

IN THE HIGH COURT OF SOLOMON ISLANDS

Civil Jurisdiction

Civil Case No. 498 of 2023

BETWEEN: JOSEPH BASITALAU - Claimant

AND: ATTORNEY GENERAL - First Defendant
(Representing the Police and Correctional Service Commission)

AND: ATTORNEY GENERAL - Second Defendant
(Representing the Ministry of Public Service and the Ministry of Health and Medical Services)

Date of Hearing: 27th May 2025

Date of Judgment: 9th July 2025

Mr. B. Ifutoó for the Claimant

Mr. B. Pitry for the First and Second Defendants

JUDGMENT

AULANGA, PJ:

Background of the Case

1. The Claimant is a former Staff Sergeant of the Correctional Services of Solomon Islands (CSSI) in Honiara. In 2019, he was terminated by the CSSI for failing to comply with the mandatory COVID-19 vaccination directives to be taken by all public officers, including those employed in State-Owned Enterprises, collectively referred to as “public officers”. Following his termination, the Claimant appealed to the First Defendant for

reconsideration. In 2023, the First Defendant, with the concurrence of the Second Defendant, upheld the termination. This proceeding challenges that decision.

2. The mandatory vaccination directives were communicated through two circulars issued by the Second Defendant. The directives required all public officers to receive their first dose of the COVID-19 vaccine by 31st August 2021 (later extended to 31st October 2021), and their second dose by 30th October 2021 (later extended to 31st January 2022).
3. The directives were issued pursuant to a Cabinet decision made pursuant to section 35 of the *Constitution* during the declared State of Public Emergency (SOPE) encountered in Solomon Islands as a result of the COVID-19 pandemic. The directives were made pursuant to Regulation 5 of the *Emergency Powers (COVID-19) (No. 2) Regulation 2021*, made under the *Emergency Powers Act (Cap. 11)*.
4. The directives warned all public officers that failure to take the vaccinations by 31st January 2022 would result in self-termination of employment for “continuous non-compliance” and insubordination to the directives of the Solomon Islands Government as their employer. The directives in short were commonly referred to as the “No Jab, No Job” policy and were widely circulated through government ministries and the media. For public officers working during the SOPE, the directives and the deadlines for taking the vaccinations were the common conversations of the day.
5. At the time the circulars were issued, the Claimant was under suspension. He resided in Honiara, where multiple vaccination centres were located. He claimed unawareness of the directives due to his suspension and lack of access to CSSI offices, and asserting that he had not been personally informed of the circulars.
6. Aggrieved by his termination, by letter dated 20th June 2023, the Claimant appealed to the First Defendant. The appeal was considered and ultimately rejected in a decision dated 17th April 2023.

7. The Claimant did receive his first vaccine dose in February 2022. However, that was after the extended deadline, and only after he contracted COVID-19. The First Defendant, however, disregarded this as non-compliance with the mandatory directives. The Claimant then commenced this legal proceeding.

The Claimant's Case

8. The Claimant instituted this proceeding for judicial review arising from the termination of his employment, seeking an order to quash the First Defendant's decision dated 17th April 2023. He contends that the First Defendant, with the concurrence of the Second Defendant, breached natural justice by failing to afford him an opportunity to be heard prior to the termination decision. In support of his claim, the Claimant also seeks declaratory relief to set aside the First Defendant's decision, alleging that the First and Second Defendants acted unreasonably, arbitrarily, and irrationally at the time the decision was made. He further alleges that the First and Second Defendants abused their powers by considering irrelevant matters, failing to consider relevant ones, misdirecting themselves on matters of fact and law, acting unreasonably or in bad faith, and denying him a fair hearing. The Claimant seeks an order for reinstatement to his previous position, with full remuneration and entitlements backdated to 24th March 2022, together with interest.
9. In essence, the Claimant's case is that the First and Second Defendants acted *ultra vires* and in breach of natural justice in arriving at the decision. This therefore requires this Court to intervene by way of judicial review

The First and Second Defendants' Case

10. The First and Second Defendants deny all the allegations raised by the Claimant in the pleadings and evidence. They maintain that there was no error of law, procedural or substantive, in the decision to terminate the Claimant's employment. They assert that the decision was properly made pursuant to the Government's COVID-19 vaccination directives issued under the *Emergency Powers (COVID-19) (No. 2) Regulation 2021*, which

they argue is not subject to judicial review. The Defendants submit that the claim is without merit and should be dismissed with costs.

11. It is not disputed that the Claimant was on suspension for allegations of misappropriation of trust funds at the time the 1st and 2nd circulars were issued. He was residing in Honiara in an accommodation with other government and private employees during that period. It is also undisputed that the circulars were widely publicised in the media and that public officers in Honiara were required to comply with the vaccination directives by the specified dates. By living in Honiara with other government and private employees, and where accessibility to media is convenient during the relevant period, there was nothing that might otherwise have impeded his compliance with the directives.

The Scope of this Court's Determination

12. Let me begin with the premise that judicial review is a mechanism to confine administrative actions within legal limits. It is an adjudicative process by which an illegality of an administrative action or decision is challenged. The circumstances under which judicial review may be available are where the decision-making body exceeds its power, commits an error of law, commits a breach of natural justice, reached a decision which no reasonable tribunal could have reached or abuses its powers. In *Kekedo v Burns Philip (PNG) Ltd* [1988-89] PNGLR 122 at page 124, the Court explained that the purpose of judicial review is not to examine the reasoning of the subordinate authority with a view to substantiate its own option. Judicial review is concerned not with the decision or the merit of the case but with the decision-making process. This view was similarly expressed in our jurisdiction in *Waiwori v Attorney General* [1991] SBHC 65 that when considering judicial review cases, the Court is mindful not to look at the merits of the decision in such a way that it eventually performs the function of that delegated by law to the decision maker or authority. This fine line must be maintained in judicial review proceedings.

13. Having said that, in judicial review, the Court is only concerned with the illegality, irrationality or procedural impropriety of the public body or authority. The judicial review of the authority's action is principally carried out on two grounds, namely, *ultra vires* and

breach of natural justice. In that situation, the Court will not substitute its opinion, or of an individual judge for that of the authority mandated by law to decide the matter in question. It is not the role of the Court to make the decision for the authority. The Court normally takes the view that the authority has the expertise on the subject and is better suited to decide the matter. The Court will only involve if there is a material irregularity, or illegality that vitiates the administrative action of the authority.

The First Defendant's Letter of Termination

14. This is the decision at the heart of this proceeding.
15. The First Defendant, with the concurrence of the Second Defendant, was the authority that determined the Claimant's appeal and ultimately upheld his termination. The decision letter dated 17th April 2023 that communicated the outcome of that appeal to the Claimant is quoted as follows:

"Dear Mr. Basitalau,

Re: APPEAL AGAINST TERMINATION

The Police and Correctional Service Commission "the Commission" considered your appeal termination via its 2nd Circulation of papers dated 9th March 2023.

In considering your appeal, the Commission noted that there were two separate appeals made by you and one of which the initial one that was pending advise from the Attorney General.

In terms of the first appeal, the Commission perused the report of your case and noted that there is no direct evidence implicating you of misappropriation of the prisoner's fund. The Commission further noted that the (sic) statement made by Mr. Daniel Donua is not sufficient to warrant a conviction and termination by the Commissioner of

Corrections. Therefore, the Commission agreed that you should be reinstated to your position and all entitlements be paid.

However, in view of the second appeal, the Commission noted that your claim was that you were not aware of the directives, is questionable as there were numerous publicities (sic) in the media about the cabinet's directives urging all public officers to have their vaccinations done as a requirement for ongoing employment in the public service. The consequences of a failure to comply were also made clear that any non-compliance would result in termination from the public service. The Commission importantly noted that this is a mandatory requirement that was put in place by the Government which in its view is non-appealable.

Furthermore, the Commission is of the view that the onus is on you to prove that you have complied by the due date, and failing which that is end of the matter. With that, the Commission is satisfied that you have demonstrated that you have not complied by the due date.

In light of the above, the Commission made the following decisions:

1. ACCEPTED appeal number one, and that you be **RE-INSTATED** and all your entitlements be paid including restoration of your half payment w.e.f date of suspension.

2. NOT APPROVED appeal number two, and **UPHELD** that you be **DISMISSED**.

Yours faithfully,

Sandra Maezama

Assistant Secretary

For: Chairman

Police and Correctional Service Commission"

16. It is important to note that this decision was not made in vacuum. It was rendered in adherence to the Government's COVID-19 vaccination policy, which was expressed in the two circulars or directives issued during the SOPE. These directives mandated full compliance by all public officers, including those under suspension. The obligation to receive the two vaccine doses by the stipulated deadlines was not implied. It was explicitly stated in the circulars.

Relevant Issues for Court's Considerations

17. Having outlined the background facts, there are a number of issues agreed upon by the parties that must be determined. They are:

1. Whether the Claimant had knowledge of and received notice of the 1st and 2nd circulars requiring mandatory COVID-19 vaccination by all public officers, including officers of the Correctional Service of Solomon Islands (CSSI);
2. Whether the Claimant was afforded a fair opportunity by the First Defendant to respond to the allegations against him;
3. Whether the Claimant was given adequate notice of the second allegation to respond and be represented at a hearing;
4. Whether the Claimant was accorded natural justice by the First Defendant;
5. Whether the First Defendant acted reasonably, diligently, and rationally in dismissing the Claimant's appeal; and
6. Whether the First Defendant acted lawfully in dismissing the Claimant's appeal.

Issue 1: whether the Claimant had knowledge of and received notice of the 1st and 2nd circulars requiring mandatory COVID-19 vaccination by all public officers, including CSSI officers.

18. This issue in my view deals with the merit of the First Defendant's decision and not the process by which the decision was made. As stated in *Kekedo v Burns Philip (PNG) Ltd* (supra), *Waiwori v Attorney General* (supra) and *SMM Solomon Ltd v Axiom KB Ltd* [2016] SBCA 1 that judicial review proceedings are only confined to errors of law in the decision-making process, and not with the merit of the decision. Having said that, this issue is obviously unmeritorious as it falls outside the scope of judicial review, and is one that the Court cannot determine.
19. Even assuming the Court has jurisdiction to assess this issue, the evidence has overwhelmingly established that the First Defendant has fully considered the Claimant's explanation regarding his alleged lack of knowledge of the circulars. The First Defendant has expressly made its decision on this aspect of the claim as conveyed in its decision dated 17th April 2023.
20. The Claimant did not dispute that he resided in Honiara when the circulars were issued and widely publicised in the media. In cross-examination, he confirmed that he was living in a shared residence with others employed in both the public and private sectors. He was not re-examined on this point. This means he in fact knew about the due dates for the public officers to take the mandatory vaccinations. His claim that he was not aware of the circulars and the due dates to take the two vaccinations, is clearly at odds with the realities of the COVID-19 vaccination rollout in Honiara where multiple vaccination centres were erected with mass queues of people for vaccinations that can be seen in Honiara. I consider his evidence as fanciful, unreliable, and cannot be accepted.
21. The Claimant appears to argue that the First Defendant based its decision primarily on the media publicity and missed deadlines to take the vaccinations without considering the Claimant's suspension status, his lack of being notified by the CSSI about the contents of the two circulars and his partial taking of the vaccination, as amounting to relevant factors that could be weighed. However, a close reading of the pleadings shows that the Claimant failed to plead the material facts on what relevant considerations the First Defendant allegedly overlooked when it rejected the Claimant's submission on his lack of knowledge

of the due dates to take the vaccinations and his partial compliance to the vaccination directives. Hence, as held in *Kopu v Bonuga* [2024] SBHC 146 and affirmed by the Court of Appeal in *Tovosia v Koli* [2025] SBCA 5, there is nothing the Claimant can rely on to support this aspect of the case. In other words, a failure to plead the material facts on what relevant considerations the First Defendant allegedly overlooked will preclude the Claimant from relying on them during the trial. As a result, there is no factual foundation upon which the Court can decide this issue in the Claimant's favour.

Issues 2, 3 and 4: whether the Claimant was given a fair opportunity, notice of the allegation and natural justice by the First Defendant to respond to the allegation or be represented at the hearing.

22. These three issues are centred on the principle of natural justice that was not accorded to the Claimant. Hence, they are considered together.
23. These issues assume an existence of a procedure created by Regulation or Statute that entitles the Claimant to a right of response, appearance or legal representation before the First Defendant, making it a necessity before the decision could be made.
24. The Claimant's position is that the First Defendant ought to have provided him with such an opportunity before reaching its decision.
25. Section 119 of the *Constitution* establishes the First Defendant (Police and Correctional Service Commission) and outlines its composition and mandate as follows:

*"119. (1) There shall be a Police and Prisons Service Commission for Solomon Islands.
 (2) The members of the Commission shall be -
 (a) the Chairman of the Public Service Commission, who shall be Chairman of the Commission;
 (b) the Chairman of the Judicial and Commission; and
 (c) a person appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.*

(3) If the office of the member of the Commission appointed under subsection (2)(c) of this section is vacant or the holder thereof is for any reason unable to perform the functions of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint some other person to act in the office of that member; and any person so appointed may continue to act until he is notified by the Governor-General, acting as aforesaid, that the circumstances giving rise to the appointment have ceased to exist."

26. Section 124 of the *Constitution* vests the First Defendant with authority over disciplinary matters relating to CSSI officers as follows:

"124. (1) Save as provided in subsection (2) of this section, power to remove and to exercise disciplinary control over persons holding or acting in offices in the Prisons Service is vested in the Police and Prisons Service Commission.

(2) The following powers are vested in the Superintendent of Prisons -

(a) in respect of officers of or above the rank of Prison Officer, the power to administer reprimands;

(b) in respect of Assistant Prison Officers, the power to exercise disciplinary control other than removal or reduction in rank; and

(c) in respect of officers below the rank of Assistant Prison Officer, the power to exercise disciplinary control including the power of removal.

(3) The Superintendent of Prisons may, by directions in writing, and subject to such conditions as he thinks fit, delegate to any officer in the Prisons Service of or above the rank of Assistant Prison Officer any of his powers under subsection (2)(c) of this section other than the power of removal, but an appeal from any award of punishment by such an officer shall lie to the Superintendent of Prisons."

27. The Claimant unfortunately did not point to any written procedure prescribed by Statute or Regulation to be followed by the First Defendant for hearing of disciplinary matters that

requires a response or the attendance of the Claimant or by legal representation that was not afforded to him. In the absence of such a procedural guarantee, the question of what constitutes natural justice falls to be determined by the circumstances of the case, the nature of the inquiry, and the relevant rules or statutory framework.

28. The above position was held by Tucker L.J. in *Russell v Duke of Norfolk* [1949] 1 All E.R. 109, where the Court echoed that the requirement for natural justice depends on the circumstances of the case, the nature of the inquiry, the rules under which the authority is acting and the subject matter of the case. The Court therein continued to state that the authority retains the discretion to consider what is fair and reasonable in the circumstance of the case. This was followed in *R v Aston University Senate; ex parte Roffey* [1969] Q.B 538, that the existence of a right to an oral hearing or legal representation is not automatic, even where the right to be heard is fundamental. In other words, the Courts in those cases jointly held the view that there is no inherent right to an oral hearing or for legal representation even though the right of hearing is regarded fundamental to any decision. At the end of the day, the rules for the hearing are left to the decision maker or the adjudicator. In the present case, the First Defendant acted under the *Emergency Powers (COVID-19) (No. 2) Regulation 2021*, issued during the SOPE. This unique circumstance of this case must be considered by this Court when determining this matter.
29. In Court, Milner Tozaka, the Chairman of the First Defendant, stated that the decision on whether or not to require the attendance or any response from the Claimant remains under their discretion. He stated that they were satisfied with all the materials provided by the Claimant and as a result, they did not require his attendance. The No Jab No Job policy is mandatory and self-explanatory which the Claimant had breached. He further stated that they made the decision to uphold the Claimant's termination since the CSSI's decision brought to them for review was made pursuant to a breach of the Government COVID-19 vaccination policy sanctioned by Regulation made during the SOPE.
30. Given the Claimant has breached the directives in the two circulars issued by the Government under the *Emergency Powers (COVID-19) (No. 2) Regulation 2021* made under the *Emergency Powers Act* as a result of the COVID-19 pandemic, does that require

any response, attendance or legal representation for the Claimant? I agree with the Defendants' submission that in these circumstances, the requirement for a hearing or natural justice must be weighed against the overriding effect of section 4 (2) of the *Emergency Powers Act*.

31. Section 4 (2) of the *Emergency Powers Act* states:

"Any regulation made under section 2, or any other rule or order made thereunder, shall have effect notwithstanding anything inconsistent therewith in any law, and, to the extent of the inconsistency, the law shall have no effect so long as the regulation, rule or order remains in force."

32. This is a non obstante clause. It gives overriding effect to any regulation, rule or order that is in conflict with any law or order made under the *Emergency Powers Act*. In other words, it grants overriding effect to emergency regulations or orders made under the Act, including those affecting procedural fairness. Viewed more broadly, it means if the Government creates a regulation, rule, or order under the *Emergency Powers Act*, that rule or order will override or supersede any existing law that conflicts with it. So, if there's a conflict between an emergency regulation or order and a regular law, the emergency rule or order will prevail and the regular law will not apply.

33. The *Emergency Powers (COVID-19) (No. 2) Regulation 2021* was made under section 4 (2) of the *Emergency Powers Act*. The Claimant was terminated by the CSSI during the SOPE when the *Emergency Powers (COVID-19) (No. 2) Regulation 2021* was in force. The fact that the First Defendant did not provide him an opportunity to respond to the allegations or appear in person or by legal representation before the decision was made did not in any way invalidate the powers on which the circulars were made. To invalidate the powers or orders, in my view, means to make a decision that is tantamount to overturning or quashing the directives issued in the circulars pursuant to the *Emergency Powers (COVID-19) (No. 2) Regulation 2021*. Hence, when the Claimant was not afforded natural justice before the decision was made, the Claimant's non-compliance with the circulars issued

under a valid emergency regulation does not entitle him to procedural guarantees that would otherwise apply.

34. In any event, a failure to comply with natural justice is not fatal to any decision made by the First Defendant pertaining the breach of the directives made pursuant to the *Emergency Powers (COVID-19) (No. 2) Regulation 2021* and the *Emergency Powers Act*. This position is well settled in *Douglas v Attorney General* [1999] SBHC 147, at page 6, a case referred to by counsel for the Defendants, where Palmer J (now CJ) clarified this position in the following unequivocal terms:

“The fact therefore the rules of natural justice had not been complied with in making of the order of deportation by the Prime Minister is not fatal to its validity. Its validity is saved by subsection 4 (2) of the EPA.”

35. Accordingly, the fact that the First Defendant did not offer the Claimant a chance to respond or appear in person, does not render its process to be procedurally improper or unlawful. No breach of natural justice arises under these exceptional circumstances.

36. In the present proceeding, the power upon which the circulars were made for strict compliance by the public officers cannot be invalidated or superseded by the failure to comply with the common law rules of natural justice on the basis that it was saved under section 4 (2) of the *Emergency Powers Act*.

37. Given the First Defendant, with concurrence of the Second Defendant, was tasked to review the decision of the CSSI made during the SOPE, and in the absence of the Claimant pointing to a breach of a specific rule or procedure ought to be followed by the First Defendant that requires natural justice to be given to the Claimant to respond to the allegation, and further, considering that the First Defendant in fact retains the discretion on whether or not to give the Claimant an opportunity to respond to the allegation before the decision was made, I do not see any procedural error or impropriety on the part of the First Defendant. This issue is decided in favour of the Defendants.

Issue 5: whether the First Defendant acted reasonably, with due diligence and rationality when it dismissed the Claimant's appeal.

38. The Claimant argues that the First Defendant acted unreasonably, without due diligence and irrationally by failing to investigate or consider mitigating circumstances, such as his partial compliance with the vaccination requirement or the existence of health-based exceptions.
39. Counsel for the Claimant amplifies that submission that the First Defendant should have enquired about the Claimant's partial compliance with the No Jab No Job policy before making the decision to dismiss the appeal. By implication, if the First Defendant had undertaken such investigation, the appeal could be considered otherwise.
40. The Claimant further submits that there were exceptions given for people with pre-existing health conditions not to take the COVID-19 vaccines. If the Claimant's late and partial taking of the vaccination were considered, that could warrant his case to be considered exceptionally. The failure to do so therefore evidences the First Defendant's failure to act reasonably, with due diligence and rationality. On those asserted grounds, the First Defendant's decision should be overturned.
41. Contrary to the Claimant's submission, the evidence has established that the Claimant already raised these points in his written appeal dated 20th June 2022. The relevant excerpt, found at page 45 of the Court Book, clearly sets out the Claimant's explanations regarding his partial vaccination, suspension status, and alleged lack of formal notification, as follows:

"RE: APPEAL AGAINST PUNISHMENT PURSUANT TO SECTION 125 OF THE CONSTITUTION

I refer to the above subject. It should be noted that this appeal is against my termination. The background of the allegation against me is outlined as follows:

- 1. That on February 2022, the Correctional Service Human Resource Officer called in at where I lived and asked for a copy of my COVID-19 Vaccination Card, which I provide only my 1st jab done.*
- 2. That on 24th March 2022, I realised that my salary was ceased and when I enquired about it, I was informed by CSSI HR that I was now terminated.*
- 3. I was also informed that I was in breach of the COVID-19 No Jab No Job policy that is the reason for my termination.*

As per hearsay, I learnt of the Government policy on COVID-19 vaccination which I was alleged to breach verbally from CSSI HR.

I as a Correctional Officer who's on half pay and have a pending appeal case referral to the Attorney General Chamber. I see it fit also to bring this case to the Police and Prison Service Commission for determination.

I hereby lodge this appeal against my punishment pursuant to section 125 of the Constitution of Solomon Islands.

Appeal ground 1: *I was on half pay or currently on suspension awaiting determination by the AG Chamber on my previous appeal with this Commission. I therefore not access to any Government Policy or any Official Circulars from the government, in this matter the Covid-19 policy.*

Appeal ground 2. *The Correctional Service during February 2022 call in at where I live and ask to have copy of my Covid-19 Vaccination card. In the same manner the Correctional Service should have come to my residence and inform me of the Covid-19 Government policy on No jab No job policy. I would have completed my vaccination within the required period of time had been for CSSI inform me accordingly.*

Appeal ground 3. *Since 24th March 2022 while my salary was ceased, I was never served with any Termination letter by the Commissioner of Correctional service, nor subject to any tribunal hearing or discipline process. The evidence of punishment is that my salary is ceased and verbally inform by CSSI HR that I was already terminated.*

It is also here submitted that my right to a fair hearing was not given and this breached of the rule of natural justice. It is fundamental to a fair procedure that both sides should be heard. My punishment thus, are unjustified.

Appeal ground 4. *It is not my intention to breach the COVID-19 Government policy, as I have stated in appeal ground 2. It is also evident that I willing to be vaccinated for my own personal health, but not knowingly in breach of Government period of time for vaccination. I have completed my vaccination but outside of required period.*

I humbly seek that my appeal be allowed, and also humbly pray that the commission to allow my appeal and further make formal request for reinstatement of my salary.

I respectfully submitted.

Joseph Basitalau"

42. Based on the contents of the appeal, the Claimant has adequately explained his side of case regarding his partial taking of the COVID-19 vaccination to the First Defendant for considerations. In fact, his explanations for the partial taking of the vaccination were adequately presented to the First Defendant.
43. Given that the Claimant had fully presented the explanations, the First Defendant did not ignore this aspect of his case. Rather, it considered and ultimately rejected it. The

decision letter reflects this assessment and reinforces that the First Defendant regarded the policy as mandatory and non-appealable as expressed herein:

“However, in view of the second appeal, the Commission noted that your claim was that you were not aware of the directives is questionable as there were numerous publicities (sic) in the media about the cabinet’s directives urging all public officers to have their vaccinations done as a requirement for ongoing employment in the public service. The consequences of a failure to comply were also made clear that any non-compliance would result in termination from the public service. The Commission importantly noted that this is a mandatory requirement that was put in place by the Government which is in its view is non-appealable.

Furthermore, the Commission is of the view that the onus is on you to prove that you have complied by the due date, and failing which, that is the end of the matter. With that, the Commission is satisfied that you have demonstrated that you have not complied by the due date.”

44. It is therefore incorrect to assert that the First Defendant had failed to consider the Claimant’s partial compliance with the vaccination. Even if procedural deficiencies had occurred at the CSSI level, the First Defendant’s subsequent decision is preserved or saved by section 4 (2) of the *Emergency Powers Act* when it decided the Claimant’s appeal. The First Defendant, in my view, when deciding the Claimant’s appeal could not lawfully overturn or modify directives that were issued under the *Emergency Powers (COVID-19) (No. 2) Regulation 2021*.

45. When all the factors are considered, in my view, the First Defendant has acted reasonably, with due diligence, and rationally when it made the decision to uphold the Claimant’s termination of employment. The First Defendant was conscious of the fact that it does not have the power to invalidate or overturn any decision that was made regarding a breach of an order or directives made under the *Emergency Powers Act*. On the whole, the First Defendant acted within its lawful powers, considered all relevant materials, and exercised

its discretion reasonably. For these reasons, I do not see any error on the part of the First Defendant which could warrant this Court to intervene.

Issue 6: whether the First Defendant acted lawfully when dismissing the Claimant's appeal.

46. There is not much that can be gained from this issue on the claimed unlawfulness of the First Defendant's action when it dismissed the Claimant's appeal. The Claimant asserts that there was no gazettal order made by the Prime Minister for the orders for vaccinations. By implication, this means the First Defendant's decision to uphold the CSSI's decision by relying on the COVID-19 Government vaccination policy was unlawful and ought to be quashed.
47. This argument must be rejected. The Claimant failed to plead any material facts in his originating claim that would support a finding of illegality. As stated in *Tovosia v Koli* (supra), parties are estopped from raising unpleaded issues at trial. Those issues must be pleaded upfront to give the First and Second Defendants fair notice of the issues to be addressed during the trial and more importantly, to ensure procedural fairness in the proceeding. The Claimant cannot raise this during closing submission and expects the Court to rule in his favour to the detriment of the opposing parties.
48. The inevitable conclusion reached by this Court is that, the First Defendant was performing its core constitutional function under section 124 of the *Constitution*. Its decision to uphold or dismiss disciplinary appeals falls squarely within its jurisdiction. The decision here was based on the clear evidence that the Claimant had not complied with lawful government directives made under a valid emergency Regulation. It was based on the Claimant's self-disobedience to the No Jab No Job policy, a directive made under Regulation 5 of the *Emergency Powers (COVID-19) (No. 2) Regulation 2021*. That decision was not unlawful. Again, I find no errors in the First Defendant's action, and this aspect of the Claimant's case is rejected forthwith.

Orders of the Court

1. **The Claim for Judicial Review is dismissed.**
2. **The Claimant shall pay costs to the First and Second Defendants on a standard basis.**



Justice Augustine S. Aulanga

PUISNE JUDGE