

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

Civil
Civil Case No. 22/1268 SC/CIVL
Const Case No. 22/1893 SC / CNST
Judicial Review Case No. 23/235 SC/ JR

BETWEEN: Gil Yang Yoon and Choi Eun Cheol
Applicants

AND: The Government of the Republic of Vanuatu
Respondent

Before: Hon. Justice EP Goldsbrough

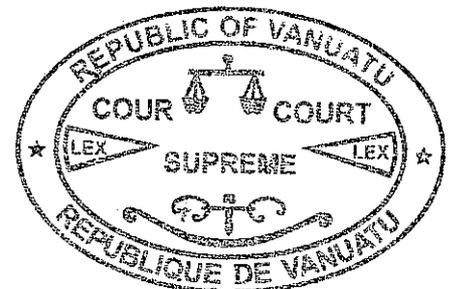
In Attendance: Sugden, R for the Applicants
Robert, N for Respondents

Date of Hearing: 9th day of September 2024

Date of Judgment: 17th day of November 2025

JUDGMENT

1. There are three matters pending involving the same parties to each, all relating to the same decision. That decision was to deport the applicants. The decision, of the responsible Minister, was challenged in a Constitutional Petition, a Judicial Review and an appeal brought under the relevant provisions of the Immigration Act.
2. The original decision was made on 21st March 2023 and the applicants deported immediately and without notice thereafter. Subsequently, on 25th January 2024 the decision was irregularly revoked.
3. At an early stage, a decision of this Court was published on the constitutionality of the legislative provision providing for the making of an order such as was made against a non-citizen. The decision, published on, has not been the subject of any appeal. That decision followed a precedent set by the Court of Appeal in *Ayamiseba v Attorney General* [2006] VUCA 21.



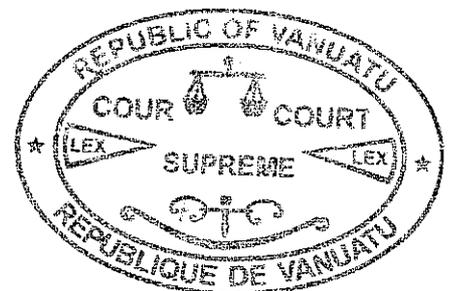
4. At that time, the Minister had a choice. Under the legislation, he could either give notice to the Applicants or make an order without notice, requiring officers of the Immigration Service to execute it.
5. The original decision was made on 21st March 2023, and the applicants were deported immediately and without notice thereafter. Subsequently, on 25th January 2024, the decision was irregularly revoked.

At an early stage in these proceedings, a decision of this Court was published on the constitutionality of the legislative provision providing for the making of an order such as was made against a non-citizen. That decision, published on 3 February 2023, has not been the subject of any appeal. That decision followed the precedent set by the Court of Appeal in *Ayamiseba v Attorney General* [2006] VUCA 21.

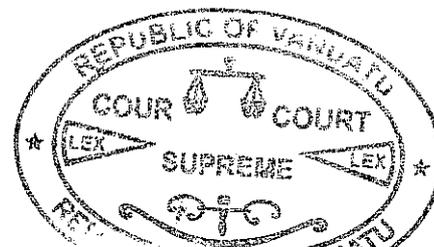
6. In that decision, the government was criticized for acting before the relevant appeal period had expired. Otherwise, the legislation was found not to be unconstitutional, provided it was properly exercised.
7. The government, in turn, accepted that its actions were unlawful in this matter because once again the government acted within the appeal period. The requirement is that Immigration officers must not execute a without-notice deportation order until the appeal period has expired, or the Applicant asks to be removed earlier.

DISCUSSION

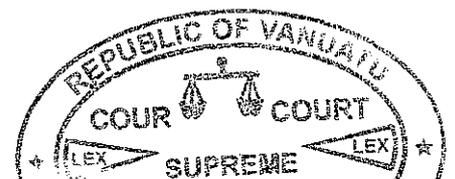
8. The applicants were offered by this Court the remedy of returning to the country to allow the appeal period to expire. Still, counsel advised that the applicants did not seek that remedy.
9. Other than the question of an infringement of the right to a speedy and fair criminal trial which the Applicants then faced in Vanuatu, there is nothing left in the Constitutional petition to be determined. The principal challenge to the lawfulness of the legislation failed. No doubt it is hoped that the vehicle of a Constitutional challenge will provide grounds for an order for damages, not available in either of the other two proceedings.



10. Counsel sought to persuade this Court to deal with the speedy criminal trial question and submitted that the Court of Appeal had said that matter must be dealt with through a Constitutional petition. That is the correct position, but further Court of Appeal authorities subsequently considered that, whilst the matter should be properly brought by way of a Constitutional petition, it should be dealt with by the criminal trial judge and no other judge sitting in the Supreme Court. See *Kalosil v Republic of Vanuatu* [2016] VUCA 35 and *Kalnpel v The Government of the Republic of Vanuatu* [2023] VUCA 10. Neither counsel cited those two authorities.
11. Given those authorities, this Court determines that the criminal trial judge must determine this part of this petition relating to the criminal trial. The only comment that this Court needs to make is that both applicants could have made themselves available for trial when the order deporting them was revoked. One returned shortly after that event, another did not return then and may not have even returned yet.
12. Because the original order made to deport these two Applicants has been revoked, and at least one of them returned to Vanuatu, the Court asked counsel to make submissions on whether these proceedings should continue to trial. That question arises because of the nature of the proceedings. Should an already revoked decision be the subject of an appeal process? Should a Judicial Review of such a decision proceed, given the limited nature of the remedy available? Given that findings have already been made and published concerning the constitutionality of the applicable legislation, can anything more be achieved?
13. Taking that into account, this Court determined that these proceedings should be ended without a trial, as there is nothing to appeal, review or consider.
14. The Constitutional petition is otherwise dismissed with no ancillary order made other than as to costs. As to costs, this Court makes no order, allowing the parties to pay their own costs. The applicants did not show any unconstitutionality in this Court. They either instigated or, in any event, took advantage of the extrajudicial revocation of the order against which relief was sought. In those circumstances, awarding costs in their favour would be an affront to justice. The same applies to the question of damages. The order made against them, whilst obtained following legitimate information and request, was illegitimately revoked. No reason

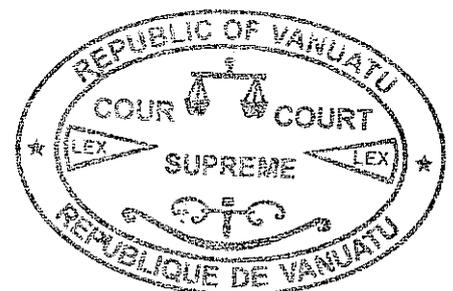


- has been disclosed by either the new Minister, the Applicants or anyone else. The process of revocation began with someone, and at least one of them took personal benefit from it.
15. Making a Constitutional Application when the circumstances warrant a Judicial Review, and the only purpose of the former is to obtain damages not available from the latter, tends to devalue the constitutional aspect. It should not be encouraged.
 16. As for the Judicial Review of the deportation order, the only remedy available is the quashing of the order. Given that the order has been revoked and the defendant Republic accepts that it has been revoked, the claim is dismissed as no remedy remains available to this Court. Again, no order for costs is made for the same reasons as set out above.
 17. As far as the appeal against the Minister's decision is concerned, there is nothing left to decide, given that the Minister has now substituted a different decision.
 18. This Court earlier referred to irregularity in the revocation of the original order for deportation. That is a reference to the fact that the Attorney General's chambers drafted no order as would be expected if legislative provisions were being followed. Hence, the said revocation was not gazetted as one would expect. The Minister has confirmed his instructions that the revocation should remain in force, which is a matter for him. He has accepted on behalf of his administration that such revocation may render the Republic liable to pay damages. Time has been allowed for counsel to negotiate that question, but it has not been spent productively, and no agreement on damages has been reached. In part, this is because counsel for the claimants is reluctant to begin any assessment until both clients have returned, and one of them remains unwilling to return without orders from this Court guaranteeing that he will be granted the residence permit he requires.
 19. Such an order is beyond the power of this Court, as the Court of Appeal pointed out in *Republic of Vanuatu v Brugger* [2024] VUCA 9. The grant or refusal of an immigration permit falls within the ambit of the Director of Immigration, not the Supreme Court. This Court will not usurp that power but reserves the right to review its exercise.
 20. It will never be known why the Minister decided to revoke the deportation order whilst these proceedings were pending. It is not mere speculation, thought, to suggest that it is unlikely



that he would make such a decision without being prompted to do so. Whether he was led by one or both applicants, or by those who support them, matters not. Counsel for the applicants maintains that he was not involved in any negotiations, and there is no evidence to suggest that. It remains the case, however instigated, that the applicants have benefited from whatever intervention caused this extrajudicial order.

21. Given the Minister's decision not to involve the Attorney General's Chambers in adopting the regular drafting process for the order, one is left to question why unorthodox procedures were adopted. Given that the Director of Immigration allowed one of the applicants back into the jurisdiction even though the revocation order had not been gazetted, his department must have received some indication from the Minister that the order should be recognised.
22. The submission made by counsel for the Applicants that this Court should treat the revocation as restoring things to how they should have been, i.e. was a proper and correct order to have been made, is wrong. The revocation was improperly done. It was not done as required through the Attorney General's Chambers. It was made at a time when the Chambers were defending the previous Minister's decision and without notice to the Chambers. It is difficult to envisage a more improper use of power.
23. The deportation order was made in compliance with Vanuatu's international treaty obligations, following a request from another State party requesting mutual assistance in criminal matters. The Republic may now be said to be in breach of its obligations under that treaty. Whether the requesting state made an invalid request in the first instance is not usually the subject of litigation, and indeed the requesting country in those proceedings has not been offered the opportunity to defend its request.
24. The applicants have benefited from the decision of the Minister, whether they asked for the decision themselves or not. It is difficult to accept that, having received the benefit of that order, they should further benefit in these proceedings with any order for costs and/or damages.

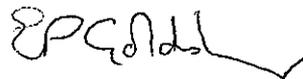


DECISION

25. As there is no longer any decision to appeal or review and the Constitutional position is now clear, this Court dismisses each and every claim and application made by the Claimant/Applicants with no further orders either as to damages or costs.

DATED at Port Vila this 17th day of November 2025

BY THE COURT



Hon. Justice EP Goldsbrough

