

**IN THE COURT OF APPEAL OF  
THE REPUBLIC OF VANUATU**  
*(Appellate Jurisdiction)*

**CIVIL APPEAL CASE No.26 OF 2012**

**BETWEEN:** JOSHUA BONG  
Appellant

**AND:** PRESIDENT OF THE REPUBLIC OF VANUATU  
Respondent

***Coram:*** *Hon. Justice Bruce Robertson  
Hon. Justice Oliver Saksak  
Hon. Justice Daniel Fatiaki  
Hon. Justice John Mansfield  
Hon. Justice Dudley Aru*

***Counsel:*** *Mr Saling Stephens for the Appellant  
Mr Avock Godden for the Respondent*

***Date of hearing:*** 17<sup>th</sup> October 2012  
***Date of judgment:*** 25<sup>th</sup> October 2012

## **JUDGMENT**

### **INTRODUCTION**

1. Joshua Bong was appointed as the Commissioner of Police for the Republic of Vanuatu for a 3 year term from 1 October 2009 to 30 September 2012. That appointment was made by Instrument of Appointment under the hand and seal of the President of the Republic of Vanuatu.
2. On 17 June 2012 Mr Bong was given notice that the President had suspended him from office for 3 months, from 17 June 2012 to 16 September 2012. He brought proceedings in the Supreme Court to challenge the lawfulness of his suspension. That action was unsuccessful. On 10 August 2012, the trial judge rejected all his contentions and dismissed his claim. Mr Bong was ordered to pay the costs of the action.
3. This is an appeal from that decision. Apart from the issue of costs, it is hard to see now any benefit in Mr Bong pressing his appeal. He has ceased to be



Commissioner of Police in any event, simply because his term of appointment expired on 30 September 2012. He received his correct salary up to 30 September 2012. Nevertheless, counsel on his behalf pressed the appeal, and the Court of Appeal has carefully considered it.

4. One matter argued on Mr Bong's behalf can quickly be laid to rest. Mr Bong said, by way of explaining the significance of the appeal, that if successful on the appeal he may be re-instated as Commissioner of Police. He relied upon s.7A(1) of the Police Act [CAP.105] to suggest his appointment had been extended to 5 years.
5. That is plainly wrong. Section 7A was introduced into the Police Act by the Police (Amendment) Act No. 22 of 2010. It commenced on 17 January 2011. Section 81A prescribes the transitional arrangements for those affected by the amendments. It makes it plain that all officers of the Vanuatu Police Force (VPF) employed by the Police Service Commission (the Commission) continue to hold office under the same terms and conditions and with the same entitlements as they did before the amendment. Section 7A therefore cannot have changed the terms of Mr Bong's appointment as Commissioner of Police.

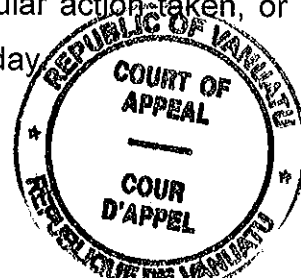
### **THE FACTS**

6. The office of Commissioner of Police is not one established under the Constitution of the Republic. The VPF was established by, and operates under, the Police Act. The office of the Commissioner of Police was itself established by the Police Act. The functions and powers of the Commissioner of Police are also prescribed under that Act, particularly s.4(1). The Commission is also established under that Act. After the amendment by the Police (Amendment) Act those functions and powers have been extended: s.10A.
7. Mr Bong was appointed as Commissioner of Police by the President, acting on the advice of the Commission for 3 years, in accordance with s.10 of the Police Act. Since the 2010 amendments, that appointment is now to be made under the new s.7A(1) by the President on the advice of the Commission after consultation with the Minister, and is to be for a term of 5 years, with review



after 3 years as required by s.7A(2). As noted, those provisions do not apply to Mr Bong's appointment.

8. On 18 May 2012, the Chairman of the Commission received a letter from the Minister expressing some concern about Mr Bong's performance as Commissioner of Police. The Commission informed Mr Bong of the complaint, and that it proposed to investigate the matters raised by the complaint. It suggested he take leave while the investigation was undertaken. On 19 May 2012, Mr Bong wrote to the Commission requesting permission to take outstanding leave from that date, and recommending that a Deputy Commissioner take over his office during his leave. Apparently Mr Bong then had 4 months' leave accrued, so the leave he planned to take would be used up during the proposed investigation. As the trial judge said, that approach was a measured and reasonable response by all concerned to a difficult and sensitive issue.
9. On 30 May 2012, through his solicitor, Mr Bong wrote to the Commission complaining that he had been forced to take leave or face termination of his position, and that a Deputy Commissioner had been wrongly appointed as Acting Commissioner during his absence. It was apparently perceived by Mr Bong that he had thereby been displaced as Commissioner of Police. On 13 June 2012 it was made clear that there was no issue about that, and the proceedings he had instituted in the Supreme Court seeking his reinstatement as Police Commissioner, obviously misconceived, were discontinued.
10. However, on the same day, 13 June 2012 Mr Bong wrote to the Commission indicating he "relinquished" his leave and was returning to work the following day.
11. The Commission on 14 June 2012 met and concluded that Mr Bong's return to his office would be likely to hinder its investigation into the Minister's complaint. On 15 June 2012, there was considerable difference of views within the VPF about those two competing considerations and the situation was tense. It is not necessary or useful to describe in detail the particular action taken, or advice sought by Mr Bong or by the Commission over that day.



12. As a result of advice received from the Attorney-General about the options available to it, and its view of what was appropriate, the Commission on 16 June 2012 resolved to seek the suspension of Mr Bong as Commissioner of Police. It consulted with the Minister about that decision. It then on 17 June 2012 attended the President and the President, acting on the Commission's advice, suspended Mr Bong from his office as Commissioner of Police for 3 months.
13. As noted, Mr Bong brought proceedings in the Supreme Court to challenge the lawfulness of his suspension. His claim was dismissed with costs. This is an appeal from that decision.

### **CONSIDERATION OF THE ISSUES**

14. The grounds of the appeal largely mirror the issues raised before the trial judge and rejected by him. It is convenient to consider them in sequence. In the view of the Court of Appeal, there is no merit in any of them. That is largely for the reasons given by the trial judge. In both the grounds of appeal and the appellant's legal synopsis, there are 19 and 18 matters separately raised. They overlap, and to a significant degree are repetitive. The following issues emerge from those documents and the oral submissions.

#### **(a) Proof of the President's signature on the Instrument of Suspension of 17 June 2012**

15. This point was not taken before the trial judge. It is a little inconsistent that Mr Bong is prepared to accept the genuineness of the President's signature and seal on the Instrument of Appointment, but not on the Instrument of Suspension. But he says the President has to give a sworn statement (and, by implication, to be available for cross-examination) to prove that he signed and sealed the Instrument of Suspension.
16. In any event, the point has no merit.
17. Although the Republic of Vanuatu has no Evidence Act, like almost all other jurisdictions, the Courts of the Republic of Vanuatu can take judicial notice of

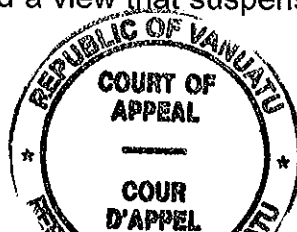


public documents, such as those apparently bearing the signature and seal of the President. That has been so for a very long time: see e.g. **Mighell v. Sultan of Johore** [1849] 1 Q.B. 149. As long ago as the **Evidence Act 1849** (UK, 8 & 9 Vict c.113), there was statutory expression of that position. It continued to be the case in the **Evidence Act (UK)**, in force at the time of the establishment of the Republic.

18. In this instance, there was no other evidence which could have placed any doubt on the fact that the President signed and sealed the Instrument of Suspension.

**(b) Power of the President to suspend the appellant from performing the role of the Commissioner of Police.**

19. Mr Bong argued that the President did not have the power to suspend him from his office.
20. There is no express power to do so in the Police Act. However, that power is found in s.21 of the Interpretation Act [CAP.132]. It provides:  
*“Where an Act of Parliament confers powers on any authority to make any appointment that authority shall also have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend reappoint or reinstate any person appointed in the exercise of the power.”*  
(Emphasis added)
21. Counsel for Mr Bong argued that s.21 could not apply because the Police Act is not an Act of general application. There are two reasons why that submission is wrong. The first is that s.21 applies to “an Act of Parliament”. It is not confined to some Acts, or Acts which are of general application. The second is that the Police Act is an Act of general application. It applies in Vanuatu, across the Republic and to the whole of the people of the Republic. They are entitled to its observance, as much as any member of the VPF is entitled to its observance and - to the extent it imposes obligations on them – they are obliged to comply with it as much as any member of VPF is obliged to comply with it.
22. If s.7A of the Police Act now applies to the process of suspension, it was on the evidence complied with. The Commission formed a view that suspension was a



proper course to have adopted. The Commission consulted the Minister and then gave evidence to the President. The President acted on that advice.

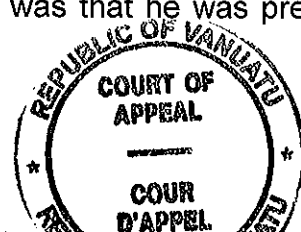
23. Since 19 January 2011, the appointment of the Commissioner of Police must be done under, and subject to, Part 2A of the Police Act, including s.7A. Hence, the terms and conditions of such an appointment now may be a little different from those which applied to Mr Bong.
24. We also note that Mr Bong did not show that, under the terms and conditions of his appointment, preserved by the transitional provisions of the Police (Amendment) Act, the President had no power to suspend him. There was nothing in the terms and conditions of his appointment which suggested that there was no power to do so.

**(c) The President acted on the advice of the Commission, rather than conducting his own inquiry before being satisfied that grounds for suspension existed.**

25. Counsel for Mr Bong, in the course of his submissions acknowledged that this argument could not be maintained. It was inconsistent with another argument he presented. It is also not consistent with the explanation of the role of the President in **Attorney-General v. President of the Republic of Vanuatu** [1994] VUSC 2 as approved in **Sope Maautamate v. Speaker of Parliament** [2003] VUCA 5, and also see **Government of Republic of Vanuatu v. President of the Republic of Vanuatu** [2012] VUSC 109, 8 June 2012: Constitutional Case No.2 of 2012.
26. Clearly, the President is expected to act on the advice of the Minister and, in circumstances such as the present, on the advice of the Commission.

**(d) The finding that Mr Bong agreed to take leave while an investigation was conducted by the Commission into the matters raised by the Minister.**

27. The evidence before the trial judge was clearly sufficient to support the finding that Mr Bong initially agreed to take leave while the proposed investigation was conducted. It is correct that his sworn evidence was that he was pressured to



do so, but the trial judge did not have to accept that evidence and there was no ample material to support his finding. His own letter of 19 May 2012 can speak for itself.

28. Consequently, this complaint by Mr Bong is not made out.

**(e) Other findings of fact**

29. The matter proceeded at first instance on the basis of undisputed material, following the earlier ruling of the trial judge of 18 July 2012 in which objections to evidence (amongst other things) were addressed.

30. On that material, counsel for Mr Bong identified particular paragraphs of the judgment of the trial judge which - he contended - were against the weight of the evidence or made unreasonably.

31. The Court of Appeal considers that these contentions are not made out. The primary material is reasonably capable of supporting each of the particular findings challenged. The critical findings have been separately addressed. It is not necessary to refer in detail to the evidence.

**(f) Other matters**

32. The appellant asserts that it was wrong to have invited the appellant to remove the Minister of Internal Affairs and the Commission as parties in the action before the Supreme Court. That order removing them as parties was made by consent at a conference on 26 June 2012. There was no error on the part of the trial Judge in giving effect to the order proposed by the parties on that occasion.

33. It is also clear that a number of the references to the judgment of the trial judge where (it is argued) there are incorrect or unsupported findings of fact are no more than observations about the meaning of the Police Act, in particular paragraphs 65, 66, 67 and 68 of the judgment.

34. The suspension order restricted publication of the full terms of the judgment of the Supreme Court. That was apparently intended to ensure that there was, at the time, no risk of prejudice to the position of Mr Bong during the then ongoing investigation. There is no legal error on the part of the trial judge in that regard.



If Mr Bong no longer wants the benefit of that order, he may apply for the trial judge to discharge it. Likewise, the President by his legal representatives may do so. There is no reviewable error.


35. The claim that the trial judge should have recused himself has no merit. It was proper for counsel for Mr Bong to have raised the question, if he was instructed to do so on proper grounds. The trial judge rejected that application, and gave reasons for doing so in reasons given orally on 6 June 2012 and subsequently published. For the reasons given by the trial judge, he was correct to have refused to recuse himself. It is not necessary to repeat those reasons. On this appeal, the propriety of the appellant re-raising the issue must be questioned having regard to the recorded comments made following the ruling of 6 June 2012 at [34], namely that the matters raised to support the claim for recusal were withdrawn.

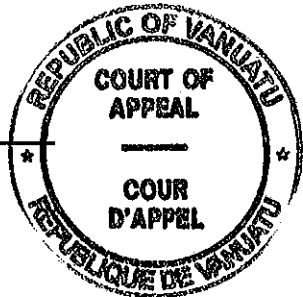
### **CONCLUSION**

36. For those reasons, the appeal must be dismissed.  
Mr Bong is to pay to the President the costs of the appeal.

**DATED at Port-Vila this 25<sup>th</sup> day of October 2012**

**ON BEHALF OF THE COURT**

  
\_\_\_\_\_  
**John Mansfield**  
Judge



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom, separated by two stars. In the center, it reads "COURT OF APPEAL" and "COUR D'APPEL" with a horizontal line between them.