

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

Civil
Case No. 25/1775 SC/CIVL

**BETWEEN: WAISINU BAKOKOTO, BAKAULU
BAKOKOTO & ANTAS BAKOKOTO of
Ifira Island, Port Vila Harbour**
Applicants/Claimants

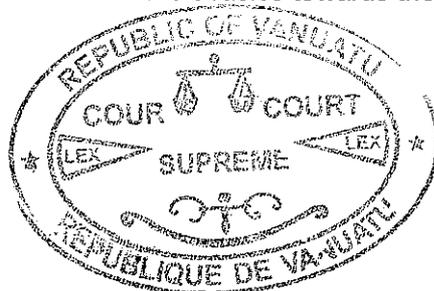
AND: GUAN KAI residing at Elluk, Port Vila
Respondent/Defendant

Date: 27 November 2025
Before: Justice M A MacKenzie
Distribution: Claimants – Mr J Mesao
Defendant – Self-represented

RULING

The application

1. The applicants seek a freezing order under rule 7.8 of the Civil Procedure Rules (“CPR”).
2. Specifically, they seek orders on a without notice basis as follows:
 - i. That certain banks pay funds held in the bank account of Vanuatu Noni Life Technology Ltd (“the company”) be paid into the Chief Registrar’s Account; or
 - ii. That the respondent pay funds into the Chief Registrar’s Trust Account.
3. The urgency is said to arise in two ways:
 - i. The respondent is being pursued by other creditors.
 - ii. That the respondent is frequently absent from Vanuatu and is evasive towards the applicants.



Background

4. There is a long history to the issues between the applicants and the respondent, which is helpfully set out in *Pakoa v Kai* [2022] VUCA 26. Briefly, the applicants are the lessors of leasehold title 12/0633/1387 ("the lease title"). Their late brother Jacky Bakokoto was the original lessee and in 2013 entered into an agreement to sell the lease title to the respondent.
5. There were people living on the land. There was a long drawn out eviction process, which was not resolved until 2024. In the meantime, the respondent sold the lease title to a Li Erzhaio in 2020 for USD 900,000. A very curious issue is that the applicants, as lessors, were required to consent to the transfer. It is difficult to understand why they did when payment under 2013 sale and purchase agreement between Jacky Bakokoto and the respondent was outstanding.
6. On 20 June 2025 the applicants filed a claim seeking:
 - i. The respondent pay them the balance of the purchase price under the 2013 sale and purchase agreement; and
 - ii. The Respondent pay them a lessor's benefit pursuant to s 48A(2) of the Land Leases Act [CAP 163].
7. An order renewing the claim was recently made as it had not been served within 3 months, due to difficulties with service. Service has now been effected pursuant to a substituted service order.

The Law

The application is for a freezing order pursuant to rule 7.8 of the Civil procedure Rules ("CPR"), which says:

Order to protect property (freezing order, formerly called a Mareva order)

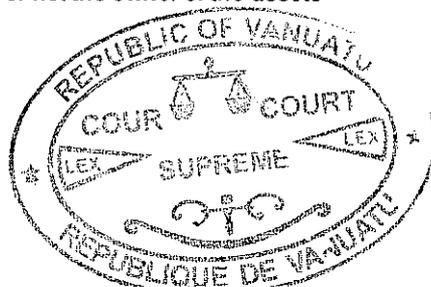
7.8

(1) In this rule:

"owner", for assets, includes the person entitled to possession and control of the assets.

...

(3) The court may make a freezing order whether or not the owner of the assets is a party to an existing proceeding.



(4) The court may make the order only if:

(a) the court has already given judgment in favour of the applicant and the freezing order is ancillary to it; or

(b) the court is satisfied that:

(i) the applicant has a good and arguable case; and

(ii) a judgement or order in the matter, or its enforcement, is likely to involve the assets; and

(iii) the assets are likely to be removed from Vanuatu, or dealing with them should be restrained.

(5) The application must:

(a) describe the assets and their value and location; and

(b) include the name and address of the owner of the assets, if known, and the identity of anyone else who may be affected by the order and how they may be affected; and

(c) if a proceeding has not been started, set out:

(i) the name and address of anyone else likely to be a defendant; and

(ii) the basis of the applicant's claim; and

(iii) the amount or nature of the claim; and

(iv) what has been done to recover the amount of the claim, or to get the relief claimed; and

(v) any possible defences to the claim; and

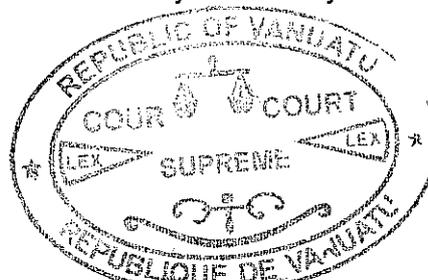
(d) in any case, set out:

(i) how the assets to be subject to the order will form part of any judgment or its enforcement; and

(ii) what will be done to preserve the assets; and

(iii) if the application has not been made on notice, the reason for this; and

(d) include an undertaking as to damages that may be caused to the defendant or potential defendant, or anyone else who may be adversely affected, if the order is made; and



(e) have with it:

- (i) a sworn statement in support of the application; and
- (ii) a draft freezing order.

(6) The sworn statement must include the following:

(a) why the applicant believes:

- (i) the assets may be removed from Vanuatu; or
- (ii) dealing with the assets should be restrained; and

(c) if the court has already made a judgment or order, why the applicant believes the judgment or order already made may not be able to be satisfied, or may be thwarted, if the freezing order is not made; and

(d) if a proceeding has not been started and the name and address of the owner of the assets, and anyone else likely to be a defendant, are not known, what has been done to find out those names and addresses; and

(e) in any case:

- (i) how the assets to be subject to the order will form part of any judgment or its enforcement; and
- (ii) what will be done to preserve the assets; and
- (iii) if the application has not been made on notice, the reason for this.

(7) If the name and address of the owner of the assets is not known, the application may be served as follows:

- (a) for service on a ship, by attaching it to the mast; or
- (b) for service on an aircraft, by attaching it to the pilot controls; or
- (c) in any case, as the court directs.

(8) When making the freezing order, the court must also:

(a) fix a date on which the person to whom the order is granted is to report back to the court on what has been done under the order; and

(b) if a proceeding has not been started, order that:

- (i) the applicant file a claim by the time stated in the order; and



(ii) if the defendant is not known, the defendant be described in the claim as "person unknown"; and

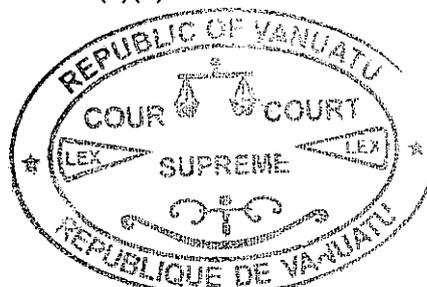
(iii) if the name and address of the defendant or potential defendant is known, fix a time for serving the claim on him or her.

(9) The court may set aside or vary a freezing order.

8. As was held in *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 ALL ER 213, if there is a danger that the debtor may dispose of his assets so as to defeat a claim before judgment, the Court has jurisdiction in a proper case to grant an interlocutory judgment to prevent disposal of assets. This was affirmed in Vanuatu in *Best v Owner of the Ship "Glenelg"* (No1) [1982] VUSC 9, in considering caselaw in relation to Mareva injunctions (now freezing orders).

Discussion

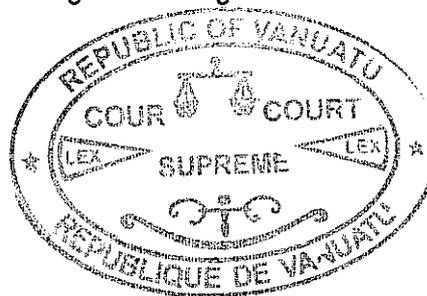
9. Under rule 7.8(4)(b) of the CPR, the criteria for making a freezing order is:
- (i) There is a good and arguable case.
 - (ii) A judgment or order, or its enforcement, is likely to involve the assets.
 - (iii) The assets are likely to be removed from Vanuatu, or dealing with them should be restrained.
10. Notably, the applicants must give an undertaking as to damages which they have not: rule 7.8(4)(e) CPR. The sworn statement should have addressed the applicants' ability to satisfy an undertaking; *Intercontex v Schmidt* [1988] FSR 575. The applicants have failed to address their ability to satisfy the undertaking too.
11. From the application and the sworn statement, it seems that the funds sought to be restrained are the proceeds of an insurance payout following the 17 December 2024 earthquake. This follows on from an alleged promise made by the respondent to settle the financial issues between them from insurance funds received for damage to a building which the respondent rents.
12. A Bred Bank cheque was issues to the respondent on 17 June 2025 for VT 193,685,800. The applicants assert it was the respondent's insurance money. How they obtained a copy of the cheque is a very interesting question? I infer there must have been a privacy breach somewhere along the line, unless the respondent gave them a copy of the cheque, which seems a rather odd thing to do.
13. A freezing order is discretionary. All the criteria in rule 7.8 (4)(b) must be satisfied for a freezing order to be made:



- *Good and arguable case*
 - i. An issue the applicants have not addressed is that they are not parties to the 2013 agreement. While it is not in dispute that Jacky Bakokoto held the lease title beneficially for the applicants, the first cause of action is breach of contract. The applicants are not parties to the contract, so will need to amend the claim by adding the personal representative of Jacky Bakokoto. Once that is done, then there is a good and arguable case in relation to that cause of action.
 - ii. The applicants' second cause of action relates to an asserted claim for a lessor's benefit payable when the respondent sold the lease title. I cannot say if there is a good and arguable case as it will turn on whether it is a rural lease or not. The lease itself says it is a rural commercial lease. The schedule to the lease has a condition that the land is to be only used for commercial purposes.

- *Will a judgment or order be likely to involve the assets?*
 - i. The claim does not directly involve the insurance funds, but any judgment will require the respondent to pay money to the applicants. The applicants rely on a promise made by the respondent to pay them once he received the insurance money.

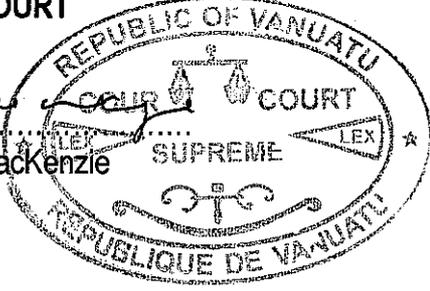
- *Assets likely to be removed from Vanuatu or dealing with them should be restrained*
 - i. There is no evidence that assets are likely to be removed from Vanuatu. The respondent's travel overseas, evasiveness and other financial difficulties in and of itself would not be sufficient for the Court to be satisfied that a freezing order should be made. However, I do consider the fact that the respondent promised to pay what was outstanding under the 2013 agreement out of the insurance money, and has not done so, despite receiving a very large pay out, indicates that there is a danger that the respondent may dispose of his assets so as to defeat a claim before judgment. Therefore, I would be willing to make a restraining order in relation to the balance outstanding under the 2013 sale and purchase agreement. I would not be willing to make an order in relation to the asserted lessor benefit, due to question marks as to that cause of action as discussed above, and whether there is a good and arguable case.



14. However, at this juncture I cannot make a freezing order, given there is no undertaking as to damages from the applicants, and no evidence at all of the applicants' ability to satisfy the required undertaking.
15. It is for the applicants to comply with rule 7.8. If and when they provide the undertaking, and evidence as to their ability to satisfy the undertaking, I will consider the application. All three applicants will need to file sworn statements which must include their financial positions. Rule 7.8 also requires a draft freezing order to be attached to the sworn statement. This will need to be complied with too.

**DATED at Port Vila this 27th day of November 2025
BY THE COURT**

name
.....
Justice M A MacKenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR" and "COURT" are positioned on either side of the scale, with "SUPREME" below them. The word "LEX" appears on two banners flanking the central emblem. A small star is located on the right side of the seal.