

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

Civil
Case No. 25/1716 SC/CIVL

BETWEEN: LINDA ELTON
Applicant

AND: BARLEY ELTON
Respondent

Date of Hearing: 12 December 2025
Before: Justice M A MacKenzie
Counsel: Applicant – Mr KT Tari
Respondent – Mrs M Nari

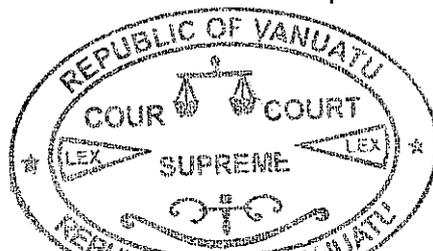
RULING

Introduction

1. Mr and Mrs Elton are the parents of three children. They are Kila, aged 11; Mahkin, aged 7 years and Gabriel, aged 3 years. Currently, the children are living in Santo with their father, Mr Elton. Mrs Elton is living and working in Port Vila.
2. Both parents want to have the primary day to day care of the children. The sworn statements filed in support of the care arrangements show that Mr and Mrs Elton are in conflict about the care and contact arrangements for the children.
3. Over recent months, Mrs Elton has had very little contact with the children, due to Mr Elton limiting and gatekeeping Mrs Elton's communication and contact with the children. Because the parents could not agree on arrangements for the children to spend time with their mother over the long school holidays, I directed a short hearing. Mr and Mrs Elton were directed to put forward their proposals.

The hearing

4. The hearing proceeded by way of submissions only. I had directed the parties to be present. Mr Elton was to appear by way of a video link from Santo. That was not possible



due to a technical issue in Santo. He was unable to attend by phone link from Santo either, as the conference room was booked. So, an arrangement was made for Mr Elton to be telephoned from the registry so that he could attend the hearing. However, for whatever reason, Mr Elton did not answer the phone. Thus, only Mrs Elton was present.

Outcome

5. After hearing oral submissions from counsel, I advised counsel of the outcome and made a number of orders for the children's time with their mother over the long holidays. These orders have already been circulated to counsel. I said I would give written reasons. These are my reasons.

The mothers' proposal

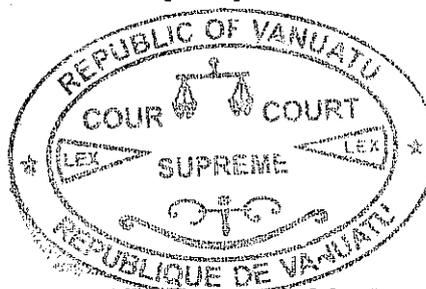
6. Mrs Elton's primary proposal was that she have the care of the children from 19 December 2025 to 25 January 2026. She said she would pick up the children in Santo, stay there for a few days and then travel to Northwest Santo for Christmas and New Year with her partner. Then Mrs Elton's intention was to take the children to Port Vila for the balance of the time and then return them to Santo around 25 January 2026. Mrs Elton made an alternate proposal. That proposal was that she have the children in her care from 19 to 21 December 2025 in Santo. And then she would have a second block of time with the children from 9 January to 25 January 2026 in Port Vila.
7. Mrs Elton also proposed that while the children are in her care, Mr Elton may telephone or video call them any day between 8am and 8pm.

The father's proposal

8. Mr Elton's interim proposal is that Mrs Elton may telephone the children between 5.30 and 6.30pm each day. For the school holidays, his proposal is that Mrs Elton may see them in Santo or take them to Port Vila "if the children are happy to go with her". His concern is that the children have never met Mrs Elton's new partner, so he is a stranger to the children. He wanted Mrs Elton to undertake that if the children wanted to return to Santo for whatever reason, she would return them immediately.

Relevant legal principles

9. As was held in *Iati v Nishai* [2021] VUSC 27 and *Kassou v Kassou* [2024] VUSC 76, the applicable legislation is the Guardianship of Minors Act [1971] UK. Section 1 provides:



1. Where in any proceedings before any court (whether or not a court as defined in s. 15 of this Act) –

(a) the custody or upbringing of a minor; or

(b) the administration of any property belonging to or held on trust for a minor, or the application of the income thereof,

is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

10. Further, s 9 of the Guardianship Minors Act [1971] UK provides:

1. (1) The court may, on the application of the mother or father of a minor (who may apply without next friend), make such order regarding –
(a) the custody of the minor; and

(b) the right of access to the minor of his mother or father,

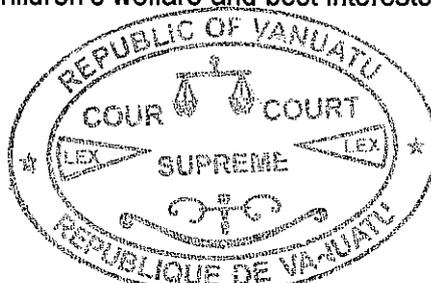
as the court thinks fit having regard to the welfare of the minor and to the conduct and wishes of the mother and father.

11. Vanuatu is the signatory to the convention on the rights of the child [1989] [CRC]. The Court is obliged under the CRC to consider the best interests of the children, in accordance with Sub Article 3 (1) of the convention.

Discussion

12. The Court is to regard the children's welfare as the first and paramount consideration and is also obliged to consider their best interests. The children's welfare and best interests are met by having a meaningful relationship with both parents. That is not the position now. One practical difficulty is the fact that the children are living in Santo with their father and Mrs Elton lives in Port Vila. That should not however be an impediment for the children to maintain a meaningful relationship with their mother.

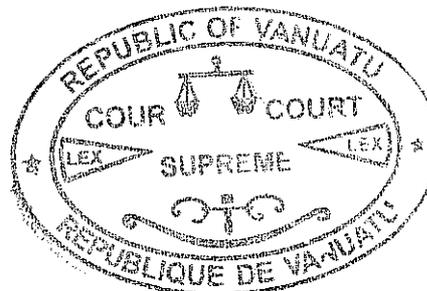
13. The care arrangements for the children on a long-term basis will be resolved in time. The immediate issue is to put in place an arrangement so that the children can spend time with their mother, which their father is resisting, as evidenced by his proposal for interim arrangements. That proposal is not in the children's welfare and best interests.



There is conflict between the parents and Mr Elton's proposal and puts the children squarely in the middle of the parental conflict. That is because the children will only spend time with the mother if they want to see them. That means they have to make a choice about seeing their mother. I make the following points.

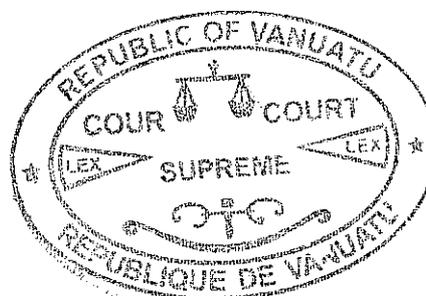
14. Firstly, there is a child desk report, which I have considered and taken into account. The child desk report has been prepared for the purposes of the application for day to day care. The report notes that the children's relationship with their mother has been unreasonably disrupted by unilateral actions of the father and parental relatives. The father's actions in removing communication devices and obstructing contact do not align with the best interest of the children, nor do they support healthy emotional developments. This is an objective piece of information, which compels me to the view that it would be emotionally difficult for the children to be in the middle of the conflict and have to make choices.
15. Secondly, all three children have a voice in terms of the care and contact arrangements, but not the choice. The children's views must be heard. But is then a matter for the Court to determine the weight to be attached to those views. It does not follow that because the children express a particular view, that the Court will act on that view. Children's views can be shaped by many factors.
16. Thirdly, Gabriel and Mahkin are too young to be able to make decisions as to whether and when they will spend time with their mother. Kila is at an age where she is likely to be aware of the parental conflict and that creates a loyalty bind for her. While untested, there is information before the Court which indicates that Mr Elton is actively discouraging the children's relationship with their mother. For example, in an email annexed to Mrs Elton's sworn statement of 17 June 2025 in support of her application for day to day care of the children, Mr Elton said "*you have no right over them when you decide to leave this marriage.*"¹
17. Fourth, Kila's views about spending time with her mother are contained in the child desk report. She likes spending time with her mother but criticises her mother for things like being on the phone, not paying attention to the children and that the children found out the mother is seeing and talking to another man on the phone. She also criticises the food provided by her mother. Mahkin says that her mother does not contact them very often and when they are together she always spends time on the phone with her friends. Gabriel likes his mother because his mother bought him a bicycle and he talked with his mother last time.
18. Based on the child desk report, the children like spending time with their mother. I cannot determine at this stage whether Killa's criticisms of her mother are authentically her own or not. However, her criticisms are not a reason to limit Mrs Elton's time with

¹ Annexure LEO5 to Mrs Elton's statement of 17 June 2025.



the children. Indeed, the child desk report notes that Mrs Elton has demonstrated stability, lawful behaviour, cooperation and a strong willingness to maintain a safe nurturing relationship with all three children.

19. I acknowledge Mr Elton's concern that the children do not know Mrs Elton's partner. That is a realistic concern and something Mrs Elton will; need to carefully manage. But Mr Elton needs to take some responsibility for that as well because he has not been willing to facilitate meaningful contact between the children and their mother. Mrs Elton will need to be mindful of the children's feelings and sensitivities about their mother having a new partner, but there is nothing to suggest she is not capable of putting her children first.
20. I consider that the children's welfare and best interest are met by the children spending the holidays with their mother given they have had very limited time with her over the recent period of time. Both parents are equally important to the children and have a part to play in their upbringing. And while the two older children have some criticisms of their mother, all three children said they like spending time with Mrs Elton.
21. I consider that the arrangement which best meets the children's welfare and best interests is for them to spend a block of time with their mother during the upcoming school holidays. That allows the children to reestablish their relationship and bond with their mother and to experience their mother's day to day parenting and to minimize changeovers between the parents. That is very important, given the conflict which exists between Mr and Mrs Elton.
22. However, I was not minded to adopt Mrs Elton's proposal that the children travel with her and her partner up to North West Santo. I understand that given the uncertainty, Mrs Elton needed to make arrangements for Christmas, but I am not sure that it would be in the children's welfare and best interests to be introduced not only to Mrs Elton's partner, but also his wider family – which I was told during the hearing. That may be overwhelming for the children (although I accept it may not be), but importantly the primary need here is for the children to reestablish their connection with their mother without lots of people they have never met around them. When I indicated that I did not favour that proposal, Mr Tari asked for a short adjournment to speak to Mrs Elton.
23. After the adjournment, the proposal was recast to Mrs Elton having one block of care of the children between 2 January and the week commencing 26 January 2026. That is a more child focused proposal, because Mrs Elton's plan is to go up to Northwest Santo without the children and then pick them up in Santo and take them to Port Vila for the time they are in her care. That proposal is in the children's welfare and best interests, as the children can spend a block of time with their mother, experience day to day parenting, and it minimises the risk of parental conflict at changeovers.



24. The parents need to appreciate that parental conflict can and does impact on children and their welfare. It is also important for both parents to understand that the factors that make up welfare and best interests are broad and beyond the ability to offer a stable home. A key issue is the ability to ensure children's physical and emotional safety and wellbeing. Gatekeeping a relationship between the children and their other parent does not meet the children's emotional wellbeing.

DATED at Port Vila this 16th day of December 2025

BY THE COURT

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Justice M A MacKenzie

