IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/107 COA/CIVA
[2025] VUCA 18

BETWEEN: JOSIAH KUATPEN
Appellant

AND: ATTORNEY-GENERAL
Second Appellant

AND: MARIANA LAL
Respondent

Date of Hearing:	***7 May 2025***
Coram:	***Hon. Chief Justice V. Lunabek*** ***Hon. Justice J. Mansfield*** ***Hon. Justice O. A. Saksak*** ***Hon. Justice R. Asher*** ***Hon. Justice D. Aru*** ***Hon. Justice E.P. Goldsbrough***
Counsel:	***T Loughman for the Appellants*** ***N Morrison for the Respondent***
Date of Judgment:	***16 May 2025***

JUDGMENT OF THE COURT

Introduction

1. The appellant, Josiah Kuatpen, and the Attorney-General as second appellant, appeal a decision of the Supreme Court of 25 November 2024. The appeal is against the judgment in which the respondent, Mariana Lal, obtained a declaration that a determination that she was not a fit and proper person under the Anti-Money Laundering and Counter-Terrorism Financing Act 2014 (the **Act**) was unlawful.

2. The judgment was based on a finding and declaration that the claimant was not afforded natural justice and/or procedural fairness in the process leading up to the determination that she was not a fit and proper person. It was also held that there was a failure to give Mrs Lal an opportunity to make submissions in answer to the allegations against her in breach of s 50I(2) of the Act. The determination was held to be unlawful and it was quashed. Mrs Lal was awarded costs on an indemnity basis.

3. The essential point raised in support of the appeal was that although the principles of natural justice and procedural fairness applied to the process where Mrs Lal was held not to be a fit and proper person, she was not in fact given a reasonable and fair opportunity to respond to the allegations against her.

Brief facts

4. In November 2023 the respondent, Mariana Lal, was employed as the Acting Chief Executive Officer of the Wanfuteng Bank Limited. She had been recently appointed; the employment of her predecessor having finished in the months prior as it had been determined that the predecessor also was not a fit and proper person.

5. The first appellant, Josiah Kuatpen, was the acting director of the Vanuatu Financial Intelligence Unit (**VFIU**) which administered the Act. By a letter of 2nd November 2023, which we will examine closely later in this judgment, Mr Kuatpen wrote to Mr Bob Hughes, the director of the Wanfuteng Bank Limited, informing him that the VFIU had determined Mrs Lal was not a fit and proper person under the Act. The next day Mr Hughes wrote to Mrs Lal advising her of the notification and direction, determining that she had failed the fit and proper person requirements, and asking her, as directed by the VFIU to immediately vacate the role of Acting CEO. She was asked to leave the building and take the afternoon off.

6. Mrs Lal tended her resignation effective immediately on 6 November 2023. She received modest staff benefits and the continuation of a concession home loan rate for at least six months.

7. On 20 March 2024, Mrs Lal's lawyers sought particulars of the matters put forward as indicating that Mrs Lal was not a fit and proper person. By a response on 24th March 2024 the Financial Intelligence Unit of the State Law Office provided lengthy quotes from s 9 of the Act, but did not provide any particulars. It advised Mrs Lal's lawyers that it would no longer deal with any requests from Mrs Lal and that Mrs Lal "may pursue this matter with the reporting entity", (presumably the Wanfuteng bank). In due course Mrs Lal issued proceedings against against Mr Kuatpen and the Republic, seeking judicial review of the determination that she was not a fit and proper person and a declaration that she was not afforded natural justice and procedural fairness, and that the decision was unlawful.

The Judgment

8. The Judge, after reviewing the complicated legislative scheme that applies under the Act, first dealt with an application by the appellants for the Wanfuteng Bank to be joined as an interested party. She declined that application, reasoning that the joinder of the bank was not necessary for the Court to make a decision fairly and effectively in the proceeding.

9. She then proceeded to find that Mr Kuatpen, in his correspondence, did not give Mrs Lal an opportunity to be heard prior to making the decision that she was not a fit and proper person. She held that this was a breach of natural justice and/or procedural fairness, relying on a Court of Appeal authority for the proposition that natural justice requires that a person who is going to be affected by a decision affecting personal rights must be given an opportunity to be heard. She found that no such opportunity was given to Mrs Lal. She relied specifically on ss 9(4)(c) and 50I of the Act.

The Legislative Scheme

10. The concept of a "key person" is defined in s 1 of the Act. A key person includes a director or manager of the reporting entity. We have no doubt that Mrs Lal was a key person.

11. A "reporting entity" is defined in s 2 of the Act and it includes entities that are licensed under the Financial Institutions Act and the International Banking Act. It is common ground that the Wanfuteng Bank is a reporting entity. Section 4 of the Act establishes a financial intelligence unit and defines its functions and powers. It is common ground that Mr Kuatpen was employed by the VFIU when the letter of 2nd November 2024 was sent. It is also common ground that s 8(a) of the Act gives the VFIU the task of supervising reporting entities for compliance with the Act.

12. Section 9 of the Act sets up a register of reporting entities. Under s 9(6) it is stated that in deciding whether a reporting entity meets fit and proper criteria, the Director of the VFIU must have regard to certain matters related to key persons:

> *(6) In deciding under paragraph (4)(c) or (5)(b) whether a reporting entity meets fit and proper criteria, the Director must have regard to whether any of the key persons of the reporting entity:*
>
> *(a) have been convicted of an offence or are subject to any criminal proceedings; or*
>
> *(b) are listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act ... or a financial sanctions list under the law of any jurisdiction.*

13. Contravention of s 9(1) by a reporting entity is an offence punishable upon conviction by a fine not exceeding VT25 million or imprisonment not exceeding 15 years, assuming that the reporting entity is a natural person. If the reporting entity is a body corporate it is susceptible to a fine not exceeding VT125 million. The same sanctions are provided if the reporting entity does not give the Director written notice of a change of details required for the purposes of registration within 14 days after the change occurs. Under s 9B(1) and (2) a reporting entity not regulated by a domestic regulatory authority must notify the Director of changes to key persons, although that section would not appear to apply as the Wanfuteng Bank is regulated by a domestic regulatory authority.

14. We record that these provisions of the Act relate to the reporting entity and not office holders within that entity. We do not accept the submission for the respondents that s 9 applied to the actions against Mrs Lal. The relevant part of the Act in relation to her role as an office holder in a reporting entity was s 50.

15. Section 50 of the Act sets out the enforcement measures that the Director of the VFIU can take if the Director has reasonable grounds to believe that a reporting entity has failed to comply with an obligation under the Act. Section 50I gives the Director the power to remove a director, manager, secretary or other officer of a reporting entity. Section 50I and 50J read as follows:

> ***50I. Power to remove a director, manager, secretary or other officer of a reporting entity***
>
> *(1) The Director may in writing direct a reporting entity to remove a person who is a director, manager, secretary or other officer of the reporting entity if the Director is satisfied that the person is a disqualified person within the meaning of section 50J.*
>
> *(2) Before issuing a direction, the Director must give to the reporting entity a written notice requiring the reporting entity and the person proposed to be removed to make submissions to the Director on the matter within a reasonable period specified in the notice.*

(3) *The Director must review any submission received and decide whether or not to issue the direction.*

(4) *A direction takes effect on the day specified in the direction, which must be at least 7 days after it is made.*

(5) *If the Director directs a reporting entity to remove a person, the Director must give a copy of the direction to the person removed.*

(6) *If a reporting entity fails to comply with a direction, the reporting entity commits an offence punishable upon conviction by:*

(a) *in the case of an individual – a fine not exceeding VT 25 million or imprisonment for a term not exceeding 15 years, or both; or*

(b) *in the case of a body corporate – a fine not exceeding VT 125 million. [Emphasis added]*

50J. Disqualified person

(1) *A person is a disqualified person if, at any time, the person:*

(a) *has been convicted of an offence under this Act; or*

(b) *has been a director or directly concerned in the management of a reporting entity in Vanuatu or any other country which has had its licence revoked or has been wound up by the Court; or*

(c) *has been convicted by a court for an offence involving dishonesty; or*

(d) *is or becomes bankrupt; or*

(e) *has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or*

(f) *has compounded with his or her creditors; or*

(g) *is listed on a United Nations financial sanctions list, a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under the law of any jurisdiction; or*

(h) *does not meet any other fit and proper criteria prescribed by the Regulations.*

16. It is important to note the words of s 50J(2) and (3) which provide:

(2) *A disqualified person must not act or continue to act as a director, manager, secretary or other officer of any reporting entity unless the Director gives his or her written approval for the person to do so.*

(3) *If a person contravenes subsection (2), the person commits an offence punishable upon conviction by:*

(a) *in the case of an individual – a fine not exceeding VT 15 million or imprisonment for a term not exceeding 5 years, or both; or*

(b) in the case of a body corporate – a fine not exceeding VT 75 million.
[Emphasis added]

Approach to judicial review

17. The case concerns the relatively common situation of there being an express legislative provision which provides for a degree of procedural fairness. It is part of the process of considering whether a person is a fit and proper person in terms of the Act. We comment as a general proposition that the power that the VFIU has under the Act to declare someone not a fit and proper person is an unusual and arguably draconian power. The structure of the Act is such that if a person is declared to be a disqualified person in terms of s 50J of the Act, that person under s 50J(2) must not act or continue to act as a director, manager, secretary or other officer of the reporting entity, unless the Director has given his or her written approval. In other words, the employment of a senior executive can effectively come to an end if a decision under s 50I is made by the Director that a person in a reporting entity should be removed.

18. It is not surprising therefore to see in s 50I(2) a requirement that the Director, before issuing a direction, must give to the person proposed to be removed the opportunity to make submissions to the Director on the matter within a reasonable period. In other words, s 50I(2) makes statutory provision for a right to be heard, not necessarily in person, but through a submission that at least must be able to be sent and received in writing. The Director must then review that submission before deciding whether or not to issue a direction.

19. It is also conceded in our view correctly by the appellants that the rules of procedural fairness enforceable by judicial review apply to the power to remove under ss 50I and 50J. The question arises as to the relationship between that statutory provision for procedural fairness, and the general common law obligation, enforceable by judicial review. That is the right to be heard before an entity with powers such as the VFIU makes a decision on a matter affecting a person's rights.

20. In addition to the common law, the right to the protection of the law in relation to rights is enshrined in Article 5(1)(d) of the Vanuatu Constitution. As noted below by the Supreme Court, quoting from *Michel v President of the Republic of Vanuatu*, this constitutional provision "incorporates the fundamental rules of natural justice that [are] part and parcel of the common law".[1]

21. In cases where there is no specific provision setting out a procedure that protects a person from unfairness, procedural fairness is still required. As was first stated in *Cooper v Wandsworth Board of Works*:[2]

> *"... although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."*

22. The principle in *Cooper v Wandsworth Board of Works* was re-affirmed in *Wiseman v Borneman*.[3] In that case the House of Lords considered a provision under England's Finance Act 1960 concerning securities transactions that could be used to avoid tax. The statutory procedure involved a notice to the taxpayer from the Commissioner of Inland Revenue, a statutory declaration in response from the taxpayer, followed by a counter-statement by Inland Revenue. The three documents were then presented to a Tribunal to determine if there was a prima facie case for proceedings against the taxpayer. The question was whether natural

[1] *Michel v President of the Republic of Vanuatu* [2015] VUCA 14 at [25].
[2] *Cooper v Wandsworth Board of Works* (1863) 14 CBNS 180 at 194, 143 ER 414 at 420 per Byles J.
[3] *Wiseman v Borneman* [1971] AC 297 (HL), [1969] 3 All ER 275.

justice required the taxpayer be able to see and respond to the counter-statement. Although unanimously finding natural justice did not require this, Lord Reid wrote:[4]

> *"Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard and fast rules. For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."*
> *[Emphasis added]*

23. In d'*Imecourt v Manatawai*, the Chief Justice of Vanuatu challenged a constitutional order terminating him as Chief Justice and an immigration order declaring him to be an undesirable immigrant.[5] The Supreme Court quashed both orders, in part because of a lack of fair hearing and relying on a passage from *Wiseman v Borneman*:

> *In particular it is well established that when a statute has conferred on any body the power to make decision affecting individuals the Court will not only require the procedure prescribed by the statute to be followed but will readily imply so much and no more to be introduced by way of additional procedural safeguard as will ensure the attainment of fairness.*

24. The only other case in Vanuatu engaging with these issues is *Willie v Public Service Commission* which concerned the compulsory retirement of a public servant, without any reasons being given.[6] In that case, the court only briefly addressed an argument that an article in the constitution enshrining the independence of the Public Service Commission excluded judicial oversight. This was rejected, with reference to *Cooper v Wandsworth Board of Works*.

25. These principles have been applied in New Zealand. In *Ngati Apa Ki Te Waipounamu Trust v Attorney-General*, Keith J wrote:[7]

> *The justice of the common law, Willes J memorably said 140 years ago, will supply the omission of the legislature (Cooper v Wandsworth Board of Works (1863) 14 CBNS 180 at p 194). In some of the cases to which Mr Castle referred us the Courts refused to add to the legislative requirements (for example, Wiseman v Borneman and Furnell v Whangarei High Schools Board [1973] 2 NZLR 705 (PC)) while in others they did supplement them (for example, Daganayasi v Minister of Immigration [1980] 2 NZLR 130). The principle, along with its limit, is undoubted.*

26. There will be occasions where the procedure set down by legislation is so detailed that there is no room for the rules of natural justice to be implied and called in aid. As was stated in *Whangarei High Schools Board v Furnell & Others*:[8]

> *Moreover, it is evident that the regulations have been comprehensively drawn to provide what Speight J described as "very careful procedures". ... When it is borne in*

[4] At 308.
[5] *d'Imecourt v Manatawai* [1998] VUSC 59; Civil Case 140 & 144 of 1996 (25 September 1998).
[6] *Willie v Public Service Commission* [1993] VULawRp 5; [1980-1994] Van LR 634 (25 March 1993).
[7] *Ngati Apa Ki Te Waipounamu Trust v Attorney-General* [2004] 1 NZLR 462 at [36].
[8] *Whangarei High Schools Board v Furnell & Others* [1971] NZLR 782 (CA) at 791.

> *mind that the regulations were brought into existence on the recommendation of representatives of the teachers and of the School Boards I think it is clear from both their history and their content that they provide a code of disciplinary procedure which is complete and exhaustive. That must be regarded as a strong indication that the* ***regulations leave no room for any rule of natural justice to be implied****.*
> *(emphasis added)*

27. This principle was affirmed on appeal to the Privy Council where the decision in *Brettingham-Moore v St Leonards Municipality* quoted:[9]

> *The legislature has addressed itself to the very question and it is not for the Court to amend the statute by engrafting upon it some provision which the Court might think more consonant with a complete opportunity for an aggrieved person to present his views and to support them by evidentiary material...*

28. The same caution where there is a full natural justice regime set out in the legislation, can be seen in the Australian High Court decision of *Miah v Minister for Immigration and Multicultural Affairs.*[10] In that case the High Court considered a code of procedure set out in the Migration Act 1958, and McHugh J observed:[11]

> *It is highly improbable that the legislature intended to exclude all the common law requirements of natural justice from subdiv AB. There are no clear words to that effect. Where Parliament has wanted to exclude common law rules from applying to the administration of the Act, it has not hesitated to do so in clear words. ... The subject matter of the Act, the fact that it implements Australia's international obligations, and the omission of words unambiguously pointing to an intention to exclude all the common law rules of natural justice indicate that the exercise of power under subdiv AB is conditioned on the observance of those rules except where the provisions of the Act specifically supersede them.*

Application of these principles to the facts of this appeal

29. The fairness requirement set out in s 50I(2) is broadly expressed. The person proposed to be removed must be given written notice and the opportunity to make submissions.

30. The common law concepts of fairness can be applied in interpreting the meaning of this section. Clearly the written notice must fully and properly particularise the allegations adverse to the person proposed to be removed, so that they can be understood by that person and responded to by submission. The factual question in this appeal is whether this happened or not.

31. To consider this it is necessary to refer to two letters. The first of these letters is a letter 14 August 2023 relied upon extensively by Mr Loughman for the second appellant. It is addressed to Mrs Lal. We set it out in full.

> *Dear Marjana,*
>
> ***AML&CTF ACT COMPLIANCE – REQUEST FOR INFORMATION***

[9] *Furnell v Whangarei High Schools Board* [1973] 2 NZLR 705 (PC) quoting *Brettingham-Moore v St Leonards Municipality* (1969) 121 CLR 509 (HL) at 524.
[10] *Miah v Minister for Immigration and Multicultural Affairs* [2001] HCA 22; 179 ALR 238.
[11] At [128].

I refer to the above.

This office notes that work permit for the bank's AML&CTF Compliance Officer and her husband is currently under scrutiny by the Labour Department.

Further to our meeting on Thursday, 10th August 2023, this office is kindly requesting an update on what Wanfuteng Bank Limited has done to address the issues surrounding the AML&CTF Compliance Officer's and her husband's work permit (actions undertaken by the bank to respond to queries and copies of all formal correspondence between the bank and the Labour Department).

Additionally, more importantly, please note that your status as Acting CEO is still under review and that you must be mindful of the previous allegations against you as a co-conspirator to the former WBL CEO, Ms Catherine Le Bourgeois, whose initial attempts to exert undue influence on the bank's AML&CTF CO, was by way of threatening to seek cancellation of the couples' work permits. This office also has evidence in relation to the bank's former General Manager, whose previous responsibilities, which she failed, were to properly update requirements of the work permits in question, later indirectly exerting undue pressure in relation to the same work permits which she failed to properly document and update with the Labour Department.

Kindly provide the above requested information by midday, Wednesday 16th August 2023. Should you require further information please do not hesitate to contact this office.

32. It is very difficult to understand what this letter is saying. It is referring, in the first few paragraphs, to the work of the compliance officer and her husband and actions in relation to her. Mrs Lal was not the compliance officer. It is then stated that Mrs Lal's status as acting CEO is under review and that she should be mindful of previous allegations against her as a co-conspirator in relation to the threats to cancel the compliance officer's work permit. It also gives reference to evidence in relation to the bank's former general manager. It is stated that "the above requested information" is to be provided within two days.

33. A fair reading of this letter does not show what information is in fact sought and requested. It is not possible to understand the detail of any concerns that the VFIU might have about Mrs Lal. Crucially she has clearly not been put on notice that under s 50I the Director is proposing to remove her from her position. There is no reference to her position being under threat. There is no request for a submission.

34. It is not clear what follow-up took place in relation to this letter of 14 August by either the VFIU or Mrs Lal. In any event the next document adduced in evidence was the critical email of 2 November 2023. In terms of evaluating the provision of an opportunity to be heard to Mrs Lal, this is the critical letter. It is necessary to set this out in full.

Dear Bob,

AML&CTF COMPLIANCE - FIT & PROPER REVIEW - MARJANA LAL

I refer to the above.

This office notes Mrs. Marjana Lal's appointment as Acting Chief Executive Officer to Wanfuteng Bank Limited dated 25" June 2023.

Upon review of Mrs. Lal's AML&CTF Fit and Proper status, this office notes the following:

- *Mrs Lal was found to be influencing HR functions as opposed to enabling an independent Human Resource function. This is contrary to clause 15B(f) of the AML&CTF Regulations;*

- *During the follow-up onsite visit to WBL, this office noted that Mrs. Lal did not contribute in implementing the recommendations of the first onsite report. Mrs. Lal was allocated tasks as part of WBL's remedial actions, however, she showed wilful ignorance to comply. This is contrary to clause 15B(f) of the AML&CTF Regulations;*

- *Mrs. Lal has breached protection and secrecy provisions under the AML&CTF Act by exposing Mrs. Sharlene Rajah's confidential discussions to unauthorized persons and thereby tarnishing her professional work relationships and endangering her personal safety;*

- *Mrs. Lal was found to being [sic] dishonest with this office. She claimed, in almost all meetings with this office, that she will be compliant with all of FIU instructions and will ensure WBL rectifies all issues identified. This office has evidence that Mrs. Lal was opposing FIU's instructions via emails to influence the EXCO team. This is contrary to clause 15B(e) of the AML&CTF Regulations; and*

- *Mrs. Lal has demonstrated actual conflict of interest in relation to WBL's AML&CTF Compliance Officer's work permit. Recent developments in relation to said work permit suggests that Mrs. Lal has been feeding confidential information to the Department of Labour with the intention that it will affect the status of the work permit. This is in contrary to clause 15B(g) of the AML&CTF Regulations.*

As such, I do not find Mrs. Lal as being a fit and proper person in accordance with the Anti-Money Laundering and Counter-Terrorism Financing Fit & Proper criteria.

Given that she is occupying a position that is significant to the ongoing operations of the bank, kindly arrange for an interim replacement in the role of Acting CEO and provide for our AML&CTF fit and proper review at the earliest.

Should you require further information, please do not hesitate to contact this office.

35. The first and most fundamental deficiency, if this letter is to constitute notice under s 50I(2), is that it is not addressed to Mrs Lal. Therefore, it is not giving the person proposed to be removed any opportunity to make submissions however it is interpreted. She did not receive this letter.

36. The second thing to be noted about it is that the letter even if it had been addressed to her, does not give any opportunity for Mrs Lal make submissions. It is expressed in absolute terms: "... I do not find Mrs Lal to be a fit and proper person in accordance with the [Act]". It is stated in peremptory terms that the bank should "kindly arrange for an interim replacement in the role of Acting CEO". It is clear from these words that the decision had been made that Mrs Lal must be replaced forthwith. This clause in the letter is then followed by the request that the bank should provide the VFIU with a "fit and proper review at the earliest". We construe this as meaning that the interim replacement person employed to replace Mrs Lal needed to be subject to a fit and proper review.

37. Finally, the letter does not, in any event, particularise in a satisfactory way what the allegations are against Mrs Lal. The allegations are expressed in general terms – "found to be influencing – not contribute – breach protection and secrecy provisions – being dishonest – being in an actual conflict of interest position". No

dates or details are given which would enable anyone to respond in detail and in a satisfactory way to these allegations. We are quite unable to see how any clauses in this letter are providing Mrs Lal with an opportunity to answer allegations against her.

38. It is clear therefore that that letter of 2 November 2023, as with the letter of 14 August 2023, is not written notice to Mrs Lal requiring her to make submissions. That requirement has simply not been met which means that the Director has proceeded to require Mrs Lal's removal in breach of s 50I(2) the Act and therefore unlawfully.

39. Mr Loughman submitted to us that Mrs Lal did not need to resign and that this was an overreaction by her and the bank. The Supreme Court Judge did not accept this and nor do we.

40. The letter of 2 November 2023 is conclusory. Mrs Lal has been found to be not a fit and proper person. She is to be replaced. The wording is imperative: "... kindly arrange for an interim replacement ..." It is perfectly understandable that the bank the next day directed Mrs Lal to immediately vacate the role of acting CEO. If that was not done the bank was at significant risk of the VFIU publishing a notice of non-compliance and seeking an injunction from the Court that could stop the bank from trading.

41. Mrs Lal had to obey this direction or she was at risk of committing a serious criminal offence involving a penalty of up to five years in prison if she continued in office. The prohibition in s 50J(2) was absolute that a person could not act or continue if disqualified. She could not rationally run the risk of breaching that, so it was perfectly understandable that she complied with the direction of Wanfuteng Bank and resigned on 6 November 2023.

42. We therefore find that there was a breach of the clear words of s 50I(2) which means that the appellants acted unlawfully and unfairly in removing Mrs Lal from her office.

43. For the avoidance of doubt, we also record that a letter of 24 March 2024 from the appellants to Mrs Lal's lawyer referred to by the appellants could also not be remotely regarded as the provision of notice under s 50I(2). The damage had been long done by them and Mrs Lal had lost her job.

44. Therefore, we propose upholding paragraph 75 of the Supreme Court Judge's decision which reads as follows:

> *Judgment is **entered** for the Claimant and it is declared as follows:*
>
> *a) Declaration that there were no reasonable grounds for the decision of the First Defendant by letters dated 2 November 2023 and 24 March 2024 to determine that the Claimant was not a fit and proper person under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 as amended (the 'Act');*
>
> *b) Declaration that before the First Defendant made his decision by letters dated 2 November 2023 and 24 March 2024 determining that the Claimant was not a fit and proper person under the Act, the Claimant was not afforded natural justice and/or procedural fairness; and*
>
> *c) Declaration that the First Defendant's decision by letters dated 2 November 2023 and 24 March 2024 determining that the Claimant was not a fit and proper person under the Act was unlawful and is quashed.*

45. We also record that we entirely endorse the decision of the Supreme Court Judge not to join the Wanfuteng Bank as a further party. This is a judicial review proceeding concerning the conduct of the VFIU. The bank was on the sideline in relation to the events in question, and as we have found, had no alternative but to accept the direction of the VFIU. We can see why the bank was not joined, because as the Judge held, there was no relevant claim against it in relation to Mrs Lal's claim.

46. Finally, we record that because of the difficulties resulting from the earthquake, the appeal papers were lodged out of time. Mr Morrison has sensibly not contested an application for an extension of time and the extension of time is granted.

Result

47. An extension of time is granted, but the appeal is dismissed.

48. We award costs in favour of the appellant in the sum of VAT75,000

DATED at Port Vila, this 16th day of May, 2025.

BY THE COURT

Hon. Chief Justice Vincent Lunabek

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU