

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

Civil
Case No. 21/3381 SC/CIVL

BETWEEN: Christina Thyna Gesa, Moses Peter and Martin
Mahe
Claimants

AND: Police Service Commission
First Defendant

AND: The Minister of Internal Affairs
Second Defendant

Before: Justice Oliver A. Saksak

In Attendance: Mrs Mary Grace Nari for the Claimants
Attorney General for the Defendants

Date of Hearing : 28th September 2022
Date of Judgment: 4th November 2022

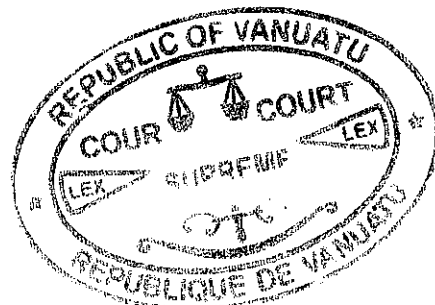
JUDGMENT

Introduction and Background

1. This is a claim for compensation at VT 1,500,000 and for punitive damages in the sum of VT 1,500,000 with interest and costs.

Background and Facts

2. The claimants were appointed by the President of the Republic of Vanuatu by Formal Instruments of Appointment dated 9th February 2017 for Martin Mahe, 16th August 2018 for Christina Thyna and 7th June 2018 for Moses Peter.
3. Pursuant to section 9 (6) of the Police Act the claimant's appointments were to be for a period of 4 years.



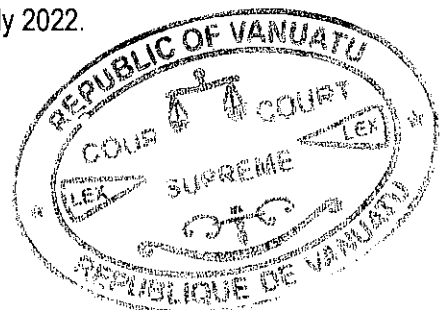
4. Parliament however amended the Police Act by the Police (Amendment) Act No.7 of 2020 . Section 9 was amended by repealing subsection 2 and 3 and replacing them with new subsections.
5. Subsection 2 was amended to increase the number of the members of the Commission to 6 members but retaining their terms of appointment for 4 years.
6. Subsection 3 was repealed and replaced requiring the Minister Responsible to only nominate retired members of the Police Force to be members of the Commission.
7. Pursuant to that amendment the Minister made nominations to the President for new appointments of the members of the Commission.
8. On 13th July 2020 the President signed the Instrument of Appointment appointing Kelson Bule, Roy Seule, Toara Thomas, Merelyn George, An Marie Simeon and Rafe Taiwia as new members of the Commission.
9. None of those facts are disputed by the defendants.

Claims

10. The three claimants alleged there have been a breach of their appointments and as such they are entitled to their balance of sitting allowances and punitive damages for breach of their appointment agreements.

Defence

11. The defendants deny liability on the basis of the Amendment Act No. 7 of 2020 and say that they are not entitled to the reliefs they seek.
12. The defendants filed a defence on 22nd December 2021. They filed a sworn statement by Joe Boe on 27th July 2022.
13. The claimants relied on their sworn statements filed by Mrs Christina Thyna on 23rd September 2022, and by Mr Mahe and Mr Peter filed respectively on 19th July 2022.

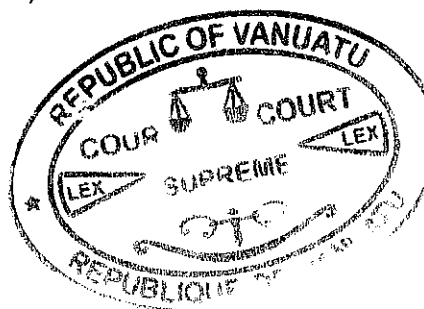


Discussion

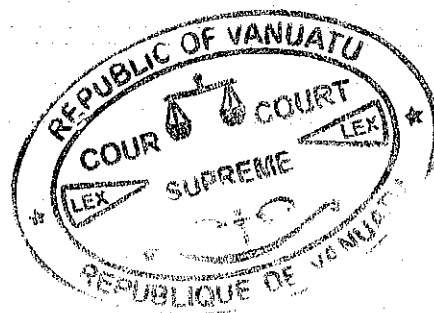
14. There are no factual disputes but there are two legal issues for determination. There was therefore no need for a trial.
15. The court allowed time to Counsel to file written submissions and Mrs Nari filed written submissions on 23rd September 2022. The defendants filed written submissions on 17th October 2022 raising two issues-
 - a) Whether there was a breach of the appointment agreement between the claimants and the Defendant?
 - b) Whether the claimants are entitled to compensation for breach of appointment?
16. The defendants submitted that as regards to the first issue, there was no breach as by virtue of the amendment of section 9 of the Act, their appointments automatically ended when the Act came into force and effect. As non-retired members of the Police Force the claimants were not qualified and not entitled to be members of the Police Service Commission.
17. With respect that argument and submission is not sustainable. The claimants were appointed under the old provision which is section 9.
18. The amendment in 2020 was made to section 9 but only to subsections 2 and 3. Subsections 5, 6, 7, 8, 9, 10, 11, 12, and 13 still exist. But the relevant subsections are 6 and 7.
19. Subsection 6 states-

"Subject to subsection (7), the term of office of any member of the commission including the chairman, shall be four years." (my underlining for emphasis)
20. Subsection 7 states

" A member of the Commission shall hold office for the period of his appointment unless he is removed from , or otherwise vacates office earlier." (My emphasis)



21. Subsection (6) and (7) of Section 9 of the Act are clear. The claimants' appointments were for a period of 4 years. It is mandatory by the use of the word "**shall be**".
22. Subsection (7) reinforces that period of 4 years by qualifying that "**unless he is removed from or otherwise vacates office earlier.**" That appointment shall be for 4 years.
23. In the claimants case they were appointed by the President in an Instrument of Appointment. However there was no removal of them as required by subsection (7) which still exists.
24. The Interpretation Act CAP 132 section 21 provides that where an Act of Parliament confers power on any authority to make any appointment that authority also "**includes the power to remove, suspend, reappoint or reinstate any person appointed in the exercise of the power.**" (emphasis added).
25. When therefore Act No. 7 of 2020 came into force there should have been a removal of the claimants to end their 4 year term and validate their terms of tenure as Commissioners. There was no removal.
26. To argue and submit their tenure ended by virtue of the new subsection (3) cannot be right in my view. That new provision disqualified them but that did not absolve the obligation to formally remove them and end their 4 year tenure.
27. Accordingly I reject the defendant's submissions and answer the first issue in the affirmative. There was a breach of their appointments.
28. It follows therefore that the claimants are entitled to compensation for that breach.



c) Mr Martin Mahe – VT 456,000 + VT 200,000 as punitive damages, Total= VT 656,000.

30. The claimants are entitled to judgment in the total sum of VT 2,968,000 to be paid by the Defendants.

31. In addition the claimants are entitled to 5% interest per annum from June 2020 until judgment.

32. The claimants are also entitled to their costs of and incidental to this action as agreed or be taxed and payable within 28 days once settled.

DATED at Port Vila this 4th day of November 2022

BY THE COURT

Oliver A. Saksak

Judge.

