

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

Judicial Review No. 6 of 2013

BETWEEN : TE MOLLI VENAOS GOISET  
Claimant

AND: REPUBLIC OF VANUATU  
First Defendant

AND: PRESIDENT OF THE REPUBLIC OF  
VANUATU, HONOURABLE IOLU  
ABIL JOHNSON  
Second Defendant

AND: MINISTER OF FOREIGN AFFAIRS  
Third Defendant

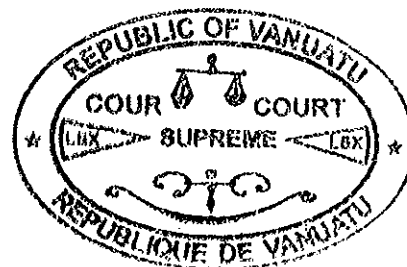
AND: ATTORNEY GENERAL  
Fourth Defendant

Coram: Justice Aru

Date of Hearing: 14 June 2013

Date of Judgment: 1 July 2013

Counsel: Mr. R.T. Kapapa for the Claimant  
Mrs. V. Molisa Trief for the 1, 2, 3 & 4 Defendants



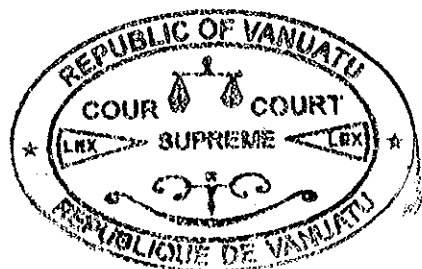
# JUDGMENT

## Background

1. The Claimant, Te Moli Venaos Goiset was appointed as Roving Ambassador of the Republic of Vanuatu to Russia and the Eastern countries on 25 August 2011. After having served in that capacity for sometime, on the 18 April 2013 she was removed by an order signed by the President of the Republic of Vanuatu.
2. The Claimant in these proceedings challenges the decision to remove her as Roving Ambassador and filed an Urgent Claim for Judicial Review with Urgent Application for Stay orders on 30 April 2013. The Urgent Application was subsequently withdrawn on 8 May 2013. Having being satisfied that there is an arguable case, direction orders were issued for the Defendants to file and serve their defence and sworn statements in support.
3. The Claimant filed two sworn statements in support on 30 April 2013 and 28 May 2013 respectively. The Defendants relied on the sworn statement of Emmanuel Blessing filed on May 2013. As the facts were not disputed, the parties were also required to file written submissions.

## Relief Sought

4. The Claimant seeks the following relief in her claim that:-
  - a) The Decision of 24 and 25 March 2013 and 26 April 2013 made by the third Defendant terminating the Claimant as Roving Ambassador be called up and quashed.
  - b) Order No.49 of 2013 made by the Second Defendant removing the Claimant as Roving Ambassador be declared null and void and be called up and quashed.

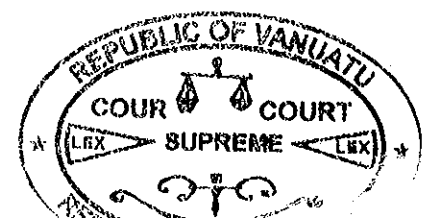


- c) The decision be quashed as it was not only contrary to the Foreign Service Act. No 22 of 2008 but that the Defendants exercised their powers unlawfully and in beach of procedural fairness or natural justice.
5. The main grounds in support of the claim could be summarized as follows. Firstly that the Minister of Foreign Affairs cannot unilaterally revoke the appointment of the Claimant as Roving Ambassador as it would be contrary to the provisions of the Foreign Service Act. Secondly, that the Third Defendant failed to comply with the Act by not affording the Claimant an opportunity to be heard and not giving her the reasons for her removal. Finally that her removal was made contrary to section 6 of the Foreign Service Act.

### Chronology

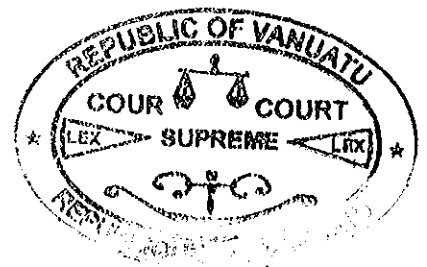
6. The following is the chronology of events that occurred which are not disputed :-

25 August 2011	The Council of Ministers endorsed the Claimant as Roving Ambassador of the Republic of Vanuatu to Russia and the Eastern Countries.
25 August 2011	The Claimant was appointed as the Roving Ambassador of the Republic of Vanuatu to Russia and the Eastern Countries.
28 November 2011	Order No. 227 of 2011 prescribed the Claimant's terms and conditions of appointment.
18 April 2012	The acting. President, H.E. Dunstan Hilton issued the Claimant's letter of credence to the Russian President.
10 January 2013	The Minister of Foreign Affairs Hon. A. Carlot wrote to the Director General J. Koanapo to assist him to issue a notice to the Claimant as Roving



Ambassador of Vanuatu Russia.

- 10 January 2013 The Minister of Foreign Affairs, Hon. Carlot, wrote to the Claimant inviting her to show cause why her appointment as the Roving Ambassador should not be reconsidered.
- 29 January 2013 The Claimant responded to the letter of the then Minister of Foreign Affairs of 10 January 2013.
- 25 March 2013 The Minister of Foreign Affairs, Hon. E.N. Natapei purported to write to the Claimant terminating her appointment as Vanuatu's Roving Ambassador to Russia.
- 26 March 2013 The Ministry of Foreign Affairs received a letter from Mr Ronald Warsal acting on behalf of the Claimant.
- 4 April 2013 The Minister of Foreign Affairs, Hon. E.N. Natapei, made submission to the Council of Ministers recommending that it recommend to the President to remove the Claimant as Roving Ambassador of Vanuatu to Russia.
- 4 April 2013 The Council of Ministers at their 4th ordinary meeting recommended to the President of the Republic to remove the Claimant as Roving Ambassador of Vanuatu to Russia and the Eastern countries.
- 18 April 2013 Following the Council of Ministers' recommendation, the President signed an Instrument of Removal of the Claimant as Roving Ambassador, published as Order No. 49 of 2013.
- 26 April 2013 Acting Minister for Foreign Affairs, Hon. B. Loughman, wrote a letter to the Claimant informing her of her removal from office by H.E the President.



## Law

7. The relevant provisions of the Foreign Service Act No. 22 of 2008 ("the Act") are :-

(i) Section I of the Act defines 'Council', 'Director General', 'head of mission' and 'Minister':

*Council means the Council of Ministers;*

*Director General means the Director General responsible for foreign affairs;*

*head of mission means a person who is:*

(a) *issued with a letter of credentials under section 2 to be:*

(i) *a high commissioner of Vanuatu; or*

(ii) *an ambassador of Vanuatu; or*

(iii) *a roving ambassador, of Vanuatu; or*

(iv) *a permanent representative to the United Nations or any other international organization, or*

(b) *appointed as a consul general under section 7;*

*Minister means the Minister responsible for foreign affairs;*

(ii) Section 2 provides for the appointment and selection of head of mission and subsection (2) and (3) provides –

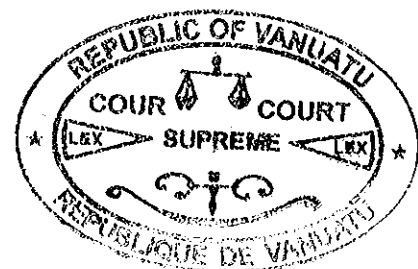
2). *The Council must not recommend to the President a person for appointment, unless the person:*

*a) is qualified and capable of carrying out the required duties at the mission; and*

*b) has been recommended to the Minister by a selection panel under subsection 9.*

3). *The President is to appoint and issue a letter of credence to a person, upon the recommendation of the Council, to be a head of mission.*

(iii) Section 6(1) of the Act provides for the removal of a head of mission as follows:



6.

(i) *The President may, on the recommendation of the Council, remove from office a head of mission if he or she:*

- (a) *ceases to be a citizen of Vanuatu (other than a person appointed under section 11 of this Act); or*
- (b) *becomes bankrupt inside or outside Vanuatu; or*
- (c) *is convicted of an offence inside or outside Vanuatu that is listed under subsection 27(2) of the Leadership Code Act [CAP 240]; or*
- (d) *is incapacitated by an illness; or*
- (e) *is not complying with his or her performance agreement with the Minister; or*
- (f) *has acted in a manner contrary to any lawful instruction of the Minister; or*
- (g) *bring into disrepute the integrity and reputation of Vanuatu; or*
- (h) *act contrary to the Government's foreign policy.*

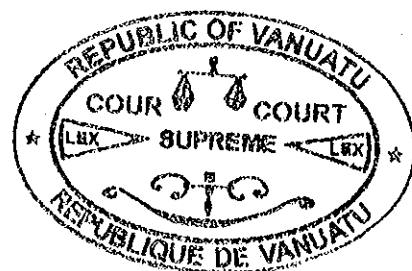
(iii) Section 18 provides:-

*The Minister is to determine, subject to the prior approval of the Council, by order, the terms and conditions of appointment of a head of mission, an honorary consul, a special envoy and other staff of the mission.*

8. A number of issues were raised in the submissions for determination which are dealt with below.

**Can the Third Defendant unilaterally remove the Claimant from office.**

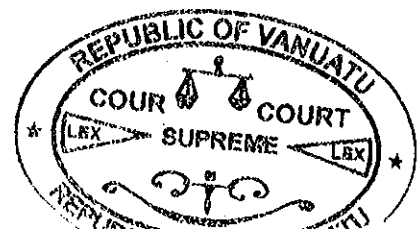
9. The Defendants conceded that the Third Defendant being the Minister of Foreign Affairs cannot unilaterally remove the Claimant from office as he purported to do by letter on 25 March 2013, only the Second Defendant can do so on the recommendation of the Council of Ministers pursuant to section 6(1) of the Act.



Was the Second Defendant's decision an order made in contravention of the Foreign Service Act.

10. The Claimant argues that the Second Defendant's decision was null and void and is contrary to the Act, as the Council of Ministers failed to inform her of the decision and secondly, that her term of office was for 3 years.
11. A Roving Ambassador as head of mission is appointed by the President on the recommendation of the Council of Ministers as specified under section 2 of the Act . The terms and conditions of appointment are determined by the Minister for Foreign Affairs subject to the approval of the Council of Ministers as provided under section 18 and these conditions operate as the appointee's performance agreement . The terms and conditions of the Claimant's appointment as Roving Ambassador were determined by the Minister and signed on 28 November 2011 as order No. 227 of 2011 . The Claimant was then issued with one letter of credence on 18 April 2012 as Roving Ambassador and that was to the President of Russia in line with her terms and conditions of appointment.
12. Once appointed, a head of mission can only be removed by the President on the recommendation of the Council of Ministers pursuant to section 6. Section 6 1) paragraphs a)-h) stipulates the grounds for which a head of mission may be removed.
13. On 10 January 2013 the Minister of Foreign Affairs, Hon. Alfred R Carlot wrote to the Director General to require his assistance to issue a Notice to the Claimant. On the same day, 10 January 2013 the Minister of Foreign Affairs wrote to the Claimant inviting her to show cause why her appointment should not be reconsidered.
14. The terms of the show cause notice were as follows-

*"Section 2 of the terms and conditions of your appointment sets out your duties as Roving Ambassador. Since then the Ministry is not aware whether you have carried out a mission to*

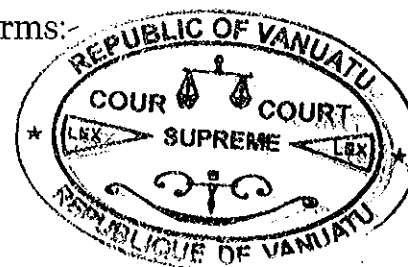


*Russia nor established a friendly dialogue with appropriate authorities of the host country of your jurisdiction as required under section 2.1 b) of the terms and conditions of your appointment.*

*One of your duty , as provided section 2.1e) of the terms and conditions of your appointment is to provide a quarterly report and an annual report to the Director General and the Minister. Unfortunately , to date the Ministry has received no formal update and written report on your achievements and activities.*

*Further to the above you , you were also expected to negotiate money to be granted and received by the Government of the Republic of Vanuatu. To date, the Ministry is not aware of any update on whether any substantial progress has been made on this issue . It is the understanding of the Government that negotiations for external funds should not come in the form of a loan.”*

15. The show cause notice was in relation to the performance of the Claimant's duties as specified in her terms and conditions of appointment, particularly clause 2.1 b) whether the mission to Russia had been undertaken, the provision of quarterly and annual reports pursuant to clause 2.1 e) and lastly whether any funds had been negotiated and received by the Government pursuant to clause 5.2.
16. The Claimant was given 10 days to respond. She responded on 29 January 2013 stating that up to 22 January 2013 she had been trying to obtain names from the Minister and the Director General of persons to travel with her to Russia. As for the reports the quarterly reports for 2011 third quarter and 2012 first and second quarters had been emailed to the Director General and copied to the Minister. Lastly that she had held discussions with various people to negotiate money for the Government.
17. On 4 April 2013 the Minister of Foreign Affairs made a submission to the Council of Ministers recommending that the Council of Ministers recommend her removal as Roving Ambassador to the President. Although the submissions were made by Hon. Edward N Natapei, he was the incumbent Minister of Foreign Affairs and the Council of Ministers paper referred to the three matters raised in the show cause notice of 16 January 2013 and the response of 29 January 2013 in the following terms:-





**Page 1, para.3**

Folem decision blong Kaonsel, Head blong State hemi issuem letter of credence. Letter of Credence hemi wan letter we Head of State imekem iko long Head blong State blong wan nara Kantri long jurisdiction we bambae Roving Ambassador bae iwork long hem, which in this case, hemi Russia.

**Page 1, last para. -p.2, 1<sup>st</sup> para.:**

Afta long completion blong diplomatic process we hemi required long Vanuatu, Russia hemi givim akrimen blong hem long Vanuatu candidate long 25 November 2011. Afta long every effort we Kavman hemi mekem, Roving Ambassador hemi neva travel iko long Russia. Hemi stap ronem two yia finis we Mrs Goiset hemi no ko long Russia yet kasem tedei.

**Page 4, 1 para.:**

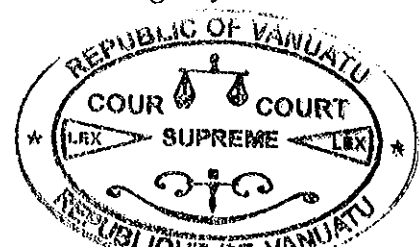
Kasem tedei, Mrs Goiset hemi never submitim wan quarterly or annual report I ko long Minister mo Director General blong Ministry about ol work we hemi step mekem long Russia. Instead hemi stap riport long netwok blong hem long Malaysia mo samfala eria long middle east, -we hemi totally outside long diplomatic Jurisdiction blong hem. Hemi also claim se Vanuatu hemi kam memba blong American Chamber of Commerce long Indonesia. Again, Indonesia, hemi no jurisdiction long hem.

**Page 2, para. 4:**

So far, Mrs Goiset hemi no submitting any quarterly or annual report we i pruvum se hemi bin negotiate wan money insaet long jurisdiction blong hem we hemi Russia mo Eastern Country I kam, long Vanuatu mo Government hemi actually receivim money ia. Kasem tedei, inokat wan indication se Roving Ambassador hemi negotiate wan money ikam inside long basket blong Vanuatu Kavman.

**Further, the Council paper also noted that:**

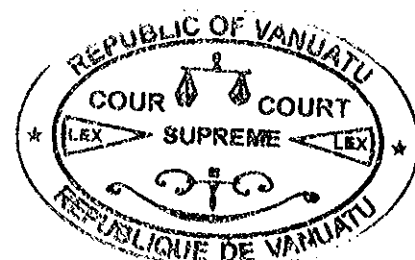
Vanuatu hemi never communicate nomination blong hem long Malaysia, middle East mo Indonesia from Head of State hemi never mekem letter of credence iko long of places ia. Long absence blong any



*akriment blong ol kantri blong Roving Ambassador hemi work iko long way, hem' showem lack of respect long international diplomatic protocol. Hemia hemi no luk kud nating long image blong Vanuatu outside, taem we ol diplomats blong yumi oli work outside long diplomatic fasin blong work.*

18. On 4 April 2012 the Council of Ministers recommended the Claimant's removal to the President and following this recommendation on 18 April 2013 the President removed the Claimant as Roving Ambassador by order No.49 of 2013 and published in gazette No.11 on 25 April 2013.
19. The Defendants submit that the Claimant was removed from office by the Second Defendant pursuant to section 6(1) e) of the Act for failure to comply with her performance agreement with the Minister. Furthermore it was submitted that the Claimant was given an opportunity to be heard by the Notice to show cause and she provided her response following which submissions were then made to the Council of Ministers to recommend her removal. The same matters raised in the notice to show cause were put before the Council of Ministers.
20. Following this recommendation the President issued the removal order in line with section 6(1) e) of the Act which provides that the President may on the recommendation of the Council of Ministers remove from office a head of mission if he or she is not complying with her performance agreement with the Minister.
21. In *Bong v. President of the Republic of Vanuatu [2012] VUSC 157* Justice Spear restated this court's jurisdiction in cases such as this as follows:-

*"The jurisdiction of this Court in relation to the Judicial Review of administrative decisions of this nature relates to the legality or lawfulness of the decision in question. It is not for this Court to examine and rule on the merits of the decision. The Court is to be concerned only with the legality or lawfulness of*



*the decision by considering such matters as whether the decision maker (in this case the President) was lawfully entitled to make the decision....”*

22. The President’s role in a case such this is that he is required to act once he receives a recommendation from the Council of Ministers. The Act does not empower the President to enquire or make inquiries of the Council of Ministers or the Minister of Foreign Affairs. The Chief Justice in *Government of the Republic of Vanuatu v. President of the Republic of Vanuatu* [2012] VUSC 109 said-

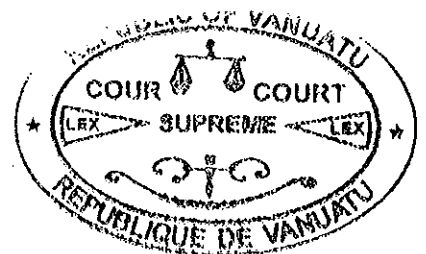
*“The President’s role is a symbolic one and the extent to which he may exert influence or control over the Government is very limited.”*

23. When the Council of Ministers made the recommendation for the removal of the Claimant as Roving Ambassador, the President was clearly entitled to make the decision. The Second Defendant’s decision was therefore made in accordance with the Act.

Was the Second Defendant’s removal of the Claimant from office procedurally unfair and a breach of natural justice in that she did not have an opportunity to be heard and she was not informed of the reasons for her removal.

24. The Claimant submitted that there was no notice given to her, and no opportunity was given to be heard and no reasons were given for the decision.
25. The Court of Appeal in *Sanma Local Government Council v. Wells* [2012] VUCA the Court of Appeal stated that:-

*“Ordinarily procedural fairness requires that a party potentially affected by a proposed decision be given notice of the concerns and have the opportunity to respond.”*



26. The facts as outlined in relation to the second issue above are that a Notice was given to the Claimant on 10 January 2013 to show cause why her appointment should not be reconsidered. She responded on the 23 January 2013. The Claimant availed herself of the opportunity to be heard by providing her response on 23 January 2013. The same matters raised in the notice to show cause were referred to the Council of Ministers. Having considered the matter the Council of Ministers then recommended her removal to the President. The order of removal was made pursuant to section 6(1) e) for non compliance with her performance agreement. The matters raised in the notice to show cause were conditions of the Claimant's performance agreement with the Minister.
27. To conclude, there was nothing procedurally unfair about the Claimant's removal as Roving Ambassador. I therefore make the following orders:-

### ORDERS

1. The claim is dismissed.
2. The Defendants are entitled to costs on a standard basis to be taxed if not agreed.

DATED at Port Vila this 1 day of July 2013

BY THE COURT



.....  
D. Aru  
Judge

