

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

Judicial Review Case No. 21 of 2013

BETWEEN: HERVE HOPKINS
Claimant

AND: MINISTER OF INTERNAL
AFFAIRS
First Defendant

AND: THE PRESIDENT OF THE
REPUBLIC OF VANUATU
Second Defendant

AND: SAM DAN AVOCK
Affected Party

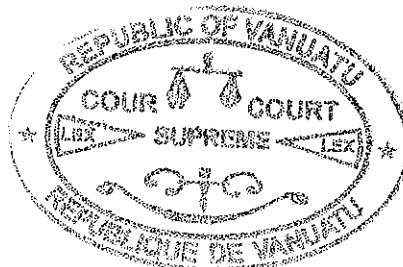
Coram: *Justice D. V. Fatiaki*

Counsels: *Mr. A. Godden for the Claimant
Mr. K. T. Tari for the Defendants
No appearance for the Affected Party*

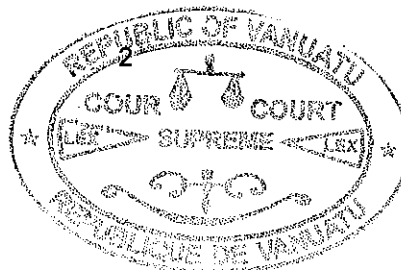
Date of Decision: 16 April 2014

JUDGMENT

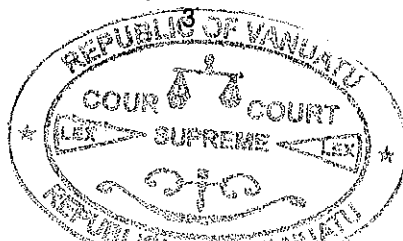
1. This matter was initially allocated to Spear J. in October 2013 but had not been completed by the time his term ended and was re-allocated to me in December 2013.
2. The court papers comprise an application for judicial review with sworn statement in support and a defence and sworn statement. There are no conference notices or minute(s) in the file that might indicate that a **Rule 17.8** conference had been conducted nor is it known whether or not Sam Dan Avock was served with the papers as he is very likely to be "*directly affected*" by any orders the Court may make on the application.
3. Accordingly the papers were ordered to be served on Sam Dan Avock to allow him to be heard on the application if he desired. The affected party has not appeared or filed any opposition to the application.



4. In this application for judicial review the applicant challenges the decision terminating his appointment as Chairperson of the Police Services Commission by the Minister of Internal Affairs in July 2013.
5. The **Police Services Commission** (*the Commission*) is established by **section 9** of the **Police (Amendment) Act No. 22 of 2010** (*the Amendment Act*) which came into effect on 17 January 2011. The Commission has a membership of 6 members appointed by the President for a term of 4 years "... unless he or she is removed from or otherwise vacates office earlier". By **Section 9B** the Chairperson of the Commission is appointed by the Minister "... after consultation with the Prime Minister from amongst the members of the Commission".
6. It is sufficiently clear from the above provisions that membership of the Commission is a condition precedent to appointment as its Chairperson such that the removal of a Chairperson's membership of the Commission automatically results, in the loss of his or her chairmanship. Furthermore, the fact that the appointing authority of the members and the Chairperson of the Commission are different can produce quite unexpected, even conflicting results if the appointments are made "**out of sequence**" or without there being a vacancy in the Commission's membership.
7. For completeness, the term "*Minister*" under the original **Police Act** [CAP. 105], was defined as "*the Minister for the time being responsible for the Force or any Minister acting on his behalf.*" Although the Amendment Act repealed the definition of "*Minister*", **section 7** of the **Interpretation Act** [CAP 132] effectively continued it by providing that the term "... shall be construed as a reference to the Minister for the time being responsible for the matter in connection with which the reference is made".
8. By Instrument of Appointment dated 3rd October 2012 the applicant was first appointed a member of the Commission by the President. By Instrument of Appointment of the same date the applicant was appointed Chairperson of the Commission by the then Minister of Internal Affairs after consultation with the Prime Minister.
9. Almost two (2) months later by an Instrument of Withdrawal and Assignment of Function dated 30 November 2012, the Prime Minister in exercise of powers under **section 9 (2)** of the **Government Act** [CAP. 243] withdrew responsibility for the "*Vanuatu Police Force*" from the Minister of Internal Affairs and assigned it to "*the office of the Prime Minister*". There has been no subsequent re-assignment of the Vanuatu Police Force to another Minister.




10. Subsequently, there was a change of Government in late 2012 and the late Patrick Crowby Manarewo was appointed Minister for Internal Affairs on 23 March 2013.
11. By Instrument of Appointment dated 9 July 2013 the Minister of Internal Affairs purported to appoint Sam Dan Avock as Chairperson of the Commission with immediate effect. Two (2) days later, by Instrument of Removal the President removed the applicant as a member of the Commission.
12. For completeness and somewhat irregularly, by Instrument of Appointment dated 11 July 2013 the President appointed Sam Dan Avock a member of the Commission (ie. 2 days after his appointment as chairperson of the Commission).
13. I say "*purported*" and "*irregularly*", because, at the time of Sam Dan Avock's appointment as Chairperson of the Commission the applicant was the incumbent Chairperson and had not been lawfully removed. Furthermore, Sam Dan Avock had not yet been appointed a member of the Commission and, therefore, did not qualify to be appointed its Chairperson.
14. Whatsmore by an Extraordinary Gazette Notice dated 11 April 2013 (exactly 3 months earlier) the "*Vanuatu Police Force*" remained a Department under the portfolio of the Prime Minister. In other words, at the time of the appointment of Sam Dan Avock as Chairperson of the Commission, the relevant responsible "*Minister*" was not the Minister of Internal Affairs but, the Prime Minister.
15. Eventually on 12 July 2013, the applicant was lawfully removed as Chairperson of the Commission by the Minister of Internal Affairs acting "*on instructions of the Prime Minister*".
16. In the face of the overwhelming irregularities that occurred in the removal and replacement of the applicant as Chairperson of the Commission, State Counsel very properly conceded, that he was unable to support the applicant's replacement as Chairperson of the Commission by Sam Dan Avock.
17. However as the applicant was lawfully removed as Chairperson of the Commission on 12 July 2013, no useful purpose would be served in quashing the various unlawful decisions (and Instruments) that preceded the applicant's removal as Chairperson of the Commission.

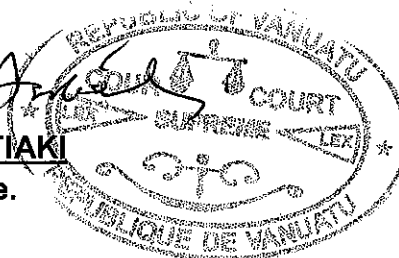


18. Having said that, the position regarding Sam Dan Avock needs to be properly regularized and, accordingly, I quash the appointment of Sam Dan Avock as Chairperson of the Commission on 9 July 2013, and direct the Prime Minister to reconsider the matter and make a new appointment of the Chairperson of the Commission as soon as possible.
19. The claimant is awarded costs against the first and second defendants summarily assessed at VT100,000.

DATED at Port Vila, this 16th day of April, 2014.

BY THE COURT


D. V. FATIAKI
Judge.



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'SUPREME COURT' and 'LEA' are also visible within the seal's border.