

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

Civil
Case No. 25/2178 SC/CIVL

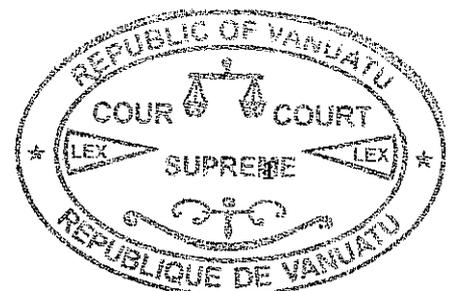
BETWEEN: Emil Sar Povier Family
Claimant

AND: Republic of Vanuatu
Defendant

Date: 5 November 2025
Before: Justice V.M. Trief
Counsel: Claimant – Mr S.T. Joel
Defendant – OAG

DECISION AS TO STRIKE-OUT APPLICATION

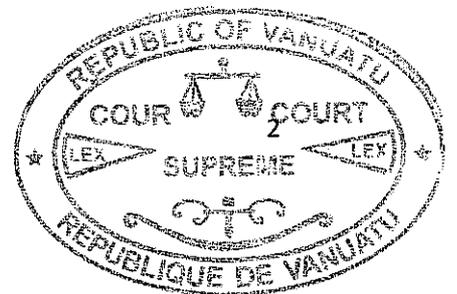
1. The Claimant Emil Sar Povier Family filed the Claim on 29 July 2025.
2. On 11 September 2025, the Defendant State filed Application to Strike out the Claim (the 'Application') and Defendant's submissions. The Sworn statement of Agnes Tari is referred to in the Application although no such statement is on the Court file. On 19 September 2025, the Sworn statement of Ily Fredy was filed in support.
3. On 16 October 2025, the Claimant filed Response to the Application and supporting Sworn statement of Mary Joel. On 23 October 2025, it filed further submissions.
4. Section 6 of the *State Proceedings Act* No. 9 of 2007 (the 'Act') provides as follows:
 6. (1) *No proceeding against the State other than an urgent proceeding or a Constitutional proceeding, may be instituted under section 3 unless the party intending to do so first gives written notice to the State Law Office of such intention.*
 - (2) *The notice under subsection (1) must:*



- (a) *include reasonable particulars of the factual circumstances upon which the proposed proceedings will be based; and*
- (b) *be given not less than 14 days and no more than 6 months prior to the institution of proceedings.*

[emphasis added]

- 5. In the Application, the Defendant set out subs. 6(1) of the Act with the words, "Office of the Attorney General" in place of the reference to the "State Law Office."
- 6. However, I am not aware of an amendment to the Act deleting the words, "State Law Office" from subs. 6(1) of the Act and substituting the words, ""Office of the Attorney General".
- 7. Indeed, the 2024 consolidated edition of the Act sets out s. 6 of the Act as set out in para. 4 above.
- 8. By amendment to the *State Law Office Act* in 2021, the State Law Office was renamed the, "Office of the Attorney General" ("OAG"). However, there does not appear to have been any consequential changes made to the *State Proceedings Act*.
- 9. Section 6 of the Act requires a claimant to give written notice of a proceeding against the State to the State Law Office, now the OAG, not less than 14 days and no more than 6 months prior to the institution of proceedings.
- 10. As the Court of Appeal held in *Republic of Vanuatu v Napuat* [2023] VUCA 8 at [15], citing *Republic of Vanuatu v Kwang Sing 1* [2013] VUCA 35, s. 6 of the Act provides an absolute bar on proceedings which have not been instituted within the required minimum and maximum periods set out in s. 6:
 - 15. *We do, however, regard the obligation imposed by the statute as absolute, in the same way as this Court arrived at that conclusion in Sing. It provides an absolute bar on proceedings being instituted under section 3, that is to say against the State unless notice has been given as required and within the required minimum and maximum periods of 14 days and 6 months respectively. Counsel are well advised to bear in mind the provisions of the section and may consider filing a copy of the section 6 notice together with the originating claim to demonstrate compliance with the section.*
- 11. By the Claimant's own admission, notice was given in accordance with s. 6 of the Act by letter dated 1 July 2021 but proceedings were not instituted within 6 months.
- 12. The Claim was filed on 29 July 2025. That is over 4 years after the notice of intention to commence proceedings and in contravention of the provisions of s. 6 of the Act which requires the notice to have been given within 14 days and no more than 6 months prior to the institution of proceedings.



13. It was submitted that the notice of intention to commence proceedings has been 're-issued' by a notice dated 16 October 2025. However, there is no legislative provision for such alleged re-issuance.
14. Given the Claimant's non-compliance with s. 6 of the Act, the Claim must be struck out.
15. For the foregoing reasons, the Defendant's Application to Strike out filed on 11 September 2025 is **granted**.
16. The Claim is **struck out**.
17. Costs must follow the event. The Claimant is to pay the Defendant's costs as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

**DATED at Port Vila this 5th day of November, 2025
BY THE COURT**


Justice Viran Molisa Trief

