

**UNDER: THE ANTI-MONEY  
LAUNDERING AND COUNTER-  
TERRORISM FINANCING ACT**

**AND UNDER: PART 17 OF THE CIVIL  
PROCEDURE RULES 2002**

**BETWEEN: Carpenter Motors (Vanuatu  
Limited) of PO Box 4016 Port Vila  
in the Republic of Vanuatu**  
First Claimant

**AND: John Cliff of PO Box 4016 of Port  
Vila in the Republic of Vanuatu**  
Second Claimant

**AND: Floyd Ray Mera, Director,  
Financial Intelligence Unit**  
First Defendant

**AND: Attorney General, State Law  
Office, Port Vila**  
Second Defendant

*Date of Hearing:* 26<sup>th</sup> June 2023

*Before:* Justice R.L.B Spear

*Distribution:* Mr G. Blake for the Claimants  
Mr S. Aron for the Defendants

*Date of Decision:* 30<sup>th</sup> June 2023

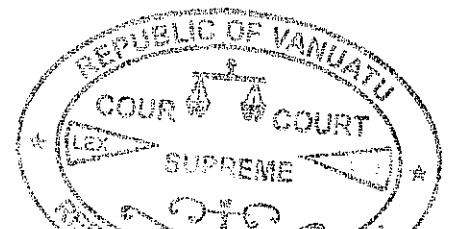
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**RESERVED DECISION**

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Introduction

1. On 15<sup>th</sup> September 2022, the first defendant (Mr Mera), in his capacity as Director of the Financial Intelligence Unit (*FIU*), directed the five major trading banks in Vanuatu to freeze all accounts for Carpenter Motors and its Manager, Mr John Cliff.



2. This claim challenges the lawfulness of the decision of Mr Mera to direct that those bank accounts be frozen. The challenge is advanced on two bases:-
  - a) First, that Mr Mera as the Director of the FIU did not have the power or the authority to issue such directives;
  - b) Secondly, if he did have such authority or power then it was unreasonable for him to have exercised that power in this case.

### Background

3. Carpenter Motors is a substantial commercial entity in Vanuatu and part of the wider Carpenter group of companies operating throughout the Pacific. Carpenter Motors in Vanuatu is primarily a car dealership and the agent for Nissan, Isuzu, Mazda and Hyundai motor vehicles as well as Massey Ferguson tractors. It also operates the Budget Car Hire business and engages in the purchase and sale of commodities including copra to produce coconut oil as well as cocoa.
4. The directives to the banks were by letter from Mr Mera of 15<sup>th</sup> September 2022 and sent to Wanfuteng Bank, ANZ Bank (Vanuatu) Limited, Bred Bank (Vanuatu) Limited, National Bank of Vanuatu and Bank South Pacific (Vanuatu) Limited. Each of the letters was in these terms:

*"15<sup>th</sup> September 2022*

*(The Banks)*

**COMPLIANCE DIRECTION –CLIFT, JOHN STEPHEN (MR); LETLET, AUGUST (MR) & CARPENTER MOTORS (VANUATU) LTD (ENTITY)**

*I refer to a report by this office on 12<sup>th</sup> September 2022, in relation to the above-mentioned individuals & entity.*

*On 8<sup>th</sup> September 2022, Mr Clift threatened Mrs Susie Jacobus, a Carpenter Motors staff and appointed AML&CTF Compliance Officer to resign or she will be terminated without full employment entitlement after which she has conducted her lawful duties under the AML&CTF Act. Mrs Jacobus resigned the next day.*

*I have information that Mr Clift breached section 32A of the AML&CTF Act by disclosing to Mr Letlet our request for information into his vehicle information.*

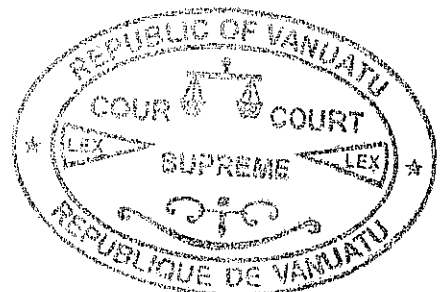
*Pursuant to section 5(1) (h) of the Anti-Money Laundering & counter-Terrorism Financing Act No.13 of 2021 ("AML&CTF Act"), placed hold on all account(s) for Carpenter Motors (Vanuatu) Ltd and Mr Clift (if any), both joint and sole account (s).*

*This direction remains effective until another direction is issued to your entity.*

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

*Yours faithfully,*

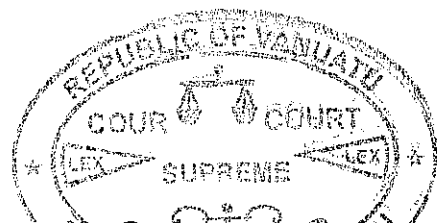
**Floyd Ray Mera**  
**Director FIU**



5. The banks are all "reporting entities" pursuant to s2 of the Anti-Money Laundering & Counter-Terrorism Financing Act 2021 (the AM Act). The banks complied with Mr Mera's directions and froze the accounts of both Carpenter Motors and Mr Cliff. The 15<sup>th</sup> September 2022 was a Thursday. No advance notice of this intended action was provided either to Carpenter Motors or Mr Cliff prior to this action being taken by Mr Mera, nor was advice given after the bank accounts were frozen.
6. The following day Friday 16<sup>th</sup> September 2022, Mr Mera wrote to the banks asking them to maintain his direction from the previous day but allow repayments of existing Carpenter Motor's loans only.
7. Carpenter Motors quickly discovered on Friday 16 September 2022 that all its bank accounts had been frozen by the banks which caused serious commercial disruption to its business - as more exactly explained by Mr Cliff in his sworn statement. Furthermore, the freezing of Mr Cliff's personal accounts caused considerable embarrassment to him and required him to borrow money from friends over the weekend.
8. Carpenter Motors engaged Mr Blake of counsel to act for it once it ascertained on Friday 16<sup>th</sup> September 2022 that its bank accounts had been frozen. Mr Blake rang the Financial Intelligence Unit to be informed that only Mr Mera could deal with this issue and that he was unavailable that day enjoying the Penama Public Holiday.
9. Mr Cliff did not discover that his personal accounts had been frozen until later that Friday 16<sup>th</sup> September 2022.
10. Carpenter Motors had, however, received a letter from Mr Mera also on 15<sup>th</sup> September advising that the FIU had identified "adverse information concerning its sales of vehicles that amounted to potential breaches of your AML&CTF registration obligations, customer due diligent obligations, record keeping obligations and reporting obligations as required under parts 3, 4, 5 & 6 of the AML and CTF Act". That letter informed Mr Cliff that the FIU would be conducting a target-based on-site examination of Carpenter Motors on Tuesday 20<sup>th</sup> September 2022. Mr Cliff states that he sent an email to Mr Mera seeking to postpone the examination as he had organised a trip to Australia to attend his daughter's 18<sup>th</sup> birthday celebrations. However, Mr Mera declined to postpone the examination and Mr Cliff cancelled his trip to Australia as he felt he needed to be present during the examination. Notwithstanding that exchange of communications on 15<sup>th</sup> September 2022, no mention was made of the decision that had already been made by Mr Mera to direct the trading banks to freeze the accounts not just of Carpenter Motors but also of Mr Cliff.
11. On Tuesday 20<sup>th</sup> September 2022, Mr Blake made an urgent application to this Court for relief from the freezing of the bank accounts. That application came before Justice Harrop who made an order setting aside, "the apparent decision of (Mr Mera) to direct the freezing of the claimants' bank accounts and denial of access to their funds". This was on the same day that the FIU target-based examination had taken place at Carpenter Motors. Justice Harrop issued the reasons for his judgment on 21 September 2022. He stated this in paragraph 13 of his decision:-

*"13. I was satisfied, in terms of rule 7.5 (3), that the Claimants (or proposed Applicants) have a serious question to be tried as to the lawfulness of the First Defendant's apparent decisions and that if the evidence remains as it is they would be likely to succeed. As I have already noted I was readily satisfied the applicants would have been seriously disadvantaged had I not made the order yesterday."*

12. On 21<sup>st</sup> September 2022, Mr Mera wrote again to each of the banks simply advising that:



*"The FIU conducted its onsite inspection on Carpenter Motors (Vanuatu) Limited ("CMVL") on 20<sup>th</sup> September 2022 and has identified possible breaches under the Anti-Money Laundering & Counter-Terrorism Financing Act No.13 of 2014 ("AML&CTF Act").*

*Pursuant to section 5(1)(h) of the AML&CTF Act, I hereby removed (sic) my Directions dated 16<sup>th</sup> September 2022.*

*However, kindly note that I will be applying enforcement measures on CMVL and its key person(s) in the coming weeks."*

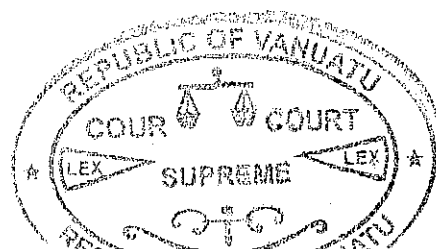
13. While the reference is to a direction of 16<sup>th</sup> September 2022, that letter of 16<sup>th</sup> September 2022 simply amended his direction from the previous day.
14. It is noteworthy that, in Mr Mera's letter of 21 September 2022, no mention was made at all that this Court had ordered his decision to issue the freezing direction be set aside.
15. There is no dispute to the outline of the facts mentioned above.
16. Evidence was filed by the parties being sworn statements of:
  - a. For the Claimants:
    - i. Mr Clift, and
    - ii. Mr Blake (non-contentiously - just producing documents received from the State Law Office being the correspondence between Mr Merah and the banks); and
  - b. For the Defendants:
    - i. Mr Mera.

None of the deponents of the sworn statements was required for cross-examination.

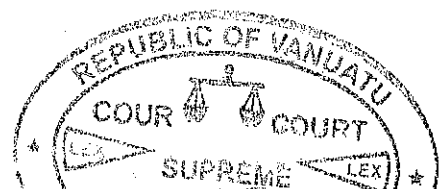
17. There is some further background to this matter that is dealt with by Mr Mera:-

*"15. In year 2020 to early September 2022, FIU received information and report of the abuse of powers Mr August Letlet ("Mr Letlet") in the conduct of carrying out trading business with Carpenter Motors for the purchase of new Government Vehicles and other personal trading business between Mr Letlet and Carpenter Motors (the "First Claimant") and this information relates to the criminal investigation against Mr Letlet which the Director was made aware of by the Office of the Ombudsman. Attached and marked "FM3" are true copies of the relevant documents including all letters and email correspondences between FIU and Carpenter Motors since 2020 to September 2022.*

*16. I confirm that through the course of exchange correspondence between FIU and Carpenter Motors, FIU discovered through the information received from Carpenter Motors that the Second Claimant Mr John Clift had disclosed to Mr Letlet that FIU requested information from them (First Claimant regarding his (Letlet) trading business with Carpenter Motors.*



17. I confirm that based on the information received about the disclosure of information by the Claimants to Mr Letlet and the extended collusion between these two persons over the years, FIU has reasonable grounds to believe that there was possible abuse of the AML&CTF process of Carpenter Motors and the Second Defendant. As such, FIU at that time was of the view that the matter is now urgent given the disclosure of the information to Mr Letlet by the Second Claimant may hinder any investigation. Therefore, the Director exercised its function under subsection 5(h) of the AMLCTF Act and issued the letters dated 15 September 2022 to the Banks. Attached and marked "FM4" are true copies of the letters issued to the Banks.
18. I confirm that at the time the accounts of the Claimants were placed on hold, the FIU carried out an onsite inspection on the First Claimant and had obtained the relevant information pertinent to the criminal investigation and criminal proceeding against Mr Letlet. Attached and marked "FM5" is the true copy of the onsite report.
19. I confirm that all material times, the FIU promptly reviewed all transactional instructions in the respective Carpenter Motors accounts and approved these instructions that satisfied the business purposes.
20. On 21s September 2022, the First Defendant issue another written direction to the Banks informing them that the directive to place on hold all accounts of the Claimants by letter dated 15 September 2022 is removed as the Director of FIU is satisfied with the outcome of the onsite. Attached and marked "FM6" are true copies of the letters dated 21 September 2022."
18. It appears clear that for some years Mr Mera had been concerned about the trading relationship between Mr Letlet August and Carpenter Motors. Indeed, in Mr Mera's letter to Mrs Susie Jacobus (the AM Compliance Officer of Carpenter Motors) of 28 October 2020, it was stated that several reports had been received by the FIU in relation to Mr Letlet and Mr Letlet's wife. Mr Mera further stated that in that letter that,
- "... the allegation suggest corruptible practises (sic) in relation to Mr Letlet's position as the Director General of the Ministry of Finance and Economic Management. As such the FIU was conducting internal investigation based on these allegations against Mr August's finances/assets (sole and joint ownership).*
- .....
- it is highly likely that Mr August may have abused his power for personal financial gain, therefore, he may committed offences under the Penal Code [CAP 135], Leadership Code [CAP 240] and Proceeds of Crime Act [CAP 284]."*
19. Mr Mera required Mrs Jacobus to provide details of the sales and purchase of vehicles involving Mr and / or Mrs August and Carpenter Motors, Thrift Auto Centre (eventually consumed by Carpenter Motors) and Budget Rentals. That information was provided by Mrs Jacobus on 3 November 2020 letter. Mr Mera then filed a complaint against Mr Letlet with the Ombudsman indicating that the reports received by the FIU "have identified suspected breaches of Leadership Code [CAP 24], Financial Dealers Licensing Act [CAP 70] and Proceeds of Crime Act [CAP 284].
20. The Ombudsman responded to that complaint by seeking a search warrant of Mr and Mrs August's home property. The search warrant of the home was executed at a time when Mr August and his son



were present and it caused them considerable distress. A substantial quantity of documentation was taken of personal nature from Mr Letlet's home.

21. The legality of the search warrant was immediately challenged by Mr August. That challenge was initially unsuccessful. That decision was, however, appealed successfully to the Court of Appeal who determined that the search was unlawful<sup>1</sup>. The Ombudsman was ordered to return all the documentation and other items seized during the search of Mr August's home. Mr Letlet and his son then sought damages for trespass on the part of members of the Ombudsman's Office and the accompanying Police officers. That claim was successful and both Mr August and his son were each awarded VT2, 000, 000 in damages<sup>2</sup>.
22. Seemingly undeterred by the outcome of his complaint to the Ombudsman's office, Mr Mera then prepared and presented a further complaint which he sent to the Police Commissioner and the Public Prosecutor. The central components of that letter dated 13 September 2022 are as follows:-

*"The compliant (sic) implicated Mr; John Stephen Cliff, General Manager of Carpenter Motors (Vanuatu) Ltd and Mr August Letlet, Director of General of Ministry of Finance & Economic Management for alleged breach of disclosure of FIU request to a third party under section 32A of the Anti Money Laundering & Counter Terrorism Financing Act No.13 of 2014 ("AML&CTF Act") and exerting undue influence under section 22 of the Leadership Code.*

*It was reported to this office that Mr Letlet and Mr Cliff met on Thursday 8<sup>th</sup> September 2022 at Ramada where Mr Cliff may have informed Mr Letlet of FIU's request for his vehicle information and that Mrs Susie Jacobus (Carpenter Motor AML&CTF Compliance Officer) responded to the request.*

*Straight after the lunch meeting, Mr Cliff called Mrs Jacobus to his office and informed her that Mr Letlet is a beneficial friend of Carpenter Motors and her action was in breach of company record confidentiality.*

*Mr Cliff threatened Mrs Jacobus to immediately resign or Carpenter will terminate her employment without her employment entitlements.*

.....

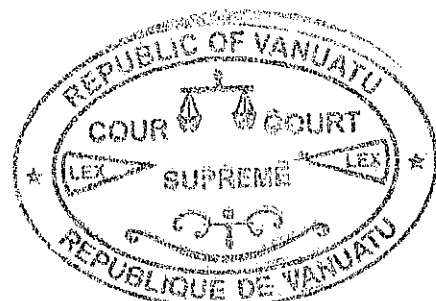
*It is possible that Mr Letlet and Mr Cliff may have colluded in Mrs Jacobus' requested resignation. Mr Cliff may have informed Mr Letlet of FIU's request for his vehicle information held with Carpenter Motors and in response, Mr Letlet may have instructed Mr Cliff to penalise Mrs Jacobus."*

23. It was just two days later (Thursday, 15<sup>th</sup> September 2022) that Mr Mera notified Mr Cliff that a targeted investigation of Carpenter Motors by the FIU would take place on Tuesday 20<sup>th</sup> September 2022. Additionally, it was that same day (15<sup>th</sup> September 2022) that Mr Mera directed that the bank accounts of both Carpenter Motors and Mr Cliff be frozen.

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<sup>1</sup> August v Ombudsman of the Republic of Vanuatu [2021] VUCA 59

<sup>2</sup> Letlet v Ombudsman of the Republic of Vanuatu [2020] VUSC 173  
upheld Ombudsman of the Republic of Vanuatu v Letlet [2023] VUCA 1



24. This factual background is important primarily as to whether Mr Mera has acted reasonably in the *Wednesday*<sup>3</sup> sense to direct the freezing of the bank accounts. First, however, it is necessary to determine whether Mr Mera had the power to do so.
25. Mr Mera explained the role that the FIU fulfils. No-one can justifiably doubt the importance to Vanuatu of the FIU. The FIU represents the instrument by which Vanuatu has joined and participates in the international commitment to combat the money laundering of criminal proceeds as well as the financing of terrorism.
26. Mr Mera also outlined the background to the 2014 enactment of the AM Act. This was part of an updating and review of (what is described) as the *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*. This arises out of an international movement by a large group of countries dating back to the early 1990s to address the laundering of criminal proceeds. This international group of countries formed what is known as the Financial Action Task Force (FATF). Clearly, the rise in terrorism meant that the FATF initiatives developed to address not just money laundering but also the financing of terrorism. The FATF recommendations effectively have three separate prongs:-
- a) That member countries make money laundering (and now the financing of terrorism) a criminal offence;
  - b) That member countries enact legislation to enable the mutual assistance between member countries in relation to criminal matters;
  - c) That member countries enact legislation that provides for the monitoring of various institutions that might be susceptible to use by criminal elements for money laundering.

#### The Claimant's Case

27. Mr Blake submitted that the decision of Mr Mera to freeze the bank accounts, not just of Carpenter Motors but also Mr Clift, was beyond his powers as Director of the FIU. Mr Blake noted that Mr Mera relied on s. 5(1)(h) of the AM Act as providing him with the authority to take the steps that he did in relation to the banks:

#### **"5 Functions and powers of the Unit**

- (1) *The Unit has the following functions:*

.....

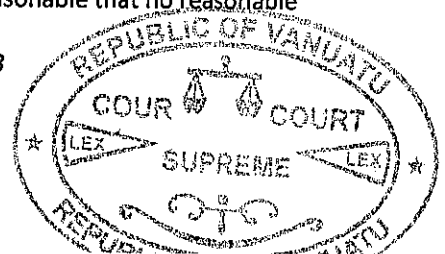
*(h) to direct in writing a reporting entity to take such steps as the Director considers appropriate in relation to any information or report received by the Director so as to facilitate any investigation that is anticipated or being undertaken by the Director or an assisting entity; and*

.....

- (2) *The Unit has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions."*

<sup>3</sup> A reasoning or decision is *Wednesday* unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it

*Associated Provincial Picture Houses Ltd v Wednesday Corporation* [1948] 1 KB 223



28. Mr Blake argues that the various functions identified in s5(1) is essentially to ensure that the FIU is able to meet its statutory responsibility under section 8A in relation to the supervision of reporting entities for compliance under the act.

*"8A. Supervision of reporting entities*

- (1) *The Unit must supervise reporting entities for compliance with this Act.*
- (2) *The Unit has the following functions in relation to the supervision of reporting entities:*
  - (a) *to monitor and assess the level of AML and CTF risk across reporting entities;*
  - (b) *to monitor reporting entities for compliance with this Act and the Regulations,*  
*and for this purpose to develop and implement a risk-based supervisory programme;*
  - (c) *to provide guidance and feedback to reporting entities in order to assist those reporting entities to comply with this Act and the Regulations;*
  - (d) *to specify such forms and notices as are necessary in the implementation of his Act;*
  - (e) *to produce guidelines for compliance with this Act and Regulations;*
  - (f) *to monitor and enforce compliance with this Act and Regulations;*
  - (g) *to co-operate with the National Coordinating Committee, domestic regulatory authorities, law enforcement agencies and foreign government agencies to ensure the consistent, effective, and efficient implementation of this Act;*
  - (h) *to provide training programs for reporting entities in relation to customer due diligence obligations, record keeping obligations and reporting obligations.*

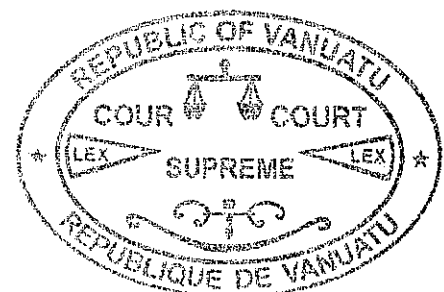
29. The Director is required to perform the functions and authorised to exercise the powers of the unit specified under this act – s7(2).

30. Mr Blake argues, however, that although s5(1)(h) & (2) provides the Director with the power to "do all things that are necessary or convenient to be done for or in connection with the performance of its function", that does not extend effectively to directing that a reporting entity (such as a bank) freeze the bank accounts of another reporting entity even if that other reporting entity is under investigation. Mr Blake refers to the specific enforcement provisions in Part 10AA and in particular s. 50G that authorises the Director to apply to the Court "for an injunction restraining a person from engaging in conduct in contravention of this act."

31. Part 10AA was inserted into the AM Act by the Anti-Money Laundering and Counter-Terrorism Financing (Amendment) Act 2017. It introduced various enforcement measures that could be implemented by the Director. Section 50G is in these terms:

***50G Restraining injunctionctions***

- (1) *The Director may apply to the Court for an injunction restraining a person from engaging in conduct in contravention of this Act.*



(2) In addition to an application under subsection (1) the Court may grant an injunction restraining a person from engaging in conduct in contravention of this Act if it is satisfied that:

(a) a person has engaged, is engaging or is proposing to engage, in any conduct; and

(b) the conduct was, is or would be a contravention of this Act.

(3) An injunction under subsection (2) may be granted to an officer, employee or agent, or a group of officers, employees or agents of the reporting entity.

(4) An application made under subsection (1) may be made ex parte, and the Court may grant an interim injunction under subsection (2) without the defendant being heard if the Court considers it appropriate to do so.

32. In this respect, as is provided, the application for an injunction may be made ex parte and the Court may grant an interim injunction without the defendant being heard.

33. Mr Blake argued further that if s5(1)(h) is to be read as authorising the Director effectively to invoke an injunction by determination rather than by application to the Court, what is the purpose then of s50G. Furthermore, the specific provision (s50G) must have precedence over the general provision (s5(1)(h)).

34. Furthermore, Mr Blake argue that s5(1)(h) specifically requires the Director to take steps such as to "facilitate any investigations that is anticipated or be undertaken" but that should relate to the reporting entity under investigation. That is, that the investigation is of Carpenter Motors and arguably Mr Clift whereas the freezing direction was to the banks. In this respect, Mr Blake took general support from the Constitution and s. 9 of the Interpretation Act and the right to be protected from the "unjust deprivation of property"

35. Article 5(1)(j) of the Constitution:

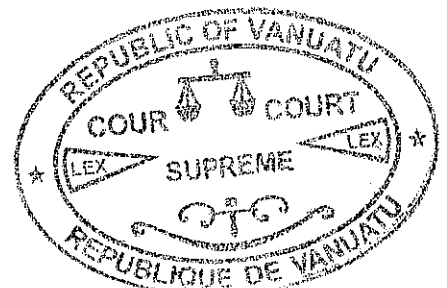
**"5. Fundamental rights and freedoms of the individual**

(1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –

.....

(j) protection for the privacy of the home and other property and from unjust deprivation of property"

36. Section 9 of the Interpretation Act requires any Act to be read and construed subject to the Constitution:



### **9. Acts subordinate to the Constitution**

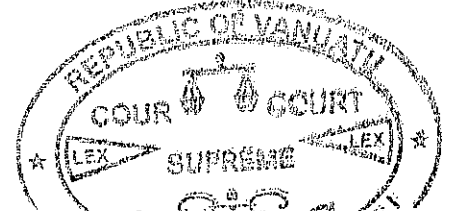
- (1) *Every Act shall be read and construed subject to the Constitution and where any provision of an Act conflicts with a provision of the Constitution the latter provision shall prevail.*
  - (2) *Where a provision in an Act conflicts with a provision in the Constitution the Act shall nevertheless be valid to the extent that it is not in conflict with the Constitution.*
37. Accordingly, that such an incursive and coercive power to deprive a person or other entity of its property needs to be specifically provided for so that it does not offend that constitutional right. The article in the constitution provides for the unjust deprivation of property which of course suggests that the oversight of the Court is required when a personal entity is to be deprived off its property.
38. Finally, Mr Blake argued that there was no investigation being undertaken either by the Director or a law enforcement agency at that time. However, Mr Mera had only a few days beforehand presented a complaint to both the Commissioner of Police and the Public Prosecutor, and that he had given notice that there would be an investigation conducted on-site of Carpenter Motors compliance with its responsibilities under the AM Act. This is obviously not the strongest point Mr Blake was able to make.

### Case for the Defendants

39. Mr Mera, in his sworn statement, refers to the predecessor to the AM Act of being the Financial Transactions Reporting Act (FTR Act) and in particular s13F of that Act which is in these terms s13F:

#### ***"13F. Power to halt transaction or attempted transaction***

- (1) *This section applies if the Unit has reasonable grounds to suspect that a transaction or attempted transaction may:
  - (a) *involve the proceeds of a money laundering offence, a financing of terrorism offence or any other serious offence; or*
  - (b) *be preparatory to a financing of terrorism offence.**
- (2) *The Unit may in writing direct the financial institution concerned not to proceed with that transaction or attempted transaction for a period to be determined by the Unit in order to allow the Unit:
  - (a) *to make any necessary inquiries concerning the transaction or attempted transaction; and*
  - (b) *to consult or advise any relevant assisting entity on its inquiries.**
- (3) *A direction under subsection (2) may be given orally or in writing. However, if it is given orally, it must be followed up in writing within 24 hours after having been given orally.*
- (4) *The period determined by the Unit under subsection (2) must not exceed 5 days.*
- (5) *The Unit may apply to the Supreme Court for an extension of the period determined under subsection (2).*
- (6) *If a financial institution fails to comply with a direction, the financial institution is guilty of an offence and is punishable on conviction:*



(a) in the case of an individual – by a fine not exceeding VT 2.5 million or imprisonment for a term not exceeding 2 years, or both; or

(b) in the case of a body corporate – by a fine not exceeding VT 10 million.

40. Mr Aron contended that although the various functions specified in s5 of the AM Act do not provide the Director with these specific powers set out in s13F, it can be or should be taken as effectively being the forerunner of the power in s5(1)(h) and (2). Mr Aron submitted that Parliament clearly intended that s5(1)(h) & (2) be considered effectively as replacing the earlier s13F on the basis that if the FIU had reasonable grounds to suspect that a transaction or attempted transaction may involve the proceeds of a money laundering offence or other serious offence, the FIU might in writing direct the financial institution concerned not to proceed with that transaction or attempted for a period to be determined by the FIU in order to allow the FIU to:-

- a) Make any necessary enquiries concerning the transaction or attempted transaction; and
- b) To consult or advise any relevant assisting entity on its enquiries.

#### Discussion on the Power to Order an Injunction

41. This is a matter of statutory interpretation. In this respect s. 8 of the Interpretation applies.

#### ***"8. General principles of interpretation***

(1) *Every Act must be interpreted in such manner as best corresponds to the intention of Parliament.*

(2) *The intention of Parliament is to be derived from the words of the Act, having regard to:*

- (a) *the plain meaning of ordinary words; and*
- (b) *the technical meaning of technical words; and*
- (c) *the whole of the Act and the specific context in which words appear; and*
- (d) *headings and any limitation or expansion of the meaning of words implied by them; and*
- (e) *grammar, rules of language, conventions of legislative drafting and punctuation.*

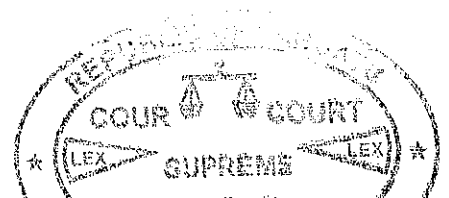
(3) *Where the application of subsection (2) would produce:*

- (a) *an ambiguous result; or*
- (b) *a result which careasonably (could reasonably) be supposed to c to correspond with the intention of Parliament, the words are to receive such fair and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.*

(4) *In applying subsection (3), the intention of Parliament may be ascertained from:*

- (a) *the letive (legislative) history of the Act or provision in quen question; and*
- (b) *explanatory notes and such other material as was before Parliament; and*
- (c) *Hansard; and*
- (d) *Treaties and International Conventions to which Vanuatu is a party."*

42. There is, in the AM Act, a specific provision that provides for the Director to obtain an injunction which, of course, a freezing order most certainly is (formerly known as Mareva Order). S50G



expressly provides the Director with that power but of course it requires the Director to apply to the Court for that order.

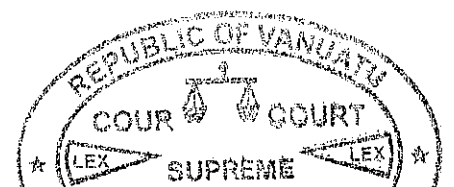
43. S5(1)(h) & (2) is very much a general provision and can surely not allow the Director to effectively impose a freezing order on a reporting entity except pursuant to an order obtained from the court pursuant to s. 50G. Section 5(1)(h) is a general provision. The maxim *Generalia Specialibus Non Derogant* clearly applies. That maxim provides that a special provision is not to be read down by reference to a general provision. That was stated succinctly by O'Connor J in *Goodwin v Phillips Round* (1908) 7 CLR 1 at 14:

*"Where there is a general provision which, if applied in its entirety, would neutralise a special provision dealing with the same subject matter, the special provision must be read as a provisor to the general provision, and the general provision, in so far as it is consistent with the special provision, must be deemed not to apply."*

44. That does not detract from the approach required by s8 of the Interpretation Act. Rather, as stated by Lord Cooke in *Effort Shipping Co. Limited v. Linden Management SA ("The Giannis in K")* [1998] 1 ALL ER 495 at 513 said:

*"The generalia specialibus maxim....is not a technical rule peculiar to English statutory interpretation. Rather it represents simply common sense and ordinary usage."*

45. The common sense of this approach is clear when considering Mr Blake's primary submission here that, if the Director was entitled to impose a freezing order by direction relying upon s5(1)(h) & (2), there would be no need for s50G. I agree.
46. Pursuant to s8(3) of the Interpretation Act, the Court can look beyond the Act in question, or the provision in question, but only if its meaning is not clear or is otherwise ambiguous. There is no need here. The plain wording of the AM Act provides a specific power to the Director to apply for an injunction in an appropriate case. It is unnecessary to look at the history leading up to the formation of the AM Act. Nor should an earlier provision be considered as providing colour to a subsequent provision particularly one that is in such general terms.
47. It appears clear that whatever powers may have been reposed in the Director or the FIU under the FTR Act, and whether or not they permitted the Director or the FIU to act in the way that Mr Mera has in this case, the AM Act specifically provides that such an incursive and intrusive action as an injunction or freezing order must have the sanction of an order of this Court.
48. Indeed, the argument advanced by Mr Aron, and I note trumpeted by Mr Mera in his evidence, that s. 5(1)(h) should be read as authorising the actions taken by Mr Mera, ignores that the AM Act was amended in 2017 by introducing the new Part 10AA which included s. 50G and the ability of the Director to obtain an injunction from the Court. That would suggest, at the very least, that Parliament recognised the need for a specific provision to govern situations where the Director of the FIU considered that injunctive action was required.
49. There is also force in Mr Blake's argument that the constitutional right to be protected from unjust deprivation of property requires a more specific power to interfere with another person's property than is provided by s. 5(1)(h)
50. I accordingly find that the Director did not have the power to direct the Banks to freeze the bank accounts either of Carpenter Motors or Mr Clift. He could have achieved this outcome only by



obtaining a freezing order by application to this Court. For reasons that will become apparent when dealing with the reasonableness of the decision to direct the freezing of the bank accounts, the oversight of the Courts is clearly warranted.

51. In case I am wrong and that the Director was lawfully empower to direct the Banks to freeze bank accounts in such a situation as this, I turn now to the question as to whether that his decision to do so was lawful having regard to the *Wednesday* principle.

Whether the Decision was Reasonable?

52. In this respect, the issue is whether a reasonable person in the position held by Mr Mera as Director of FIU acted reasonably in the circumstances to direct the freezing of those bank accounts.
53. In this respect Mr Blake argued that Mr Mera appears to have been inspired to freeze the bank accounts by the dismissal of Carpenter Motors Compliance Officer, Mrs Jacobus and his belief that Mr Clift may have breached s32A of the AM Act by disclosing to Mr Letlet the FIU's request for details of his vehicle transaction history with Carpenter Motors. Of course, all that information relating to motor vehicles had been provided by no other than Mrs Jacobus. Clearly, Mr Mera felt that the FIU had gone as far as it could in relation to that enquiry and his actions were to refer the matter to the Ombudsman for investigation into possible breaches by Mr Letlet of certain Acts but, significantly, not the AM Act.
54. Assuming that Mr Mera did have the power to direct the freezing of those bank accounts, how could that have assisted any investigation into a breach of s32A of the Act either in respect of Carpenter Motors or Mr Clift:

**"32A. Disclosure of information**

- (1) *A person must not disclose any information to any other person that:*

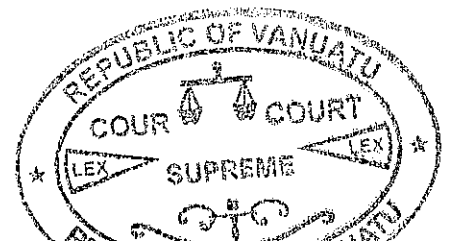
- (a) *a reporting entity, or the supervisor or auditor of a reporting entity, has formed a suspicion in relation to a transaction or an attempted transaction, or an activity or attempted activity; or*
- (b) *a report under this Act is made to the Director; or*
- (c) *information under this Act is given to the Director.*

- (2) *A person must not disclose any information to any other person if the person to whom the information is disclosed may reasonably be expected to infer any of the circumstances in paragraph (1)(a), (b) or (c).*

- (3) *Subsections (1) and (2) do not apply to a disclosure made to:*

- (a) *an officer, employee or agent of a reporting entity who has made or is required to make a report or provide information under this Act for any purpose connected with the performance of that reporting entity's duties; or*
- (b) *a lawyer for the purpose of obtaining legal advice or representation in relation to the disclosure; or*
- (c) *the supervisor of the relevant reporting entity; or*
- (d) *a law enforcement agency or any other person assisting the Unit under this Act.*

- (4) *Any information disclosed to a lawyer under paragraph (3)(b) must not be disclosed to any other person except for the purpose of:*



- (a) *the performance of the lawyer's duties; or*
- (b) *obtaining legal advice or representation in relation to the disclosure.*

(5) *Nothing in this section prevents the disclosure of any information in connection with, or in the course of, proceedings before a court if the court is satisfied that the disclosure of the information is necessary in the interests of justice.*

(6) *If a person contravenes subsection (1) or (2), the person commits an offence punishable upon conviction by:*

- (a) *in the case of an individual - a fine not exceeding VT15 million, or imprisonment for a term not exceeding 5 years, or both;*
- (b) *in the case of a body corporate - a fine not exceeding VT 75 million.*

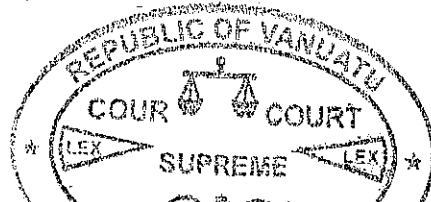
(7) *If a person contravenes subsection (1):*

- (a) *with intent to prejudice an investigation of a money laundering offence, a financing of terrorism offence or another serious offence; or*
- (b) *for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person, the person commits an offence punishable upon conviction by the penalty referred to in subsection (8).*

(8) *The penalty is:*

- (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*

55. Simply put, any inquiry into the suspected breach of s32A could not have been even remotely assisted in any way by the freezing of the bank accounts of either Carpenter Motors or Mr Cliff. Significantly, no effort was made to freeze the bank accounts of Mr Letlet who has supposedly acted in breach of various acts.
56. Certainly, the Director considered that a targeted investigation should take place into Carpenter Motors' compliance with its responsibilities under the AM Act. That investigation was not resisted and it was undertaken on 20 September 2022. A detailed report was prepared which identified that, in some respects, there had been non-compliance or only partial compliance with some of the provisions of the AM Act. However, that has more the appearance of that reporting entity's compliance with its obligations under the AM Act and counsel confirm that it has not resulted in any criminal prosecution. Indeed, it appears as mentioned more of a general audit of compliance obligations.
57. Regrettably, I am drawn quite directly in this case to the conclusion that Mr Mera either misunderstood the extent of his powers or that he deliberately misused the authority of his position as Director of the FIU to punish both Carpenter Motors and Mr Cliff. It certainly appears that this decision to direct the banks to freeze the accounts followed the dismissal of Mrs Jacobus who appears to have provided information to Mr Mera. Additionally, Mr Mera suspected, and probably quite justifiably, that there had been a discussion between Mr August and Mr Cliff that was likely to have amounted to a breach of s.34A on the part of Mr Cliff.
58. What possible purpose could there have justifiably been for the bank accounts of Carpenter Motors and Mr Cliff being frozen. What suggestion was there that Mr Letlet, Carpenter Motors or Mr Cliff



were involved in money laundering or the financing of terrorism? Indeed, not only Mr Mera's earlier complaint to the Ombudsman about Mr August but subsequently the complaint to the Commissioner of Police and the Public Prosecutor did not suggest any such untoward conduct. At best, Mr Mera may have been concerned that Carpenter Motors may not have been complying with the reporting entity requirements arising from the AM Act but that surely could not justify the freezing of the bank accounts of a well-established and substantial business such as that run by Carpenter Motors.

59. Even more to the point, what possible assistance could have been achieved by freezing the bank accounts of Mr Clift? If anything points to this action by Mr Mera being nothing more than a "flexing of muscle", of the misuse of the authority that he carried as director of the FIU, it is the freezing of Mr Clift's personal bank accounts.
60. Perhaps of some significance is that Carpenter Motors, Mr Clift and Mr August have not faced any prosecution for any offence that Mr Mera believed may have been committed – see his letters to the Ombudsman and the Commissioner of Police.
61. On the evidence provided by Mr Mera, I do not consider for a moment that any competent court would have granted an order freezing those bank accounts. I consider that it was not just unreasonable for Mr Mera to direct the banks to freeze those bank accounts, I consider that it was reprehensible for him to do so in the circumstances that prevailed at that time

### Conclusion

62. I find that the decisions taken by Mr Mera, as Director of the FIU, to direct that the Banks freeze the accounts of both Carpenter Motors and Mr Clift were unlawful for the above reasons but in summary:-
  - a) Mr Mera as Director did not have the power to direct that the banks freeze the accounts of Carpenter Motors and Mr Clift. The Director only has standing to apply to the Court for such an order.
  - b) Even if Mr Mera as Director did have the power to direct that the bank accounts be frozen, such a decision on his part in these circumstances was unquestionably unreasonably and an abuse of the authority of his position.
63. Costs - This is a case where I consider that the claimants are entitled to indemnity costs, and I order costs accordingly. I leave that now for the parties to resolve between them but if not then to be taxed by the Deputy Master. The costs are to be paid within 14 days of being settled.

**Dated at Port Vila this 30<sup>th</sup> day of June 2023**

**BY THE COURT**

  
Justice R.L.B. Spear

