

**BETWEEN: BERMOS MALCEKAN, YANKEE STEVEN
& SANO IAPSEN NATUMAN**
Applicants

AND: CHEN JINQIU
First Defendant

AND: MATTHEW GROSE
Second Defendant

Date of Hearing of Application: 18 February 2026

Before: Hon. Chief Justice Vincent Lunabek

Counsel: J. Vohor for the Applicant (via Telephone from Luganville, Santo).
B. Emelee for the First & Second Defendant.
The Second Defendant is not present and not represented despite being served.

Reasons for refusing to grant interlocutory orders and for striking out the claim

Introduction

1. On 5 and 18 February 2026, I held conference hearings and heard Counsel jointly on the following, after the Court is satisfied that all parties including the Second Defendant were served with all Court documents:
 - a) The claimants' urgent application for restraining orders against the First and Second defendants filed on 9 December 2025;
 - b) The First defendant's application to strike out the claimants/applicants' application for restraining order filed 22 January 2025;
 - c) The application of the First defendant to be removed as a party in the Supreme Court in civil case no. 3765 of 2025 and or strike out the claim.
2. On 18 February 2026, I struck out the claimants' urgent application for restraining orders. I enquire into the nature and legal cause of action into the Supreme Court claim in cc 3765 of 2025. Instead of just removing the First defendant in civil case 3765 of 2025 pursuant to his application, I struck

out that claim in its entirety. The reasons of the decisions I made on 18 February 2026 are set out below.

Background

3. The claimants / applicants filed a Supreme Court claim in Civil case No. 3765 of 2025 on 9 December 2025.
4. The claimants claim for the following declarations and orders:
 - a) An order to quash the decision made on 28 May 2021 by the members of the Club de Sanma Limited.
 - b) A declaration order that the First and Second defendants acted ultra vires and without authority.
 - c) A declaration order that the decision and termination process was procedurally unlawful and void.
 - d) A declaration order that the decision and termination is null and void.
 - e) An order for compensation or damage against the First and Second defendants for loss of earning, loss of position and reputation and emotional distress resulting from unfair dismissal and wrongful action to be assessed by the court.
5. On the same date of 9 December 2025, the applicants file an urgent application for restraining orders against the First and Second defendants.
6. In that urgent application, the applicants apply for orders that:
 - a) The First and Second respondents are restrained from entering the building of Club de Sanma and maintain 100 meters radius from Club de Sanma.
 - b) The First respondents and agents and associates are restrained from conducting any business activities within the perimeters of Club de Sanma premises.

- c) That the First and Second Respondents deliver the keys of Club de Sanma building to Sheriff of Court house at Luganville, Santo.
7. The ground for the restraining orders are that:
 - a) The applicants have registered a caution upon land which the building structure of Club de Sanma building is located.
 - b) The applicants have also lodged a criminal complaint with the police at Luganville, Santo involving the second respondent, namely Mathew Grose and G.S.I. Limited.
8. The application of restraining orders is supported by a sworn statement of Bermos Malcekan filed on 9 December 2025. The sworn statement of Bermos Malcekan attached, among other matters, a copy of unregistered caution to Land Lease on the Club de Sanma, Santo, and a copy of the complaint of Mr. Bermos Malcekan to the police. The complaint was dated 17 October 2025. One of the bases of the complaint was that the sale of Club de Sanma to Northern gaming Services Limited was made in a manner which was not straight as Mr. Bermos Malcekan, as the Vice – President and board of Directors of Club de Sanma, did not receive any money of the sale of Club de Sanma.
9. A sworn statement of urgency was filed by Counsel Jim Vohor and an undertaking as to damages was filed by Bermos Malcekan on 9 December 2025.
10. On 22 January 2026, the First defendant filed two applications:
 - a) The First Defendant filed an application to strike out the applicants' urgent application for restraining orders.
 - b) The First defendant filed an application to remove himself (First defendant) from the Supreme Court claim in Civil case No. 3765 of 2025 or strike out the claim.
11. The First defendant advanced the grounds for application to strike out the applicants' urgent application for restraining orders on the following:
 - a) The Applicants' application has no legal standing and is an abuse of process.

- b) The First defendant is the lawful purchaser of the lease of Northern Gaming Services Limited where the building of Club de Sanma is located.
 - c) Club of Sanma Limited is not the owner or proprietor of the lease or assets.
 - d) The applicants now seek to restrain the First Respondent from entering the premises and operating business, based solely on internal disputes within Club de Sanma Limited's board, which have no legal relevance to the First defendant.
 - e) Club de Sanma Limited as a legal entity has been deregistered and it is not the registered lessee.
 - f) The claimants do not show any interest in the building "Club de Sanma" or in the Lease No. 03/0183/023.
 - g) No allegations of any wrong doing by the First defendant, no claim of legal or equitable rights and no cause of action to be heard based on the authority of Teaching Service Commission - v – Director General in the Ministry of Education and Training [2024] VUCA1, Civil Appeal case 3416 of 2023 (16 February 2024).
12. On 22 January 2026, Jinqiu Chen filed a sworn statement in support of the First defendant's application to strike out the Applicants' urgent application for restraining orders and in support of the application to remove the First defendant as a party to the Supreme Court claim or strike out the claim.
13. The sworn statement of Jinqiu Chen attached a copy of the company extract that Club de Sanma Limited has been deregistered. The First defendant purchased the lease and the business assets from Northern gaming Services Limited based on the representations made by Northern gaming Services Limited through its Director and Shareholders. The caution of the Applicants is unregistered.
14. On 13 February 2026, Mr. Bermos Malcekan filed a further sworn statement in support of the restraining orders and in response to the First Defendant's application to strike out application for restraining orders or strike out the claim.
15. The Court of Appeal judgement in the Teaching Service Commission -v- Director general in the Ministry of Education and Tranning [2024] VICA 7; Civil Appeal case No.3416 of 2023 (16 February 2024) set out the test required to allow urgency as a threshold

requirement for considering and granting or refusing injunctive orders in Rules 7.2 to 7.5 of the Civil Procedure Rules 2002 (CPR), when the court stated at [60] [61], [62], [63], and [64]:

"[60] Rule 7.5 should not be used by trial courts to assess whether to grant an interlocutory order when the application has been filed at the time or subsequent, to the filing of proceedings. There are good reasons why this is so. A Rule 7.5 application will be before there are any pleadings. It will typically involve an urgent request to stop an action by another. It will typically be sought without serving the other potential party with the relevant documents to the potential litigation. And so, the court will not have the benefit of opposing evidence or submission. These factors all point to the need for caution by the court in granting such an injunction. The standard in R 7.5(3) reflects such a need. The standard an applicant is required to reach for such an interim injunction is therefore properly high. These factors, other than possible urgency, will not apply when there is an interlocutory application in proceedings which are current. The Court will have the benefit of pleadings and a contest on the facts and law.

[61] Rule 7.2 of the Vanuatu Civil Procedure Rules applies to the applications for interlocutory injunctions filed at or after the proceeding are filed. No guidance is given to Counsel, or the Courts on the standard to be applied when seeking such an injunction.

[62] Given the absence of guidance we consider it may therefore be helpful if the Court summarises the approach in New Zealand and Australia to interlocutory applications made at the time or after the filing of proceedings.

[63] The position in New Zealand and Australia as to the elements the Court should consider in an application for an interlocutory order are similar. (See Klissers Farmhouse Bakeries Ltd v Harvest Bakeries [1985] NZLR 129 (HC and CA)140; Samsung Electronics & Co. Limited v Apple Inc. [2011] FCAFC 156; De Smiths Principles of Judicial Review (Second edition), Woolf, Jowell, Donnelly and Hare QC 15-07- to 1507).

[64] They are in summary: -

- (a) The first enquiry is what are the legal or equitable rights in the case before the court and does the injunction relate to those rights in the meantime? The purpose of an injunction is to preserve those rights;*
- (b) Is there a serious question to be tried in the litigation? This is the New Zealand test. In*

Australia the test is perhaps slightly different. In Australia, the test is whether the claimant has made out a prima facie case in the sense that, if the evidence filed at the time of the interlocutory application remains the same at trial will the claimant probably be entitled to the relief sought?

- (c) *The balance of convenience test. Here the court must balance the risk of refusing the order and doing a possible injustice to the applicant, against the grant of the order and doing a possible injustice to the respondent. There will be a variety of relevant factors. They are likely to include the attraction of preserving the status quo; the claimant's need to show injury that could not be adequately met by damages; whether there is a viable undertaking as to damages, such that if the injunction is granted whether the respondents may be able to enforce the undertaking if later needed; and*
- (d) **Overall justice.** *Here the court might consider whether the applicant comes to court with clean hands. This part will require the judge to make an overall assessment of where justice might lie in granting or refusing the application".*

16. In the circumstance of the present case, the application for interlocutory injunctions was filed at the proceedings under Rule 7.2 of CPR. With the extent of pleadings and evidence available in the present case, I accept the following submissions of the First defendant based on the Teaching Service Commission – v- The Director general in the Ministry of Education and Training [2024] VUCA 7: -

- a) The first enquiry is what are the legal or equitable rights in the case before the court and does the injunction relate to those rights in the meantime? The purpose of an injunction is to preserve those rights –
- I. Here, the Applicants/ claimants have no legal or equitable rights in the case they have filed before the court and the injunctions sought.
 - II. There are no pleadings or evidence against the First defendant showing knowledge, causation or contribution to any dealings between Club de Sanma or Northern gaming Services Limited.
 - III. The Applicants/claimants are neither Directors or shareholders of Club de Sanma Limited. The Applicants and Club de Sanma were not the registered lessee of Lease Title No. 03/0183/023.

- IV. The registered lessee was Northern gaming Services Limited, registered on 19 February 2024 before it was transferred to the First Defendant.
- b) Whether the claimants have made a prima facie case in the sense that, if the evidence filed at the time of the interlocutory application remains the same at trial will the claimants probably be entitled to the relief sought?
- I. The evidence of the Applicants/claimants at the time of the interlocutory application is defective considering that the grounds sought for the granting of interlocutory orders are based on an unregistered caution and the Applicants and counsel have asserted and entered evidence that is false.
 - II. The caution in the sworn statement of Bermos Malcekan dated 9 December 2025, annexure "BM1" and it was not registered on 28.02.25 as stated. The 28.02.25 date refers to the date in which the caution had been stamped for stamp duty with the Vanuatu Financial Services Commission.
 - III. The caution seems to be invalid as the applicants/claimants are alleging being the Directors of Club de Sanma Limited when in their claim they admitted they stopped to be such directors in May 2021.
- c) The balance of convenience test. Here, the Court must balance the risk of refusing the order and doing a possible injustice to the applicants, against the grant of the order and doing a possible injustice to the respondent. There will be a variety of relevant factors. They are likely to include attraction of preserving the status quo; the claimants' need to show injury that could not be adequately met by damages; whether there is a viable undertaking as to damages, such that if the injunction is granted whether the respondents may be able to enforce the undertaking if later needed.
- I. The court in refusing the Applicants' interlocutory application would not be doing an injustice against the First defendant as a bona fide purchase of the lease of Club de Sanma. The prejudice of the First

defendant is real with a real risk of major financial loss of his income as a bona fide purchaser.

- d) Overall justice. Here, the court might consider whether the applicants come to court with clean hands. This part will require the judge to make an overall assessment of where justice might lie in granting or refusing the application.
 - i. In this case, the interlocutory application has not satisfied the test in the Teaching Service Commission -v- Director general in the Ministry of Education and Training [2024] VUCA7.
 - ii. The Applicants have no legal standing to seek restraining orders against the First Defendant. The First defendant request to strike out the Applicants' application for restraining orders must be successful.

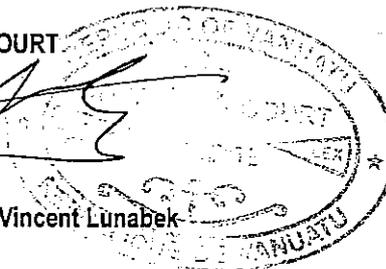
17. As to the Application of the First defendant to be removed as a party to the Supreme Court claim in Civil case No. 3765 of 2025 or strike out the claim. The following are noted: -

- a) The claim in Cc 3765 of 2025 challenged the lawfulness and validity of a decision made by the Board of Club de Sanma on 28 May 2021, replacing the claimants by other members of the Board of Club de Sanma.
- b) The Claimants/Applicants seek quashing orders and declaratory orders of prerogative nature of a judicial review type claim in a normal civil claim. Since the decision of 28 May 2021 (which is under the challenge here) to 9 December 2025 when the claim was filed, 4 years and 7 months have passed.
- c) The claim and the remedies sought are of prerogative type of a Judicial Review claim. The claimants decided not to file a judicial review claim.
- d) The Court questioned Mr Vohor as to why no claim of judicial review was ever filed within 6 months after the Club de Sanma made its decision to remove the claimants on 28 May 2021, pursuant to Rule 17.5(1) of the Civil Procedure Rules (CPR).
- e) Mr Vohor informed the Court that he was aware that 6 months had passed since the decision of 28 May 2021. He admitted he has deliberately filed the claim as if it was a normal civil claim claiming for quashing order and declaratory orders.

- f) The claim in Cc3765 of 2025 is a bad claim. It is filed in breach of Rule 17.5(1) of the CPR.
- g) As the claim was filed on 9 December 2025 with the deliberate decision of Counsel for the Claimants knowing the true position of the relevant rules, but in any event, he filed a claim seeking remedies of prerogative nature, the claimants could not obtain in a normal civil claim, it became an abuse of the process of the Court. Mr Vohor should advise the claimants there and then. He did not do so. There was no application for an extension of time for making a claim. Even if there was an application to extend the time, no such application be ever successful after 4 years and 7 months had passed since the decision of the board of Club de Sanma of 28 May 2021.
18. The claim must be struck out because any amendment (if any) to the pleadings or the claim is not going to remedy or improve the pleadings or the nature of the claim filed in Cc 3765 of 2025.
19. The First Defendant applies for costs to be awarded to him on indemnity basis. Mr Vohor said he is not going to make submission on this. The circumstance of this case justifies that indemnity costs be awarded to the First Defendant against the claimants.
20. The Court makes the following orders:
- (a) The Applicants' application for interlocutory orders is struck out;
 - (b) The Supreme Court claim in CC3765 of 2025 is struck out;
 - (c) The indemnity costs are awarded to the First Defendant against the claimants.

Dated at Port Vila, this 20 February, 2026.

BY THE COURT



Hon. Chief Justice Vincent Lunabek