship Commission three years to give them formal notice of the revocation of their citizenship certificates. The Vanuatu Government's actions, resulting in the present matter, might have been averted if procedural fairness and natural justice safeguards had been observed such as providing the Claimants with timely notice and an opportunity to be heard. Instead, decisions as to their citizenship certificates, foreign investor approval certificate and business licences were made without any recourse to them. In addition, Mr Shin had been rendered stateless and continues to be stateless, further exacerbating the Claimants' hardship.
148. The 1961 Convention on the Reduction of Statelessness is a United Nations treaty aimed at preventing and reducing statelessness. It complements the 1954 Convention relating to the Status of Stateless Persons. Whilst Vanuatu is not a signatory to these conventions, these conventions reflect and embody international law about reducing statelessness.
149. Article 15 of the 1948 Universal Declaration of Human Rights ('UDHR') provides that, "Everyone has the right to a nationality", and "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."
150. Article 12 of the Constitution provides as follows:

12. *A national of a foreign state or a stateless person may apply to be naturalised as a citizen of Vanuatu if he has lived continuously in Vanuatu for at least 10 years immediately before the date of the application.*

...

[emphasis added]

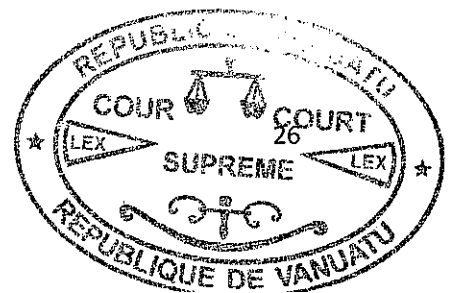
151. It is the right of each state to determine who its nationals are. However, given that Mr Shin was rendered stateless as a result of the Vanuatu Government's actions and that this occurred over 10 years ago, it is imperative that the responsible authorities look into his case as a matter of priority.

L. **Issue 7: Are special damages payable to the Claimants?**

152. No special damages were particularized in the Claim. There was evidence of an outstanding loan that the Claimants have had to take out in Korea and recorded payments made to assist their older daughter at university in France, as well as the younger daughter's school fees but none of these were particularized in the Claim. Hence, I answer **Issue 7**, "No."

M. **Other relief**

153. The Claimants also requested, in Mr Shin's last sworn statement, orders for emergency funding. This should have been pressed at case management conferences so that Orders might have been made for, say, monthly payments prior to the Court's decision as to



quantum, which payments could be deducted from the final judgment sum. Unfortunately, this was not raised. Counsel are invited to make submissions at the conference on 18 August 2025 in relation to any orders that the Court might make to alleviate the Claimants' severe financial hardship and suffering pending the Defendants' payment of the judgment sum.

N. Result and Decision

154. The following general damages are awarded:

(i) Economic loss

Loss of the Woorin Motors Limited garage business	VT44,000,000
Loss of the Territory Bar and Family Karaoke restaurant business	VT13,200,000
The market value of the leasehold property title no. 11/OE44/022	VT40,000,000
The difference in loan balance	VT55,959,522
SUBTOTAL	<u>VT153,159,522</u>

(ii) Pre-judgment interest in relation to:

The Woorin Motors Limited garage business	VT23,650,000
The Territory Bar and Family Karaoke restaurant business	VT7,095,000
SUBTOTAL	<u>VT30,745,000</u>

(iii) Pain and suffering VT15,000,000

TOTAL **VT198,904,522**

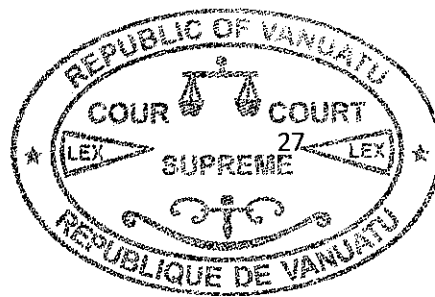
155. Accordingly, I enter judgment against the Defendants in the sum of **VT198,904,522** (the 'judgment sum').

156. The Defendants are to pay interest of 5% per annum on the judgment sum until the judgment sum is fully paid.

O. Costs

157. Costs shall follow the event. The Defendants are to pay the costs of the Claimants.

158. In the circumstances, in which the Defendants successfully appealed the decision as to quantum dated 31 August 2021 on the basis of fresh evidence, then 3 years later deciding not to rely on the fresh evidence for the rehearing as to quantum of damages, this has caused delay to the Claimants obtaining a decision as to quantum of damages and unnecessarily



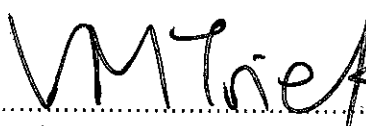
prolonged the proceedings. Accordingly, the Defendants are required to show cause as to why they should not pay costs on an indemnity basis given their conduct of the proceedings causing unnecessary delay and prolonging of the proceedings. They are to file and serve submissions **by 4pm on 25 July 2025** as to cause. I will determine on the papers after that whether costs are on the standard or indemnity basis.

159. The parties are also to file and serve submissions **by 4pm on 25 July 2025** as to quantum of costs and I can fix the costs, or whether an order is sought for costs as agreed or taxed by the Master.

P. Enforcement

160. This matter is listed for Conference **at 1pm on 18 August 2025** for the Defendants to inform the Court: (i) that they have paid the judgment sum, or (ii) to explain how it intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.
161. For that purpose, this judgment must be personally served on the Defendants and proof of service filed.

DATED at Port Vila this 17th day of July, 2025
BY THE COURT


Justice Viran Molisa Trief

