

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

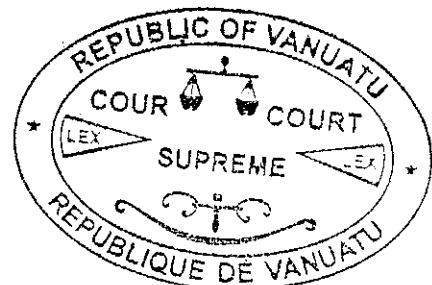
Civil  
Case No. 26/23 SC/CIVL

**BETWEEN:** Michel Garae Paro, Jethro Moli, Demsmon Wolmam  
Tabiling, Suzie Kaloris, Karae Linsar, Franky Lulu,  
Eric Simon, Fanexly Leo, Roy Maxim, Obed Tukula,  
Levianna Ligo, Susie Avou, Kingsly Vivi, Obed Hotil, Tony  
Sale, Tony Hinge, Lilian Talo, James Waso, Jean Louis  
Theresa Wobelak, Wobelak Rosita, Florinda, Satize Bule,  
Christiano Raupepe, Kaltaban, Garae Iman, Antione  
Jeyjey, Edwin Kau, Stevie Stanley Isaiah Paul, Joshua  
Nakon, Bernpaan Din Haoul, Aisen Stanley, John Tor,  
Franky, Bebe Stanley, Job Wass, Siano, Eli Stanley, Trix  
Warsal, Melissa Tarianga, Jason Stanley, James Timothy,  
Markson Naru, Javen Stanley, Philma Owe, John Kath,  
Johnethy Kaltho, Terry William, Ezra Stanley, Aime  
Sekren, Roney Zakias, Andrew William, Paputu Iercet,  
Zennick Wells, Wobelak Luciano, Masong Bethel, Kaltho  
Stanley, Joseph Sunghe, Mary Robert, Ian Iercet, Fabrice  
Daniel. Tom Wass, SamVocor, Simon Bankis, William  
John, Jack Johna, Alickson Naru, Ross Naru, Thompson  
Warele, Johnny Heribert Sael Timothy Florence Levi  
Annie Malrel Raynold Bule Patterson Stanley Obed  
Warvut Toto John Vira Puteri Jacob Silwor Sasa Maliu  
Irene Raptipe Rolina Wells Jeremy Timothy Killion  
Stanley Clery Frazer Alberto Kutoserbowor Manu Charley  
Metart Florence Bambu Paul Garae Thompson Warele  
Samuel Jimmy Rano Maliu Tari Andy Anthony Bule Sam  
Edwin Pakoa Kalo Thoma Sockiem Irene Tamracl n Lias  
Var Perei Simon Timothy Edmond Sovau Jay Batis  
Guillaume Danson Hinge Peter Karae Emmanuel Hinge  
Jelly Simeon Veronique Roy Wesley Selwyn Boss Neki  
Japeth Timothy Hannah Joe Johnny Shem Peter Nov  
Meriam Shem Joel Shem Simon Esea Nelson Bani  
Applicants

**AND:** Luganville Development Holdings Limited  
First Respondent

**AND:** Republic of Vanuatu  
Second Respondent

**Coram:** Justice Dudley Aru  
**Counsel:** Mr. J. Ngwele for the Applicants/ Claimants  
Mrs. S. Motuliki for the First Respondent  
Ms. N. Roberts for the 2<sup>nd</sup> Respondent



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## REASONS FOR DECISION

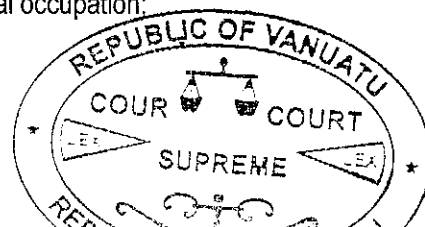
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### Introduction

1. On the 23 February 2026, I rejected and dismissed the Applicants' Urgent Application for Interim Relief. I now provide my reasons for doing so.

### Background

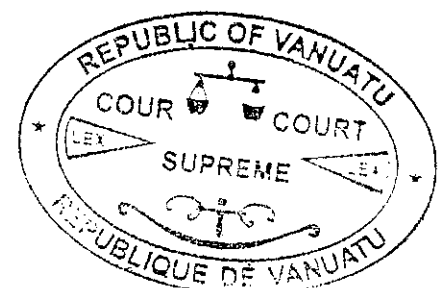
2. On 13 January 2026 the applicants filed an urgent application seeking urgent interim relief. The application was supported by a sworn statement of urgency, an undertaking as to damages and a number of sworn statements in support of the application namely: sworn statement of Obed Tukula, sworn statement of Edricks Warsal, sworn statement of Jethro Moli and sworn statement of Isaac Buleban.
3. The orders sought are as follows:-
  - 1) An order to restrain the First Respondent whether by itself, its directors, officers, employees, agents, contractors or any person acting on its behalf from carrying out or attempting to carry out any of the following pending final determination of this proceeding: -
    - a) Evicting or attempting to evict the Applicants or any other persons in actual occupation of any part of the land comprised in Lease Title No. 04/3021/1083;
    - b) Demolishing, damaging, removing, cutting, fencing off, or other/wise interfering with any homes, structures, fences, gardens, or other improvements erected by the Applicants or other persons in actual occupation of the land comprised in Lease Title No. 04/3021/1083; and
    - c) Obstructing, harassing, intimidating, or other/wise interfering with the quiet occupation and use of the land by the Applicants or other persons in actual occupation;
  - 2) An order restraining the Second Respondent, including through the Vanuatu Police Force, from assisting, facilitating, authorising, or participating in any act by the First Respondent which would have the effect of:-
    - a) Evicting or attempting to evict the Applicants or any other persons in actual occupation of any part of the land comprised in Lease Title No. 04/3021/1083;
    - b) Demolishing, damaging, removing, cutting, fencing off, or other/wise interfering with any homes, structures, fences, gardens, or other improvements erected by the Applicants or other persons in actual occupation of the land; and
    - c) Obstructing, harassing, intimidating, or other/wise interfering with the quiet occupation and use of the land by the Applicants or other persons in actual occupation;



4. As it was filed on an urgent basis, the matter was initially listed for 16 January 2026. The applicants conceded to requests for adjournments from Counsel for the respondents and the hearing was adjourned a number of times on 21 January and again on 29 January. The matter was finally heard on 9 February.
5. The first respondent, Luganville Development Holding Limited (LDHL) filed a response in opposition to the application with a sworn statement of Glen Graig in support. They objected to the orders sought by the Applicants and that the urgent application be dismissed.

### Submissions

6. The Applicants submitted that they are all residents of Solomon Hill in Santo. The subject land being custom land, they obtained authorisation to settle on the land from Joe Johnny and Kuvu Noel as representatives of the custom owners. As a result, they have built their homes and continue their livelihood on the land. It was submitted that LDHL obtained a lease over the subject land on 30 May 2025.
7. It was submitted that the need for urgent court intervention arises due to damage to some of the Applicants' properties purportedly by agents of LDHL and that there is a clear intention to have them evicted from the land. These has led to increased fear and distress that irreparable harm will be caused if they are evicted from the land. The Applicants say there is a serious question to be tried as they have overriding interests under s 17 (g) of the Land Leases Act [CAP 163]. They argue that a constructive trust exists and that it would be unconscionable to allow LDHL to evict them from the land.
8. It was further submitted that a serious question remains regarding the validity of the transfer of the lease to LDHL in view of the Court of Appeal decision in **Johnny v Molbarav** [2024] VUCA 12.
9. LDHL in opposition to the application submitted that the urgent application be dismissed in its entirety. In summary, It was submitted that there were procedural deficiencies with the urgent application and the applicants have misrepresented the facts alleged as a basis for the urgent application. It was submitted that LDHL has not threatened the applicants with eviction and that there is no serious question to be tried as the applicants are not protected under s17(g) of the Land Leases Act. It was also submitted that the Applicants lacked standing to challenge the lease and finally that the balance of convenience favours the first respondent. As they have an indefeasible title. It was also submitted that the urgent application is premature as LDHL has not sought any eviction orders against the applicants. It was finally submitted that the Applicants may have a cause of action against Joe Johnny who fraudulently sold them land when he had no lawful authority to do so.
10. For the second respondent, it was submitted that the urgent application be struck out as there is no serious question to be tried.



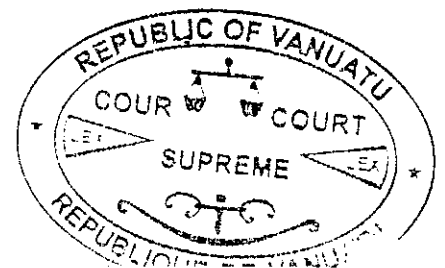
## Discussion

11. The area in question is located at Solomon Hill, Santo and is covered by lease title No 04/3021/1083 (the Property) which LDHL acquired from the National Bank of Vanuatu and became the registered proprietor on 30 May 2025.
12. The urgent application is made pursuant to rule 7.5 of the Civil Procedure Rules which provides:

### **"7.5 Application for interlocutory order before a proceeding is started**

- (1) A person may apply for an interlocutory order before a proceeding has started if:
  - (a) the applicant has a serious question to be tried; and
  - (b) the applicant would be seriously disadvantaged if the order is not granted.
- (2) *The application must:*
  - (a) *set out the substance of the applicant's claim; and*
  - (b) *have a brief statement of the evidence on which the applicant will rely; and*
  - (c) *set out the reasons why the applicant would be disadvantaged if the order is not made; and*
    - (d) *have with it a sworn statement in support of the application.*
- (3) The court may make the order if it is satisfied that:
  - (a) the applicant has a serious question to be tried and, if the evidence brought by the applicant remains as it is, the applicant is likely to succeed; and
  - (b) the applicant would be seriously disadvantaged if the order is not made.
- (4) *When making the order, the court may also order that the applicant file a claim by the time stated in the order.*  
*(emphasis added)*

13. The Court can only make the orders sought if it is satisfied that the applicants have a serious question to be tried and if, the evidence remains the same the applicants are likely to succeed. Secondly, the Court may make the order if it is satisfied that the applicants would be seriously disadvantaged if the order is not made. If so, then the court must also consider the balance of convenience between the parties. (see: **Valele Family v Touru** [2002] VUCA 3).
14. In support of the application, the applicants say they obtained permission to be on the land from Joe Johnny. Isaac Buleban in his sworn statement says he moved onto the land in 2017 and acquired a plot from Joe Johnny who told him he was the custom owner. Joe Johnny was then living with his family on the land. Recently he became aware a company owned the land and he "heard" rumours that they will be forcibly removed from the land. Out of concern for his family and properties he is supporting the application to stop the eviction.



15. Obed Tukula in his sworn statement also says he moved onto the land around 2017 and built his home. He believed Joe Johnny owned the land or had customary rights to allow people onto the land. Only recently he "heard" that a company owned the land and wanted to evict people living on the land. Out of concern for his property and investments he supports the urgent application to stop the eviction.
16. Jethro Moli in his sworn statement says he is a chief from Ambae. He was evacuated with his people to Santo around 2017 and 2018 due to the volcanic eruptions. They were introduced to Joe Johnny and Kuvu Noel as custom owners of the land who gave them part of the land to resettle his people. Until recently he also "heard" that a company owned the land and would be evicting them. Out of concern for his people and their properties he wanted the eviction to be stopped.
17. Edricks Warsal in his sworn statement says he also lives on the land and saw Samuel Tiwok cutting fences on his property. He reported the matter to the Police and at a round table meeting with the Police, Mr Tiwok admitted that he was sent by Glen Graig of LDHL to cut the fences.
18. All the applicants say they "heard" that they were going to be evicted from the Property. There was no evidence filed by any of them of any eviction proceedings taken against them by LDHL.
19. Glen Graig says in his sworn statement in support of the opposition to the application that he was engaged by LDHL to manage the development of the Property on behalf of LDHL. He denies that the applicants have been threatened with eviction and says residents were informed they could remain on the Property in the present time and they have not requested Police assistance to remove anyone. He says no eviction proceedings have been taken against the applicants and the residents were informed to attend the LDHL offices to get any information they required.
20. Mr Graigs evidence is that no eviction proceedings have been taken against the applicants. Therefore, the application to stop the eviction of the applicants is premature.

*. Serious question to be tried*

21. The applicants say they have a serious question to be tried. The serious question is whether they are entitled to s17 (g) rights under the Land leases Act t remain on the land. Section 17 (g) states:

**"17. Overriding interests**

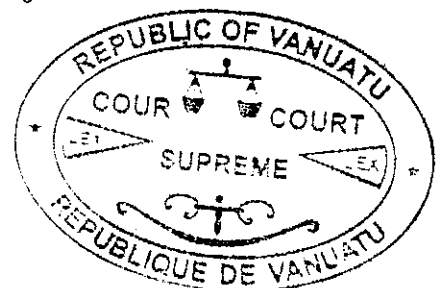
*Unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register –*

....

*(g) the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed; and*

....

*Provided that the Director may direct registration of any of the liabilities rights and interests herein before defined in such manner as he may think fit."*



22. It was argued that the applicants have an overriding interest as they have been making their living on the land before LDHL acquired the lease and LDHL failed to make a proper inquiry as to the nature of their occupation before the acquisition.
23. It is not disputed that the applicants entered and occupied the land upon authorisation by Johnny Joseph and Kuvu Noel as representatives of the custom owners. Kuvu Noel is now deceased and the applicants have not shown any evidence of his entitlement under custom. As for Johnny Joseph the Court of Appeal in **Johnny v Molbarav** [2024] VUCA 12 rejected his attempts to assert any interest in the Property under s100 of the Land Leases Act as it found that he was not the declared custom owner. In 2025, Mr Johnny in **LDHL v Joe Johnny** CC25/2917 attempted to stay the eviction orders evicting him from the Property but was unsuccessful as he failed to show that he was the declared custom owner.
24. Mr Joe Johnny has never been declared custom owner of the subject land and has never held any lease interest in the land therefore he had no authority in custom and in law to give or to allow that applicants to reside on the land. LDHL has acquired good title by registering its lease hold interest on 25 May 2025. (see: **William v William** [2005] VUCA25; **Combera v Sope** [2016] VUCA 42 and **Guan Kai v Tom** [2022] VUSC 35)
25. Therefore, there is no serious question to be tried and if the evidence remains as it is the applicants are not likely to succeed.

*Balance of convenience*

26. Taking into account the discussions above, the balance of convenience favours LDHL. It is the registered proprietor of the lease and is entitled to quiet enjoyment of its interest. It has not sought eviction orders against the applicants and they have not shown any evidence of that.
27. I accept that, there were some procedural deficiencies in the naming of some of the applicants, however the application is determined by applying rule 7.5 of the Civil Procedure Rules.

**Result**

28. Accordingly, the application was dismissed for the above reasons.
29. The file is returned to the registry for re-allocation to another Judge.

DATED at Port Vila, this 10<sup>th</sup> day of April, 2026

BY THE COURT

Dudley Aru  
Judge

