

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

**Constitutional
Case No. 26/247 SC/CNST**

BETWEEN: THE PROPRIETORS – STRATA PLAN
NO.0001
Applicant

AND: REPUBLIC OF VANUATU
Respondent

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

**Constitutional
Case No. 16/248 SC/CNST**

BETWEEN: BREAKAS BEACH ESTATE LIMITED
Applicant

AND: THE REPUBLIC OF VANUATU
Respondent

Date of First - Conference Hearing: 27 February 2026

Coram: Hon. Chief Justice Vincent Lunabek

Counsel: Mr. Hurley for both Applicants in both cases.
Ms./ Roberts for Respondent in Court case No. 248 of 2026 and
Ms. Roberts holding papers for Mr F. Bong in Constitutional case No. 247 of 2026.

Decision on First Conference hearings in two joint Constitutional applications

1. A first – conference hearing was held on 18 February 2026 but adjourned to 27 February 2026 at 2:00 pm in both Constitutional applications.
2. On 27 February 2026, I enquired into both Constitutional applications in order to be satisfied if each case has a constitutional foundation.

Constitutional case No. 248 of 2026

3. The Applicant in Constitutional case no. 248 of 2026 is Breakas Beach Estate Limited (BBEL), a local Company registered in the Republic of Vanuatu pursuant to the provisions of the companies Act [CAP 191] and re-registered pursuant to the provisions of the companies Act No.25 of 2012 (As amended).

4. The Applicants (in Constitutional case 248 of 2026) is the registered lessee of leasehold title no. 12/0844/185 (185 title).
5. Mr. Gary James Burton of Port Vila, Vanuatu, is the sole Director of the Applicant company. In his sworn statement filed 11 February 2026, in support of the applicant in Constitutional case 248 of 2026, he deposes, among other matters, the followings: -
 - a) Prior to Breakas Beach Estate Limited (BBEL) becoming the registered lessee of the 185 title on 29 December 2006, there was no road on the land over which the 185 title is registered.
 - b) Breakas Beach Estate Limited (BBEL) negotiated with purported custom owners, including Bruce Kalotrip Kalotiti, to obtain access over adjacent land to extend its subdivision over the land that became registered leasehold title no. 12/0844/129 (129 title). BBEL went to considerable expense in the process only to have a purported owner grant leasehold title no.12/0844/148 (148 title) to Sarah Paton over that adjacent land in or about July 2005. Ms.Paton consented to the surrender of the 148 title so that the leasehold title no.12/0844/184 (184 title) could be registered in Ocean Breeze Estate Limited's (OBEL) favour on 7 July 2006.
6. At pages 1 to 16 of Gary James Burton's statement, a true copy of the registered lease for the 185 title, including the registered survey plan was exhibited. Prior to OBEL building the road shown on that registered survey plan, there was no road over that land. At best, there was a "bush track".

Constitutional case No.247 of 2026

7. The Applicants in Constitutional case No 247 of 2026, is the Proprietors – Strata Plan No. 0001 of the Port Vila, Vanuatu.
8. The Applicants became the lessee of the 129 title upon registration of Strata Plan No.0001.
9. Mr. Gary James Burton filed a sworn statement on 11 February 2026 in support of the Constitutional case No. 247 of 2026 and he deposes to the followings: -
 - a) He is sole Director of Breakas Beach Estate Limited (BBEL). BBEL is the registered owner of 28 of the 31 lots in Strata Plan 0001.

- b) He is the chairman of the Council of the Applicant.
- c) Prior to BBEL becoming the registered lessee of the 12/0844/129 (129 title) on 11 February 2005, there was no road on the land over which the 129 title was registered.
- d) At page 4 of Gary James Burton's statement, a true copy of the registered survey plan for the 129 title was exhibited (GJB 1). The "road 12 M wide" show (in the top right corner) on that survey plan was a result of BBEL negotiating with persons whom it understood were the custom owners, including, Bruce Kalotrip Kalotiti, to obtain access over the then unregistered land.
- e) BBEL had negotiated with those purported custom owners to obtain a lease over the land adjacent to the 129 title to extend its subdivision onto the land. BBEL went to considerable expense in the process only to have a purported owner grant leasehold title no. 12/0844/148 (148 title) to Sarah Paton over that adjacent land in or about July 2005. Ms Paton consented to the surrender of the 148 title so that the leasehold title no.12/0844/184 (184 title) could be registered in Ocean Breeze Estate Limited's (OBEL) favour on 7 July 2006.
- f) At page 2 of the statement of Gary James Burton, a true copy of the first page of Strata Plan No.0001 registered on 11 February 2005 over the 129 title is attached.
- g) The reference on the survey plan for Strata Plan No.0001 to "Easement A – Easement for Services and Rights of Way (10 M)" is an easement and right of way for the sole benefit of the Strata lot owners. That easement was built by BBEL.

- 10. On 16 September 2025, the Applicants in the both Constitutional Applications learned that the Minister of Infrastructure and Public Utilities made a declaration under the Public Roads Order No. 156 of 2019 dated 10 December 2019 published in Gazette No.16 dated 6 March 2020 (Declaration).
- 11. Under clause 1 of the Declaration roads on the "urban area of the island of Efate referred to in schedule 1 are declared as public road"
- 12. Part of "PVR 166 (Pango area)" in the Declaration is the road that was built by BBEL on the 185 title, in or about 2006 at an estimated costs of Vt 12,000,000 (BBEL incurred substantial additional and water services and access agreements with other parties). The road that BBEL built is approximately 522 metres in length (case 148/2026).

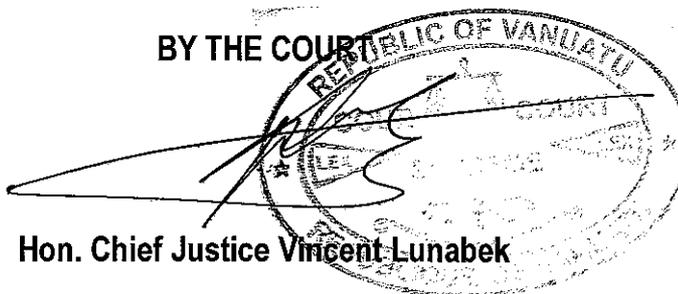
13. Part of "PVR 166 (Pango area)" in the Declaration is road that was built by BBEL on 129 title, in or about 2006 at an estimated costs of Vt 20,000,000 (BBEL incurred substantial additional expenditure for Unelco to install power and water services). The road that BBEL built is approximately 850 metres in length. The Declaration does not include approximately a) 160 metres (close to the cemetery) and b) 150 metres (leading down to Lot 24 in Strata Plan No. 0001) of the road that BBEL built. At page 3 of Gary James Burton's statement, a true copy of yellow shaded lines showing those two parts of the roads that BBEL built that are not part of the Declaration (case 147 of 2026).
14. In both cases, prior to the Declaration being made, neither the Minister nor anyone on his behalf gave the Applicants notice of his intention to make the Declaration. The Respondent in both cases, has not offered to pay or paid any compensation to the Applicants as a result of the Declaration.
15. The Applicants say in each and both cases that the Declaration by the Minister of Infrastructure and Public Utilities under the Public Roads Order No. 156 of 2019 dated 10 December 2019 in respect of "Unique Road Number" 6777, described as "PVR 166 (Pango area)" purports to unjustly deprive them of their respective properties without any or just compensation in contravention of Article 5(1) (j) of the Constitution.
16. Mr. Hurley further submitted that there are other legislations such as the Land Acquisition Act which has a regime of giving parties a prior notice when the Minister or public authorities made declarations affecting the properties of individuals or other persons or parties. The parties can object to the Declaration; and even if the acquisition is made, there must be market compensation payment. In such an example, Parliament recognised natural Justice and due process which materialised fundamental rights under the Constitution.
17. Mr. Hurley pointed out that the Public Roads Act does not have similar regime such as the Land Acquisition Act. But the common law will still come in such a circumstance as in the case of *Kuatpen v Lal* [2025] VUCA 18. In the present case, the Declaration made by the Minister affecting the 185 title (in case 148 of 2026) and the 129 title (in case 147 of 2026) was made in contravention of the requirement under Articles 5 (1) (d) and 5 (1) (k) of the Constitution to afford the Applicants natural justice and procedural fairness.
18. Mr. Hurley submitted, the Applicants in both cases, have made out a case that is founded in the Constitution.
19. I agree with Mr. Hurley that on 27 February 2026, the Applicants in both cases made out a case under the Constitution.
20. I issued the following directions: -

DIRECTIONS

- a) The Applicants to file and service any other statements by 4 March 2026.
- b) The Respondent (Republic of Vanuatu) in both cases shall file and serve their responses/defences with sworn statements in support by 21 days ie, 25 March 2026.
- c) The Applicants to file and serve replying statements by 8 April 2026.
- d) The two Constitutional applications shall be heard together and jointly, evidence in on case can be relied on in the other case.
- e) A pre-trial conference is scheduled on Tuesday 14 April 2026 at 9 am.
- f) The costs are in the cause.

Dated at Port Vila, this 27th February, 2026.

BY THE COURT



Hon. Chief Justice Vincent Lunabek