

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

Judicial Review
Case No. 17/1103 SC/JUDR

BETWEEN: NOS WILFRED

Claimant

AND: COMMISSIONER OF POLICE

Defendant

Date of Hearing: September 22nd, 2017
Date of Judgment: October 9th, 2017
Distribution: Mr. Justin Ngwele for the Claimant
Mr. Hardison Tabi for the Defendant

JUDGMENT

1. The claimant Mr. Wilfred is a serving police officer currently stationed at the Isangel Police Station on the island of Tanna. He has served there for more than 20 years. His wife is from Tanna and she is currently employed there as a Child Protection Officer for the Ministry of Justice and Social Welfare. Their six children have been raised on Tanna and it is clear that they are settled there and wish to stay there.
2. On October 26th, 2016 the Commissioner of Police issued a posting order transferring Mr. Wilfred to the Paama Police Post on the island of Paama. For some reason, unexplained by the evidence in this case, that posting order was not handed to Mr Wilfred until December 12th, 2016. The order, issued by the Police Commissioner stated as follows:

"In accordance with the Police Act [CAP. 105], Section 23, subsection 2, I revoke your previous posting at the Isangel Police Station as station sergeant, post number 1889 and further post you to the following position:

Position title: OIC

Position number: 1671

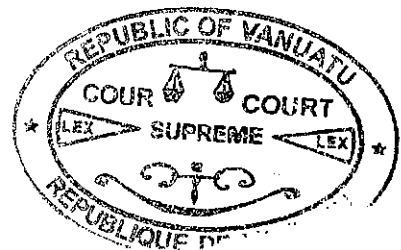
Position rank: S/SGT

Position location: Paama Police Post

Effective date: 1st November 2016

Proposed arrangement in relation to the above post includes;

- 1) *Posting with current salary and rent for a period of six (6) months;*
- 2) *To be appraised after 6 months;*
- 3) *Special consideration: None.*

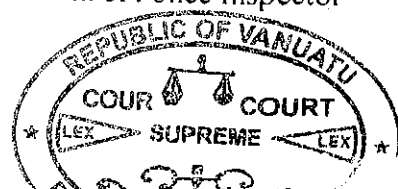


The purpose of this posting order is to ensure all members of the VPF have accurate posting in accordance with the qualification obtained and the need that this particular post has in terms of its strength. Acting Deputy Commissioner CSU is informed to facilitate your posting and travelling arrangements accordingly.

I wish to take this opportunity to thank you for the work done in your previous post and look forward to your continuous hard work and dedication to the delivery of quality policing services by the Vanuatu Police Force.

*Thank you,
Colonel Robson Iauvro
Acting Commissioner of Police.”*

3. Mr. Wilfred has applied for judicial review of this decision and seeks an order from the Court quashing the decision and prohibiting the Commissioner of Police transferring him from Isangel Police Station. Mr. Wilfred claims that the posting order was made based on irrelevant considerations on the part of the Police Commissioner namely, that:
 - (a) The Police Commissioner relied on a “*decision*” of the Nikoletan Council of Chiefs (“the Council”) requiring Mr. Wilfred to be transferred from Tanna;
 - (b) That the Commissioner of Police failed to consider the fact that the claimants wife was working on Tanna and that his children are studying on Tanna thereby rendering any decision to relocate them as being inappropriate;
 - (c) That the decision of the Commissioner of Police was one that no reasonable person would have made in the circumstances.
4. While the judicial review claim filed by Mr Wilfred referred to the the three matters referred to above, the reality of the case presented by him is that it boils down to one “irrelevant consideration” alleged to have been part of the Commissioners decision namely, the decision of the Council regarding Mr. Wilfred’s continued posting on Tanna, that decision having been made on October 10th, 2016.
5. That this was the single issue to be determined by the court was confirmed in Mr Ngwele’s opening submissions for the claimant in which Mr. Ngwele stated the issue for determination as being: “*whether the defendant when making the decision regarding the posting of the claimant was unduly and improperly influenced by the conclusions of the meeting of the Nikoletan Council of Chiefs of Tanna Island on October 10th, 2016 (where it was allegedly resolved that Mr. Wilfred should leave Tanna as it was believed that he was connected to the death of the head of the Isangel Police Station, late Rex Ravei Bofenga(?))*”.
6. There is no dispute regarding any of the factual matters which I have just referred to. There is also no dispute that on October 10th, 2016 a group of persons purporting to act as the Council met to discuss two issues, one of which was the death of Police Inspector

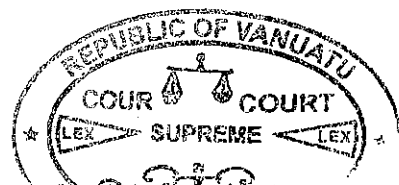


Rex Pofenga Ravei, an inspector stationed at Isangel Police Station and Mr. Wilfred's immediate superior. Inspector Rex died sometime prior to the meeting although the exact date of death is not clear from the evidence. It is apparent from the minutes of the meeting which were annexed to a sworn statement of Mr. Wilfred that the Chiefs regarded Mr. Wilfred as having some part to play in the death of Inspector Rex through the practice of witchcraft. The minutes of the meeting recorded the following conclusion:

"Jagement blong miting

- a) *Every polis ofisa mbai oli stap long Tanna long wan term blong 3 years maximum;*
- b) *Mr. Nose mo Mr. Bruno tufala imas rollem blanket (mas muvaot long Isangel Station). Hemi talem pakegen se jagement (a) mbai hemi stap we I stap and hemi the only wei we I save protectem laif blong ol polis ofisa long Isangel station"*

7. Accordingly the judgment of the Council appears to have resolved that no police officer could be stationed on Tanna for more than three years be and that two individuals, namely Mr. Wilfred and Mr. Bruno were required to leave for their own safety.
8. It is the case for Mr. Wilfred that the "judgment" of the Council was taken into account by the Police Commissioner and that the requirement of the Chiefs that Mr. Wilfred leave Tanna was the reason for his posting to Paama. Mr. Wilfred alleges that police officer Joseph Nok who was present at the meeting reported the decision of the Council to the superiors of Mr. Wilfred in Port Vila and that is how they came to know of the matter.
9. The evidence on behalf of the defendant came from two police officers, Inspector Kency Jimmy and officer Joseph Nok.
10. Officer Nok confirmed that he was present at the relevant meeting of the Council but stated that he did not report the decision of the Council to his superiors in Port Vila. It is clear from the evidence given by Mr. Nok under cross-examination that he benefited from the transfer of Mr. Wilfred to Paama in that Mr. Nok was promoted to the position of Senior Sergeant at Isangel Police Station on November 14th, 2016. Parts of his evidence were confusing in that while initially having said that he had not seen the minutes of the meeting Council, he then acknowledged that his signature was on the document and that he seen it. In addition, when asked whether or not he agreed that Mr. Wilfred been posted to Paama because of the decision of the Council Mr. Nok answered "Yes". Subsequently however when asked by Mr. Huri to clarify how he knew that the posting was based on the decision of the Council he stated that he did not know anything about the decision which had been made regarding the posting of Mr. Wilfred and that he just knew about it when his promotion took place. He reiterated that at the meeting he was simply a "bystander", that he was only at the meeting because he



had been invited to attend and that he had never spoken to any senior officer in the Vanuatu Police Force about the meeting after it had taken place. Having heard his evidence I consider it more likely than not that he was completely unaware of how the decision regarding the posting of Mr Wilfred was reached.

11. Inspector Kency Jimmy provided two sworn statements addressing the issue of the posting of Mr. Wilfred to Paama. His evidence was given in his capacity as a legal officer for the Vanuatu Police Force. Inspector Kency deposed that the reason why the claimant was posted to Paama Police post was due to the fact that the post was vacant and that there was a need for an officer with the rank of Senior Sergeant to occupy it. Mr. Wilfred was a Senior Sergeant and was also from Paama (a fact which Mr. Wilfred acknowledges) and accordingly was seen as an appropriate person for the posting. Inspector Kency deposed that the meeting of the Council and the conclusions drawn as a result to that meeting formed no part of the Commissioner's decision and the posting was made pursuant to Section 23(2) of the Police Act.
12. Mr. Kency further deposed that upon the completion of their training all police officers make a pledge and sign a declaration pursuant to Section 16 of the Police Act that they will obey the officers placed in command of them in all matters concerning police service. Further, that there had been other police officers who have been posted to other police stations in different locations although their family resided elsewhere and that that had been done in the interest of public order and the integrity of the police force.
13. Section 17 of the Police Act [CAP: 105] provides that:

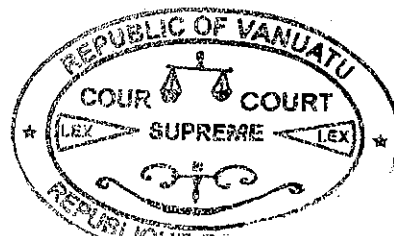
"17. Declaration

Upon completion of the training provided for in section 16(1) a probationary constable shall make and sign before a senior officer a declaration in the following form –

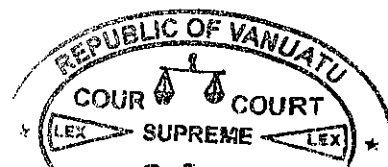
"I swear to obey the officers placed in command over me in all matters concerning the service to which I am appointed and, in the performance of my duties, only to use the powers given to me for the maintenance of public order and the enforcement of the law".

14. Section 23 of the Act deals with postings and provides in Section 23(2) that:

"Subject to the provisions of Section 10, a member shall serve in such post and in such place within Vanuatu as the Commissioner may, in the interests of the Force, decide."
15. Clearly, the Commissioner has a wide discretion regarding the posting of police officers within the Republic and such a discretion is entirely consistent with the need to operate a police force in an efficient manner.



16. Section 10 deals with appointment of officers and accordingly is not relevant to this case.
17. The Act provides no appeal process in respect of decisions regarding postings. By contrast, also not surprisingly, an appeal process is contained within the Act where subordinate officers are found guilty of committing an offence against discipline pursuant to the provisions of the Act.
18. The lack of any appeal process in respect of a decision regarding posting could well be regarded as a simple recognition of the need for a Police Commissioner to be able to make operational decisions regarding the posting of police officers in the interest of the Force and without fear of undue delay.
19. In analysing the evidence in this case there is simply no evidence that establishes that the Commissioner was aware of the meeting and "*judgment*" of the Council. While Mr. Ngwele invites me to draw the inference that the timing of the Council meeting and the date of the posting order leads to an inevitable and inescapable conclusion that the Police Commissioner took such a matter into account, I do not agree. While the timing is interesting, it would not be appropriate for me, in the absence of any other evidence, to draw the conclusion which Mr. Ngwele invites me to draw.
20. Although inferences need not be irresistible they may only be drawn from proven facts if they follow logically from them. If they do not, then the drawing of any conclusion is merely speculation and not proof. This is a case where I am being asked to speculate and I decline to do so.
21. Mr. Ngwele also invited me to draw an adverse inference from the fact that the Commissioner of Police had not given evidence in this case. While it is possible to draw an adverse inference from the failure by a party to call a witness in certain circumstances, it would not be appropriate to do so in this case. The clear evidence of Mr. Wilfred was that it was Mr. Nok who provided a copy of the minutes to senior officers. Mr Wilfred had nothing other than his suspicion, upon which to base this view. It was the clear evidence of Mr. Nok, which I accept, that he did not do so. In addition, there was the evidence of Inspector Kency that the Council judgment was not a matter taken into account in the decision regarding the posting. In such circumstances I do not consider that the failure to call the Police Commissioner is one which would enable me to draw an adverse inference sufficient to find the case for the claimant proved.
22. It is of some concern that there do not appear to be any developed protocols around the posting of officers from one island to another. It is clear in this case also that there had been no consultation with Mr. Wilfred prior to the posting. Given that such postings can have significant effects on the families of officers I respectfully suggest that there may be some benefit in developing policy guidelines in respect of matters such as this



which may provide greatest certainty for police officers while not impeding the Commissioner's clear power to direct a posting where such posting is consistent with the interests and needs of the Vanuatu Police Force.

23. For the reasons set out I accordingly find that the claimant's claim is unsuccessful and it is dismissed accordingly.
24. In these circumstances the defendant is entitled to costs to be agreed between the parties within 21 days failing which they are to taxed.

Dated at Port Vila, this 9th day of October, 2017.

BY THE COURT


JP GECHEGAN
Judge.

