

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

Judicial Review No. 3 of 2015

BETWEEN : JOSHUA BONG

Claimant

AND: LEON MALANTUGUN

First Defendant

AND: CHRISTOPHER GRIGGS

Second Defendant

AND : THE REPUBLIC OF VANUATU

Third Defendant

Coram: Justice Aru

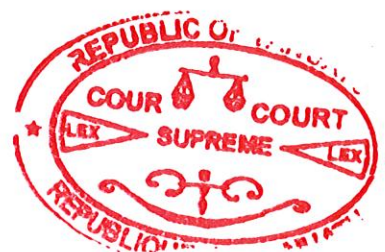
Counsel: Mr. S. Stephens for the Claimant

Ms. C. Lahua for the First and Third Defendants

RESERVED JUDGMENT

Introduction

1. This is a claim for judicial review filed by Joshua Bong challenging the decision of the Acting Public Prosecutor to appoint Mr. Christopher Griggs as a state Prosecutor. The purpose of the appointment as stated in the instrument of appointment Order No 147 of 2014 was to prosecute the Claimant and some other members of the Vanuatu Police Force in Criminal Case **Public Prosecutor v. Joshua Bong & Ors.** The Claimant seeks orders that the



appointment be quashed and declared null and void or alternatively that work undertaken by Mr. Griggs on behalf of the Public Prosecutor be declared unlawful.

2. The Claimant raises three main grounds in support of his claim. First that the Public Prosecutor acted ultra vires the Public Prosecutors Act [CAP 293] that he lacked jurisdiction to appoint the Second Defendant as a state prosecutor pursuant to section 22 (1) of the Act as the Second Defendant was not a person qualified within the meaning of section 22 of the Act to be appointed as a state Prosecutor. Secondly that the Second Defendant was not a legal practitioner within the meaning of the Legal Practitioners Act [CAP 119] to qualify for appointment as state prosecutor pursuant to section 22 of the Public Prosecutors Act. Thirdly that the Second Defendant has undertaken work in Vanuatu on a visitor's visa without a work permit and VIPA certificate.
3. The evidence in support of the claim was filed by the Claimant and the Defendants filed two sworn statements deposed by Mr. Henry Tamashiro and Mr. John Timakata.

Law

4. The appointments of state prosecutors are made pursuant to section 22 (1) of the Public Prosecutors Act which states:-

"22. State Prosecutors

(1) *The Public Prosecutor may, by instrument in writing, appoint:*

- (a) *a member of the Vanuatu Police Force; or*
- (b) *a person employed in the Public Service; or*
- (c) *a legal practitioner;*

to be a State Prosecutor for the purpose of any prosecution or class of prosecution.

(emphasis added)

5. Under the Legal Practitioners Act a legal practitioner is defined to mean:-



"a person registered as a legal practitioner, in accordance with the provisions of Part 1B of this Act".

6. Part 1 B provides as follows:-

"PART 1B – REGISTRATION OF LEGAL PRACTITIONERS

1J. Application for and registration of legal practitioners

(1) *Any person who is qualified to be registered as a legal practitioner under this Act, may apply for and obtain a certificate of a Registered Legal Practitioner from the Law Council.*

(2) *Application under subsection (1) shall be made in the form and manner prescribed by the Law Council.*

1K. Grant of the certificate of a registered legal practitioner

(1) *Subject to the provisions of this Act, upon an application made by any person under section 1J, and a payment of the prescribed fee the Law Council shall*

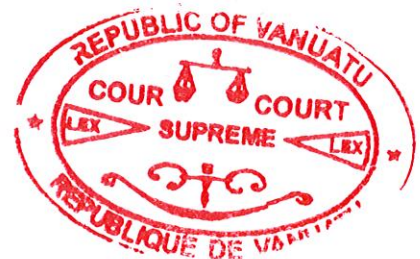
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(a) *cause the name and the relevant particulars contained in such application to be entered in the register in the prescribed form kept for that purpose; and*

(b) *issue in respect of that person a Certificate of a Registered Legal Practitioner.*

(2) *The Law Council may, in its discretion, refuse to register any person as a legal practitioner, notwithstanding that he may have the qualifications specified under section 1L.*

(3) *The Certificate of a Registered Legal Practitioner may be issued subject to such conditions, as the Law Council may see fit to impose.*



(4) *Subject to the provisions of this Act no Certificate of a Registered Legal Practitioner shall be issued to any person under subsection (1), unless he is a resident of Vanuatu, in terms of the provisions of the laws of Vanuatu relating to immigration.*

1L. Qualification for registration as legal practitioners

Subject to the provisions of this Act, any person shall be qualified to be registered as a legal practitioner who fulfils the qualification, specified by the Law Council by order made under section 15 of this Act."

Discussion

7. Section 22 of the Public Prosecutors Act sets out the three categories of persons who can be appointed as state prosecutors. These are any member of the Vanuatu Police Force, any person employed in the Public Service and a legal practitioner.
8. It was submitted by the Claimant that the Second Defendant was not eligible to be appointed a state prosecutor as he was not a person registered as a legal practitioner in Vanuatu under the Legal Practitioners Act. At Annexure "C" of the Claimant's sworn statement filed on 20 January 2015, the Chief Registrar confirmed that the Second Defendant was not currently on the roll of barristers and solicitors in Vanuatu. The Defendants' submissions that the court should not rely on the definition of legal practitioner in the Legal Practitioners Act is rejected for the simple reason that anyone wishing to be a legal practitioner in the Republic of Vanuatu must be registered under the Legal Practitioners Act. The same principle would apply to a member of the Vanuatu Police Force or a person employed in the Public Service. He or she would have to be a member of the Vanuatu Police Force or be employed in the Public Service of the Republic of Vanuatu.
9. I note that the defence filed by the Defendants admits at paragraph 1 c) that the appointment of the Second Defendant as state prosecutor was made by the Acting Public Prosecutor under pressure from members of the Vanuatu Police Force. The First Defendant confirms



this in his report annexed as Annexure "JWT 2" to Mr. Timakata's sworn statement that he feared for his safety and the safety of his family and children if he did not make the appointment. This is contrary to what the Public Prosecutors Act states in section 7 that the Public Prosecutor *"is not subject to the direction or control of any other person or body in the performance of his or her functions or the exercise of his or her powers under this Act or any other law."*

10. Similarly section 24 (1) requires the deputy Public Prosecutor and all prosecutors to perform their functions *"independently and not be subject to the direction or control of any other person or body in the performance of their functions"*.

11. Having made the above remarks, I am of the view that the orders sought should be granted and I therefore order as follows:-

1). The appointment of the Second Defendant as a state prosecutor is hereby quashed and any work carried out by the Second Defendant flowing from such appointment is accordingly declared unlawful.

2). The claimant is entitled to costs to be paid jointly and severally by the defendants or to be taxed failing agreement.

DATED at Port Vila, this 8 day of February, 2016

BY THE COURT



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D. Aru
Judge

