

(Administrative Law Jurisdiction)

IN THE MATTER OF: An Appeal from the
Teaching Service
Commission To The
Teaching Service
Disciplinary Appeal
Board

BETWEEN: JOE TIMOTHY and
ISAIAH ISAAC

Applicants

AND: MATEVULU COLLEGE

First Respondent

AND: MATEVULU SCHOOL
COUNCIL

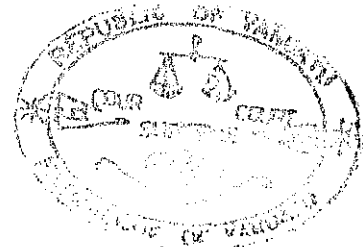
Second Respondent

AND: MINISTER OF
EDUCATION

Third Respondent

AND: TEACHING SERVICE
COMMISSION

Fourth Respondent



Coram: Mr Justice Oliver A. Saksak
Ms Cynthia Thomas – Clerk

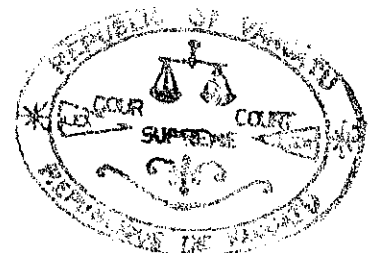
Counsels: Mr Hillary Toa, Public Solicitor's Office for the Applicants.
Mr Willie Jack Kapalu, Bill Bani & Partners for the First and Second Respondents.
Mr Tom Joe, State Law Office, for the Third and Fourth Respondents.

Dates of Hearing: 16th, 18th and 20th June, 2003.
Date of Judgment: 28th July, 2003.

JUDGMENT

This is a reserved judgment. The Applicants obtained leave to apply for judicial review of the following decisions of the Respondents:-

1. Decisions of the First and Second Respondents communicated by letter 25th April 2000 (sic) after the Applicants actions and/or omissions that -
 - (a) "Your revocation letter to the Chairman of Matevulu College Council was not accepted after many discussions.
 - (b) The memo dated 23 March 2001 stated the School Council accepted your vacation of your respective officers.
 - (c) In addition, that the Council decisions for your recommendation on the 5th April 2001 that you will be transferred out of the College."
2. The decision of the College Principal in appointing a new Assistant Principal and a new Acting Deputy Principal on 24th March 2001, and the decision of the Second Respondent confirming or endorsing such appointments.
3. The decision of the Third Respondent in suspending the Applicants without salaries communicated by letter dated 25th April, 2001.



4. The decision of the Fourth Respondent dismissing the applicants from the Teaching Service communicated by letter dated 30th August, 2001.

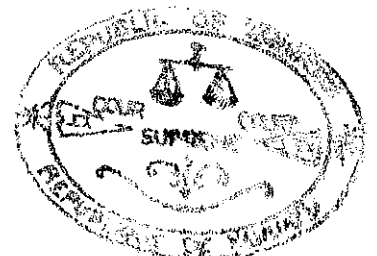
Reliefs sought

The Applicants seek orders quashing the above decisions and for orders re-instating them to their respective positions at the Matevulu College.

The Facts

A. Joe Timothy (JT)

He was appointed by the Teaching Service Commission (the TSC) as a teacher teaching physics and mathematics at Matevulu College with effect from 1st March 2000. He also held the position of Assistant Principal since 11th October, 2000. On 12th November 2000 JT made a lengthy Report on Administrative Deficiency at Matevulu College to Mr Joel Path, then the Provincial Education Officer. Copies of the Report were made available to the Second Respondent, the Principal of the College, and the Third Respondent. Apparently JT made a second Report to Mr Kalmelu Matai, Director of School Program. According to JT nothing was done by anybody about the issues touching on the Principal of the College. For that reason JT issued a notice to the Chairman of the Matevulu College Council on 23rd March, 2001 informing that he would be staging a personal strike action against the Principal, Mr Amon Nwero for an indefinite period of time. In pursuance of that intention and action JT and his colleague Isaiah Isaac (II) put up a Notice to all students, teaching and ancillary staff on the night of 23rd March, 2001 informing them that both had vacated their respective offices. On 24th March 2001 the Principal acting upon the Notice, appointed Mr Renjo Samuel as Acting Deputy Principal in place of II, and Mr Frederick Tamata as Acting Assistant Principal in place of JT.



B. Isaiah Isaac (II)

Isaiah Isaac was also appointed by the TSC as teacher teaching Agriculture at Matevulu. He was also appointed as Deputy Principal since 2nd February 2001. He was also appointed as Farm Manager in January 2001. He was not paid responsibility allowances or salaries in respect of his other responsibilities. He had pursued these matters and received no positive responses between the periods of 12th March 2001. On 23rd March 2001, II wrote to the Chairman of the College Council notifying him that he had resigned from the position of Deputy Principal.

Both JT and II were asked to attend a meeting on 26th March 2001 at the Offices of the Municipal Council in Luganville Town Hall. Both were asked by the Council (Second Respondent) why they had resigned and why they were staging personal strike action. After discussions the Second Respondent advised both JT and II to remain calm and to resume teaching duties. The meeting continued at 2 O'clock when the Applicants were again told to return to teaching duties. As a result of this, both JT and II wrote letters to the Second Respondent revoking their Notices of 23rd March, 2001. They both returned to teaching duties but then heard rumours from the students that they were to be transferred out of the Matevulu College. This resulted in a student strike held on 24th April 2001. Both JT and II declared that they supported the student's strike.

On 25th April 2001, Mr Thomas Simon came to the Matevulu College to look into the issue of the strike by students. He apparently reported matters to the Minister so that on 26th April both JT and II received their suspension letters dated 25th April, 2001. Both were suspended without salaries. Both were advised that if they wished to appeal that they do so within 21 days.

On 25th April 2001, both JT and II wrote letters of appeal to the Secretary of the TSC. On 19th July, 2001 the Chairman of the TSC wrote to the Applicants inviting both of them to respond to all matters raised in paragraphs 1 through 11 concerning alleged misconduct against them. The TSC did not receive any responses from the Applicants so that on



23rd August, 2001 the TSC determined the appeals of the Applicants and accordingly dismissed both of them from the Teaching Service. They both were advised that should they wish to appeal that they do so within 21 days by writing to the Chairman of the Disciplinary Appeal Board of the Teaching Service Commission.

The Applicants did not appeal as advised. Instead they apply to this Court to have the matters reviewed.

The Evidence

The Applicants called seven witnesses to testify orally and who also tendered their respective sworn statements. The Defendants called only two witnesses and tendered their respective sworn statements. Based on this volume of evidence the Court will consider the following issues –

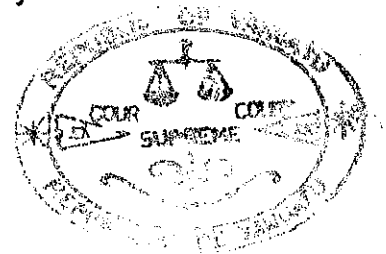
Issues:-

1. In respect of the Decisions of the First and Second Respondents in rejecting the Applicant's revocation of resignation and accepting such resignations as valid, and in deciding to transfer the Applicants out of the Matevulu College.

The issue here in my view is whether or not that decision was and is wrong or improper in law and that as such the First and Second Respondents had acted ultra vires their powers?

In my view this is a legal issue. The Applicants did not question and have not at any time questioned the establishment or constitution of the Second Respondent. The Applicants have not shown to the Court how the First and Second Respondent's decision was improper or unlawful?

The evidence before me was that both Applicants published their notice of vacation of offices to all students, teaching and ancillary staff on 23rd March 2001. The Second Respondent met and accepted the Applicants' vacation of offices. It is clear that they had only vacated their positions as Assistant Principal and Acting Deputy Principal but that they were still

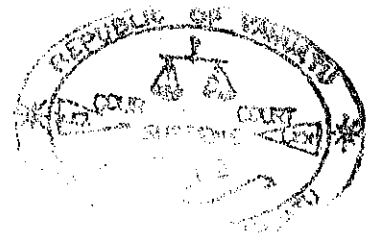


teachers. Both Applicants wrote to the Second Respondent revoking those resignations and pledging loyalty and support afresh. But it is clear the Second Respondent rejected those letters but took a decision to transfer the Applicants out of the College.

No evidence was called from the Second Respondent's Chairman or members. However from the evidence before me, it is apparent that the Applicants had staged a personal strike against the then Principal. The decisions taken by the Second Respondent in themselves reflect the serious but what appears to me to be a sympathetic view of the Council. They decided to transfer the Applicants out of the College rather than take any other action. I find nothing wrong with those decisions. They were fair and proper in the circumstances. There is nothing to show that the council had acted outside their powers in making those decisions. Therefore for these reasons, the orders sought by the Applicants to quash these decisions are refused.

2. In respect of the Decisions of the then Principal Mr Amon Nwero in appointing a new Assistant Principal and a new Acting Deputy Principal, and the decision of the Second Respondent confirming or endorsing such appointments. The issue here in my view again is whether those decisions were improper and wrong in law, and whether they were made ultra vires their powers?

Firstly, the Applicants have not joined Mr Amon Nwero as a party to this case. The Applicants produced much evidence showing certain acts and omissions of Mr Amon Nwero which in my view appears to be the root cause of the Applicants' actions to stage personal strike actions against him. That is a serious omission. All the evidence produced by the Applicants and their witnesses appear to be hearsay and are therefore irrelevant. Those evidence are inadmissible. This is not a case against Mr Amon Nwero. Therefore his decision to appoint a new Assistant Principal and a new Acting Deputy Principal cannot be reviewed. The procedures taken by the Applicants in making complaints and allegations against Mr Nwero were not proper procedures.



The only decision that can be reviewed is the decision by the Second Respondent confirming or endorsing those appointments. Again no evidence was called from the Chairman or any members of the Council but the decision itself reflects the Council's concern about the welfare and running of a College of about 400 students. It would have been a grave mistake and a gross neglect of duty had the Council not confirmed or endorsed the appointments of a new Assistant Principal and a new Acting Deputy Principal.

Under section 19(1) of the Administration of Schools Act [CAP. 121] a school council's primary function "shall be to administer and generally promote and develop the school for which it is established."

I am satisfied that when the Second Respondent took a decision to confirm and endorse the appointments of a new Assistant Principal and a new Acting Deputy Principal immediately after the Applicants had vacated those offices, they did so properly and in accordance with its functions under section 19(1) of the Act. On that basis I find nothing wrong with that decision. Therefore the orders sought by the Applicants to quash that decision is also refused.

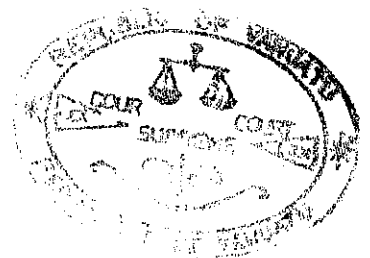
3. In respect to the Decision of the Third Respondent in suspending the Applicants without salaries. The issue here is whether the decision was proper in law and that it was done ultra vires his powers?

The evidence is that by letter dated 25th April 2001 the Minister of Education suspended both Applicants pursuant to his powers under section 32(1) of the Teaching Service Act [CAP.171]. The letter is identical and addressed to both Applicants in the following words –

"Dear Mr Timothy (and Mr Isaac),

I note from your correspondence that you had attempted to disrupt, destabilize and sabotage the normal operation of the College purely to satisfy your own interest.

The action taken clearly indicates that you had neglected your professional duties, and had wilfully disobeyed a direction applicable to you as an officer in the Teaching Service. It also indicates that you are guilty of improper conduct.



Therefore pursuant to Part 6 section 32(1) of the Teaching Service Act, I hereby suspend you from duties without salaries, with effect from the date hereof.

During the period of your suspension, you are forbidden to use college properties and facilities. Please ensure that all college properties under your possessions are returned immediately.

Should you wish to appeal against this direction, could you please do so in writing and submit it to the Teaching Service Commission within 21 days.

Thank you.

Yours Sincerely,

Signed: Hon. Jacques Sese
Minister of Education

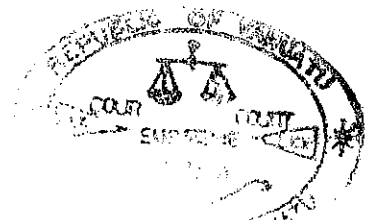
cc: Director General of Education
: Director School Programs
: Secretary – Teaching Service Commission
: Director Administrative Services
: Acting Principal – Matevulu College.”

The Law

Part 6 of the Teaching Service Act as amended deals with discipline of teachers. Section 32 reads –

- “1. If, in the opinion of the Minister, an officer –
 - (a) is inefficient, incompetent or unfit or unable to perform his duties; or
 - (b) is guilty of misconduct, the Minister may, by notice given to the officer specifying the grounds for suspension, suspend him from duty for a period not exceeding 1 month.

2. Where the Minister suspends an officer -
 - (a) The Minister shall, in writing immediately inform the Commission of the suspension and grounds for suspension;
 - (b) The Minister may, at any time, revoke the suspension.”



In the original Acts No.15 of 1983 and 12 of 1987 section 32(2)(c) reads as follows –

“the officer shall be paid his salary in respect of the period of suspension.”

However the Act was amended by Amendment Act No.36 of 1993 which repealed section 32(2)(c) and substituting the same as follows –

“the Minister may determine that the officer shall not be paid his salary during the period of the suspension.”

The Secretary of the Teaching Service Commission, Mr Christopher Karu confirmed in his evidence that he received a copy of the Minister’s letter.

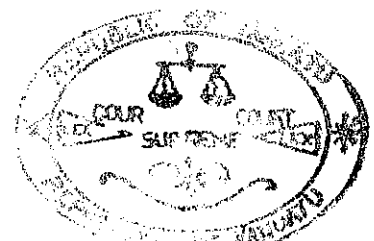
I am satisfied, applying section 32 to the facts in evidence, that the Minister acted properly and within his powers in suspending the Applicants from their duties. How the Minister received his information about the Applicants’ actions is immaterial. It is sufficient only that the Minister formed an opinion. It is clear from his letter at paragraph 1 that the Minister had some documents before him which assisted him to form an opinion as to the conduct of the Applicants.

Therefore for the foregoing reasons, the Orders sought by the Applicants to quash those decisions are refused.

4. Finally in respect to the Decision of the Fourth Respondents in dismissing the Applicants from the Teaching Service. The issue is whether the decision was proper in law and that it was ultra vires powers of the TSC?

The evidence of both Applicants were that they both appealed against the Minister’s decision on the same date being 25th April, 2001. These letters were tendered into evidence.

Before the TSC had the opportunity to determine their appeal the Applicants came before this Court seeking leave to apply for judicial review. Their application is dated 10th May 2001 only some 10 days after they had lodged their appeals on



25th April, 2001. However this Court on 9th July 2001 decided to adjourn the hearing of the matter and referred the case back to the TSC to deal with the appeal within 21 days.

As a result of that Order the TSC wrote to both Applicants by letter dated 19th July 2001. The letters are identical and I set out only the first part as follows –

"Dear Mr Timothy (and Mr Isaac),

Re: Your appeal to the Teaching Service Commission against the decision of the Minister dated 25th April 2001 to suspend you from the Teaching Service.

Before the Teaching Service Commission makes a determination on your appeal against the Ministers' decision to suspend you from the Teaching Service, it invites you to provide a statement in relation to the matters alleged to constitute the misconduct on your part which gave rise to your suspension.

The matters alleged to constitute the misconduct are as follows:

Paragraphs 1 through 11.

In dealing with your appeal under s.35 of the Act, the Commission conducts an inquiry into your alleged misconduct. If it finds that you are guilty of misconduct it may take various actions ranging from a reprimand to dismissal.

You are urged to provide the Commission with a statement in response to these matters which will be taken into account in the consideration of your appeal. Any such statement must be provided within 14 days of the date of this letter, after which time the Commission will proceed to determine your appeal and may do so without further notice to you."

Yours faithfully,

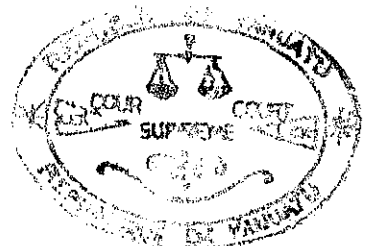
Signed: William Mael
Chairman, TSC "

The Law

Section 35 of the Teaching Service Act reads –

"(1) Where, after inquiry as directed by the Commission, it is found that an officer has been guilty of misconduct, the Commission may –

(a)(not applicable)

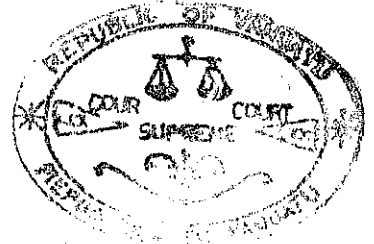


- (b)(not applicable)
 - (c)(not applicable)
 - (d)(not applicable)
 - (e) dismiss him from the service.
- (2) In an inquiry for the purpose of subsection (1) a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and be given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct."

The Applicants contented that by proceeding under section 35 of the Act the TSC had acted as if it was dealing with a disciplinary matter. The Court rejects that argument. Appeals are dealt with under section 33 of the Act which reads –

- "(1) An officer who has been suspended under section 32(1) may appeal to the Commission against the suspension by writing delivered to the Commission.
- (2) Where an officer appeals to the Commission under subsection (1) the Commission shall determine the appeal by -
- (a) revoking the suspension; or (which was not the case here)
 - (b) dealing with the matter under section 34 or 35 and the decision of the Commission shall be final. (emphasis, mine)
- (3) Where the Commission determines an appeal in the manner provided under subsection (2)(b), the suspension appealed against continues in force -
- (a) until the matter is determined under section 34 or 35(1), as the case may be; or
 - (b) until the Commission suspends the officer under section 34(3), whichever is the earlier."

Applying the law to the facts as shown by the evidence, it is apparently clear that the TSC proceeded to deal with the Applicants' appeals under the provisions of section 33(1); (2)(b)



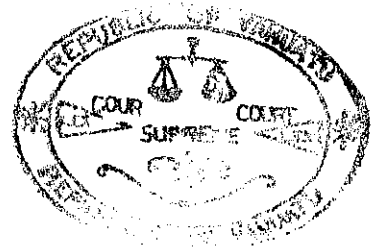
and 3(b). That therefore warranted an inquiry and that inquiry was made under section 35(2). After the inquiry was made and after which the TSC received no response within 14 days as required by letters dated 19th July 2001, the TSC determined the appeals and dismissed the Applicants in accordance with section 35(1)(e). I am unable to find anything wrong with what the TSC did in relation to the appeals of the Applicants. The Applicants had 14 days to respond. They did not. Instead they filed their appeals in this Court with their statements. That is a wrong process. It appears to me that the Applicants deliberately chose not to respect the legal procedure that the law has put in place in respect of their appeals by not responding to the letters of the TSC. They cannot now come before this Court to say that the TSC was wrong when they themselves neglected to follow legal procedures.

The TSC waited from 19th July 2001 until 23rd August 2001 when they finally decided to dismiss the Applicants from the Teaching Service on the basis that they did not respond to the allegations made against them in their respective letters of 19th July 2001. That is a period of more than one month waiting.

The TSC communicated its decision to dismiss the Applicants by letters dated 30th August, 2001. The end of that letter states –

“Should you wish to appeal against this decision you may do so in writing and have it delivered to the Chairman Disciplinary Appeal Board Teaching Service Commission within 21 days as from the date of this letter PMB 028, Port Vila.”

The TSC did not have to offer that right of appeal to the Applicants. Section 33(2)(b) states clearly that the decision of the TSC taken when a matter is dealt with under section 34 and 35 shall be final. In any event the Applicants have applied to this Court to review that decision and they treat the matter as an appeal. However I am satisfied that, except for the granting of the right of appeal by the TSC to the Applicants, all other actions of the TSC were proper and in accordance with their powers as specified in the Teaching Service Act. Therefore the Orders sought by the Applicants to quash these decisions are refused.



Conclusion

All orders sought by the Applicants are refused. The Applicants case is dismissed in its entirety. This case should not have been brought at all by the Applicants. But having done so they have put the Respondents to much costs which I now Order that the Applicants must pay. These costs are costs of and incidental to this action. In addition, the Applicants must pay the trial costs of this case. The hearing took three days at the rate of VT30.000 per day. The total trial costs is the sum of VT90.000. These must be paid within 7 days after this judgment.

The Respondents must submit their respective Bills of costs to the Applicants within 28 days from the date of this judgment. And the Applicants must pay such costs within a further 28 days thereafter unless they apply for a taxation.

DATED at Luganville this 28th day of July, 2003.

BY THE COURT



OLIVER A. SAKSAK
Judge

