

**BETWEEN:** Family Molrang  
Claimant

**AND:** Suru Area Council (Central Pentecost)  
First Defendant

**AND:** Police Service Commission  
Second Defendant

***Date of Conference Hearing:*** 23 February 2026

***Date of reasons:*** 25 March 2026

***Before:*** Hon. Chief Justice Vincent Lunabek

***Counsel:*** Mr Hardison Tabi for the Claimant  
Mr Denny Jonah for the Defendants

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## Reasons for striking out the Judicial Review Claim on 23 February 2026

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### **Introduction**

1. On 23 February 2026, I conducted a Rule 17.8 conference hearing in this Judicial Review case 25/3738 and I struck it out with costs.
2. What follow are the reasons of the striking out decision of 23 February 2026.

### **Background.**

3. An urgent judicial review claim was filed by the claimants in Judicial Review (JR) case 25/ 3538. The claimants claim for orders that: -
  - a) The First defendant's decision dated 14 November 2025 which stopped the operation of the Fuel station at Bwatnapni, central Pentecost, is unlawful;

- b) The actions of the Police officers on 2 December 2025 in removing the keys of the Fuel station at Bwatnapni and stopped its operation is unlawful;
  - c) The First and second defendants compensate the claimant for loss of business during the period which the fuel station business was closed.
  - d) Interests and costs.
4. James Tabinok, a member of the claimant's family, filed a sworn statement in support of the JR claim on 4 December 2025. The statement stated that the Ocean Logistics Limited had built a fuel station on the claimants' Family's land. The fuel station business at Bwatnapni, is a private business for the Ocean Logistics Limited in partnership with the claimants. (The business is for Ocean Logistics, established on the claimants' land and renting to the claimants). It is not a government project. It is not established on a government or public land. On 15-17 October 2025, the first defendant made a decision to stop the operation of the fuel station at Bwatnapni, central Pentecost. On 2 December 2025, the police officers at the Bwatnapni, attended to the property where the fuel station is located, removed the keys and stopped its operation.
5. A sworn statement of urgency was filed by James Tabinok on 4 December 2025 together with an undertaking as to damages.
6. An urgent ex-parte interlocutory application was also filed on 4 December 2025 with a sworn statement of James Tabinok filed on the same date.
7. On 8 December 2025, the Court heard the urgent ex-parte interlocutory application and granted the following interlocutory orders sought: -
- a) That the officers of the Second Defendant stationed at Bwatnapni Police Post immediately return the keys of Fuel Station at Bwatnapni to the claimants.
  - b) That the defendants or their agents be restrained from interfering in the operation of the Fuel station at Bwatnapni.
  - c) That the claimant and the Ocean Logistics Limited continue to operate the Fuel station at Bwatnapni pending final determination of the matter.
  - d) That liberty be given to the parties to apply
  - e) That the substantive matter be listed for Rule 17.8 conference hearing on 30 January 2026 at 8:30 am.
8. On 30 January 2026, there was no defence filed, despite service of the JR claim, statements in support and any ancillary documents effected on the defendants (see statement of Hardison Tabi on proof of service filed 4 December 2025). The conference hearing on Rule 17.8 was adjourned to 16 February 2026.

9. On 16 February 2026, an application for leave to extend time to file defendants' defence was filed and granted without objection. A new conference hearing on Rule 17.8 was fixed on 23 February 2026.

10. The First and Second Defendant filed a defence to the JR case on 20 February 2026.

11. The defence say, among other matters, the following:

- a) Pursuant to section 4A of the Decentralization Act No.17 of 2023 (the "D Act"), the Suru ("SA") Area Council (the "Area Council") is established.
- b) Pursuant to section 4A (1) (2) of the D Act, the SA Council was appointed and were composed of representative of chiefs, woman representatives, youth representatives, church representatives and business representatives who have been appointed by their respective bodies in central Pentecost (CP).
- c) Say that pursuant to section 4AA of the D Act, the SA council's functions are to review and consolidate community action plans for each community within CP-1, develop an area council Strategic Development Plan for CP-1, coordinate, monitor and report to the Penama Provincial Government Council (PPGC) on the implementation of CP-1 Strategic Development Plan.
- d) Say that the SA council is established to connect the national government and local people, and is responsible for administering the government and non- government projects and service within the area of CP-1 (sections 4 A, 4 AA and 4 AB (1) (2) of the D Act).
- e) Say that section 28 of the Foreign Investment Act No.25 of 2019 (The "FI Act") provides that before the establishment of a foreign investor within an area, the agency (the Vanuatu Foreign Investment Promotion Agency appointed under subsection 11(1)) has to conduct a public consultation to include relevant opinions from the Government, Municipal Councils, Provincial Government councils, private sector bodies and non-government organisations, and is to include the outcome of that consultation in its advice to the responsible Minister.
- f) Say that pursuant to section 28 FI Act, the agency failed to conduct a proper consultation with the Penama Provincial government through the SA Council or the local community living in CP-1 to include their relevant opinions before initiating the proposal to introduce foreign investor, the Ocean Logistics Limited which is now operating a fuel business station at Bwatnapni in CP-1.
- g) Say that the fuel station in Bwatnapni is solely owned by the Ocean Logistics and is established on the claimants' land.
- h) Say that the Ocean Logistics pays the land rent to the claimant while it operates the fuel station at Bwatnapni in the claimants' land area at CP-1.

- l) Say that the operation of the fuel station at Bwatnapni by the Ocean Logistics threatened the operations of 21 fuel stations that are owned by local people in the island of Pentecost which include those in the area of CP-1.
- J) Say that pursuant to subsections 4 AC (1) and (3) of the D Act, at its meeting of 15-17 October 2025, the SA council determined to stop the operation of the fuel station that is operated by the Ocean Logistics Limited (and the decision was made on 14 November 2025) on the basis that (1) the SA council has received several complaint letters from the chairmen of five (5) ward councils from the area of CP-1 requesting the SA council to stop the operation of the fuel station at Bwatnapni; (2) there are only 21 valid business licences of the petroleum that have been registered to operate in the area of CP-1; and that (3) - the SA council upholds good governance towards its people in the area of CP-1.
- k) Say that the decision of the SA council referred to above is in line with the SA council's commitment to serve the interests of the local population and to uphold the principles of good governance within its jurisdiction at CP-1.
- l) Say that pursuant to paragraphs 4 (c) (d) (e) of the Police Act [CAP 105], the police officers performed their functions when acted upon the request of the Area Administrator of CP-1, Richard Tabi, by enforcing the decision and orders of the SA council by removing the keys and temporarily stopping the operation of the fuel station at Bwatnapni on 2 December 2025.
- m) Say that the actions of the Police officers in CP-1 on 2 December 2025 is to maintain order within the local communities of CP-1 when enforcing the decision and orders of the SA council.
- n) Say that the SA council is an independent body which exercises its powers independently within its confined area at CP1 and therefore its decision dated at its meeting on 15-17 October 2025 lacked the sufficient public law element and is not susceptible to judicial review.
- o) Say that that the actions of the Police officers at Bwatnapni dated 2 December 2025 was based on the decision and orders of the SA council which lacked the sufficient public law element.
- p) Say that the fuel station is solely owned and operated by Ocean Logistics, but no the claimant.
- q) Say that the claimant has no standing to bring this claim as they do not own and operate the fuel station.
- r) Say that the claimant is not entitled to the relief sought or to any other relief.
- s) Say, therefore, that this claim is misconceived and must be struck out with costs.

### **Consideration**

12. I perused the provisions of the Rule 17.8 which provide:

*“Court to be satisfied of claimant’s case*

*17.8(1) As soon as practicable after the defence has been filed and served, the judge must call a conference.*

*(2) At the conference, the judge must consider the matters in subrule (3).*

*(3) The judge will not hear the claim unless he or she is satisfied that:*

- (a) the claimant has an arguable case; and*
- (b) the claimant is directly affected by the enactment or decision; and*
- (c) there has been no undue delay in making the claim; and*
- (d) there is no other remedy that resolves the matter fully and directly.*

*(4) To be satisfied, the judge may at the conference:*

- (a) consider the papers filed in the proceeding; and*
- (b) hear argument from the parties.*

*(5) If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.”*

13. I consider Rule 17.8 (3) (a), (b), (c), (d) of the CPR of 2002.

(a) Whether the claimant has an arguable case

- 14. The claimant is challenging the lawfulness of the decision of the First defendant (SA Area council) of 14 November 2025 which stopped the operation of the Fuel station at Bwatnapni, Central Pentecost.
- 15. The defence advanced the first reason to stop the operation of the Fuel station that is operated by the Ocean Logistics Limited, a foreign investor, that the SA council has received several complaint letters from the chairmen of five ward councils from the area of Central Pentecost-1 requesting the SA council to stop the operation of the Fuel station at Bwatnapni because the agency failed to conduct a proper consultation with the Penama Provincial government through the SA council or the local community living in central Pentecost-1 to include their opinions before initiating the proposal to introduce the foreign investor, the Ocean Logistics Limited, which is now operating a fuel business station at Bwatnapni CP-1 under section 28 of the FI Act of 2019.
- 16. The second reason is that the fuel operation of the station at Bwatnapni by the Ocean Logistics Limited, a foreign investor, threatened the operation of 21 fuel stations that are owned by local people in the island of Pentecost which include these in the area of CP-1.
- 17. The defence also say that there are only 21 valid business licences of petroleum that have been registered to operate in that area of CP1. This begged the question whether the Ocean Logistics Limited

as, a foreign investor, has a valid business licence of petroleum that has been registered to operate in the area of CP1 under the provision of Foreign Investment Act 2019?

18. Those are matters of public law considerations that the Suru Area Council (central Pentecost) in the Penama Provincial Government, faced when the SA Council made the decision of 14 November to stop the operation of the fuel station at Bwatnapni.

19. The SA Council, as a local public authority, is established under the D Act.

20. It is a statutory local public authority which made decision affecting rights; and its decision like the decision under challenge in this case, is properly challenged under the judicial review claim for public law remedies under the judicial review process.

21. The decision of SA Council of 14 November 2025 had the sufficient public law element and is susceptible to judicial review. The SA Council cannot escape that.

22. It is noted that, in respect to the orders that are sought in the JR claim in this case, the 3<sup>rd</sup> order (3) sought for compensation for loss of business during the period which the fuel station business was closed, is not of a public law remedy under the JR claim. It is a private law remedy. It is not appropriate to claim compensation or damages in a JR claim.

23. The matters raised in the defence covered matters such as whether Ocean Logistics Limited has an investment proposal as, a foreign investor, to invest in Vanuatu, and includes a proposal by the Ocean Logistics Limited investing through a joint venture, partnership or other association with citizens of Vanuatu or companies incorporated in Vanuatu (see Interpretation section of the Foreign Investment Act of 2019). These matters raised in the defence also include matters covered under section 35 of the Foreign Investment Act 2019 concerning the requirement for and effect of registration. Section 35 provides: -

***"35. Requirement for and effect of registration***

*(1) The requirement to register investment activities under this Part is in addition to the requirements imposed in respect of investment activities under any other law of Vanuatu.*

*(2) A foreign investor must not carry out an investment activity without a valid certificate of registration under this Act.*

*(3). Any arrangement, agreement or memorandum of understanding entered into by a foreign investor in respect of an investment activity to be commenced, has no effect until the foreign investor holds a valid certificate of registration for that investment activity.*

*(4) A permit, licence or authorisation issued under any other Act to a foreign investor in respect of an investment activity (whether commenced or to be commenced) has no effect until the foreign investor holds a current certificate of registration for that investment activity."*

24. Those matters raised in the defence of the claim can only be answered by the Ocean Logistics Limited. But Ocean Logistics Limited is not a party to this JR case.
25. The claimant cannot and could not answer to these matters raised in the defence to the claim in lieu and place of the Ocean Logistics Limited as a foreign investor pursuant to the provisions of the Foreign Investment Act 2019. The claimants, therefore, did not have the standing to file this JR claim in JR case No. 25/3456.
26. I conclude that based on the above considerations, the claimants do not have an arguable case. This is sufficient to strike out the JR claim in this case.

(b) Whether the claimant is directly affected by the decision

27. The JR claim is not about the stopping of land rents or the payment of the land rents to the claimants. The claim is about the decision of the SA council to stop the operation of the fuel station at Bwatnapni. That decision of 14 November 2025 directly affected the Ocean Logistics Limited, as the owner and operator of the fuel station business at Bwatnapni. Again, Ocean Logistics Limited is not a party in this proceeding. The claimant is not directly affected by the decision. The claimant is only indirectly affected because of the decision.

(c) Whether there has been no undue delay in making the claim

28. Here, there is no undue delay in making the claim.

(d) Whether there is no other remedy that resolves the matter fully directly.

29. No, there is no other remedy that resolves the matter fully and directly; but Ocean Logistics Limited must be the party to the proceeding, not the claimant.
30. The claimants have no standing to bring this judicial review claim as they do not own and operate the fuel station at Bwatnapni.
31. The claim is misconceived and must be struck out with costs.

Order

32. The claim is misconceived and is struck out with costs awarded to the defendants against the claimant; and such costs are to be agreed or assessed on the standard basis.

DATED at Port Vila, this 25 March 2026.

BY THE COURT

Hon. Chief Justice Vincent Lunabek