

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

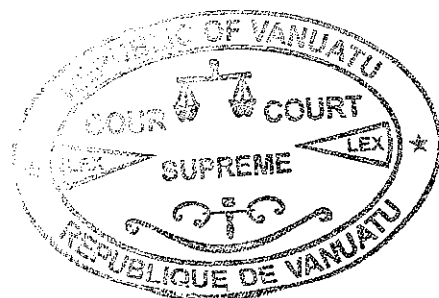
**Constitutional  
Case No. 24/1495 SC/CNST**

- BETWEEN: Wanfuteng Bank Limited**  
*First applicant*
- AND: Catherine le Bourgeois**  
*Second Applicant*
- AND: Joanna Qiong Wu**  
*Third Applicant*
- AND: Cheung Tak Lui**  
*Fourth Applicant*
- AND: Yuen Lung Yueng**  
*Fifth Applicant*
- AND: Odin Real Estate Limited**  
*Sixth Applicant*
- AND: Migale Limited**  
*Seventh Applicant*
- AND: Churchill Finance Limited**  
*Eight Applicant*
- AND: Masson De Mortfontaine Limited**  
*Ninth Applicant*
- AND: Web Engineering Business Limited**  
*Tenth Applicant*
- AND: Brighton Ventures Incorporated**  
*Eleventh Applicant*
- AND: La Pilea**  
*Twelfth Applicant*
- AND: The Republic of Vanuatu**  
*Respondent*

**Date of Hearing:** *11th day of October, 2024*

**Date of Decision:** *29<sup>TH</sup> day of October, 2024*

**Before:** *E.P Goldsbrough*



*In Attendance:*

*Aron, S for the Respondent  
Sugden, R for the Applicants*

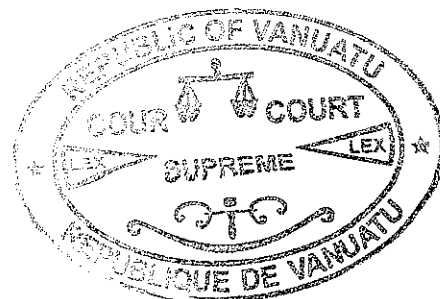
*Hurley, M for the Registered Director of Wanfuteng Bank  
Limited*

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## DECISION

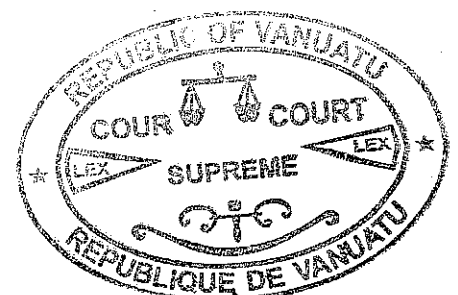
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1. This decision concerns an application brought, nominally by Wanfuteng Bank Limited seeking several orders, the first of which is that Wanfuteng Bank Limited be removed as a party to these proceedings unless and until an application for leave is made and granted under section 89 of the Companies Act 25 of 2012. Counsel brings it on behalf of Robert Stanley Hughes, who deposes that he is the sole director of Wanfuteng Bank Limited following the removal of other directors, which occurred, according to him, under directives made by the Vanuatu Financial Intelligence Unit (VFIU).
2. The application is opposed by counsel purporting to act for Wanfuteng Bank Limited under the authority of its shareholders and other purported directors appointed by those same shareholders. The appointment of those directors following the VFIU directives is challenged.
3. Counsel opposing the application makes a preliminary point that Mr Hughes, given that he has been removed by the new directors, has no authority to bring the application and is acting when he is conflicted by personal interest. That preliminary point must fail, as its success depends on whether the new directors were validly appointed and have the power to remove him.
4. Respondents to the application are the Republic of Vanuatu and the Office of the Attorney General on behalf of VFIU. They support the application, essentially on the same grounds as Mr Hughes deposes in support of it.
5. Essentially, the application can be determined quite simply. Aside from the personal conflict of interest issue raised in the preliminary point, this Court is required to consider the purported appointment of the new directors and their purported removal of Mr Hughes as the sole remaining director. The application must fail if they were properly



appointed and had the power to remove him. The application will succeed if they were not and thus had no power to remove him, subject to consideration of his conclusion that it is not in the bank's interests to be a party to the application.

6. Given the directives issued by VFIU, themselves the subject of challenge within these and other related Judicial Review proceedings, the purported appointment by the shareholders of new directors of Wanfuteng Bank is *prima facie* defective. The directives are set out in the material considered within this application, which comprises the application, the sworn statement of Robert Stanley Hughes filed on 26<sup>th</sup> August 2024, the sworn statement of Lonsdale Takoar filed on the same day, the further sworn statement of Lonsdale Takoar filed 5<sup>th</sup> September 2024, and the sworn statement of Teddy Garae filed 21<sup>st</sup> June 2024. In particular, the directives are found as RSH 1 and TG3, 4 & 5.
7. Under section 89 of the Companies Act 25 of 2012, the shareholders could have applied for leave to bring these proceedings. They did not. If granted, that would have permitted the bank to become a party to this constitutional application.
8. For this Court to uphold the opposition to the application would require a finding that the appointment of the new directors was valid. That requires consideration of the VFIU directives and a finding that those directives themselves are *void ab initio* rather than merely *voidable*. Given that the Judicial Review of the same directives remains on foot, it is most unusual for a court to be obliged to determine, at such an early stage, the validity of that which is challenged in the proceedings.
9. I am not satisfied that the directives preventing the shareholders from appointing replacement directors were beyond the power of VFIU and that the purported appointments complied in all other respects with the Anti-Money Laundering and Counter-Terrorism Financing Act No 13 of 2014 (AMLCTF Act). Thus, those purported appointments of replacement directors remain questionable until findings are made within these proceedings. The purported removal of Mr Hughes remains ineffective until findings are made otherwise.
10. For those reasons, the opposition to this application to remove the bank as a party will not succeed. Mr Hughes, as its sole director, has deposed that it is not in the bank's interest to be a party to these proceedings. That is his prerogative as its director. Nothing, save the



personal conflict of interest question, has been brought to this Court suggesting that view is not an honest and reasonable belief held by Mr Hughes.

11. As to the personal interest question, it is submitted that if Mr Hughes accepted the purported appointment of replacement directors and their decision to remove him, he would be out of a job and, thus, through personal interest, should refrain from acting. That argument, it seems to me, is not tenable.
12. The remaining orders sought seek to preserve the position following the VFIU directives. They are that the shareholders and any purported director of WFL, save for Mr Hughes, be restrained from passing or implementing any resolutions in respect of WFL and/or its officers or employees and that there be no changes to WFL's register of directors or shareholders.
13. A significant part of that order sought seeks merely to reinforce current directives and should be made if only to ensure future compliance. If it is sought during the currency of any order that a change be made to the shareholders' register, liberty is granted to apply. The orders are made as requested with that liberty included.
14. Costs of and incidental to the application are ordered to be paid by the 2<sup>nd</sup> to 12<sup>th</sup> applicants jointly and severally on an indemnity basis under Rule 15.5 (5) (a) and (c) of the Civil Procedure Rules. It would be preferable to fix the costs if counsel can assist today or tomorrow rather than order subsequent assessment in compliance with Rule 15.7 (1). Failing that, an order can be made under Rules 15.7 (2) to be dealt with by the Deputy Master.

DATED at Port Vila this 29th day of October, 2024.

BY THE COURT

*E.P. Goldsbrough*

E.P. Goldsbrough

Judge of the Supreme Court

