

**BETWEEN: John Songi, Paul William, Monick Kuren,
Stephan Worwor, Mackson Niavi, Samuel
Weul Isaiah and Chillian Iaumanga**

Claimants

AND: Commissioner of Police

First Defendant

AND: Republic of Vanuatu

Second Defendant

Date of Hearing: 1st July 2021
Date of Judgment: 20th August 2021
Before: Justice Oliver.A.Saksak
In Attendance: Mr Albert Nalpini for the Claimant
Mr Sammy Aron for the Defendant

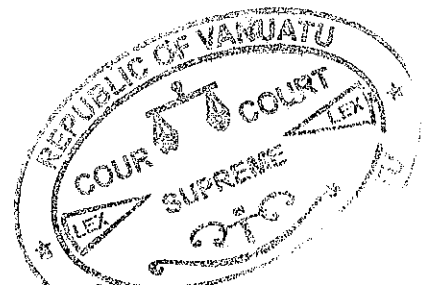
JUDGMENT

Introduction

1. The claimants were accepted as new recruits into the Police Force to undertake training at the Police Collage. They entered the College on 10 January 2021 and spent 3 nights. On 13 January 2021 the claimants were dismissed from training on grounds they did not meet the height criteria of 1.80 metre for males and 1.70 meter for females.

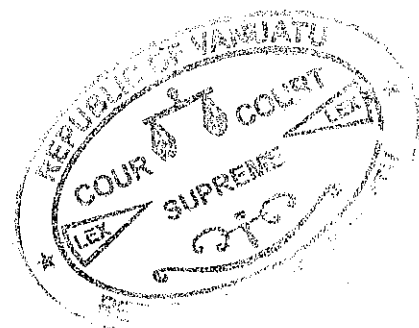
The Claims

2. The claimants claim for a review of their dismissal alleging it was unjustified and unreasonable, and should be declared void and of no legal effect. They further claim a quashing order of the decision and a mandatory order directing their reinstatements. They also seek costs of the proceeding.



The Facts

3. In October 2020 the First Defendant caused an advertisement for new police recruitments calling for applications to be submitted by no later than 16 October 2020.
4. Following the advertisement, the claimants applied and were shortlisted for interviews. They attended to the interviews, tests and examinations and were therefore included in the shortlist of 60.
5. On 10 January 2021 the claimants were contacted by the First Defendant and instructed to report to the Police College at the Independence Park to collect checklist of the necessary items required for training.
6. For some of the claimants who had been employed, resignations were made. For some who resided outside of Port Vila travelling arrangements were made for travelling to Port Vila by plane and ship.
7. In the afternoon of 10 January 2021 the First Defendant confirmed the names of the claimants by ticking their names in a register at the Police College and allocated their respective rooms at the Police Barracks.
8. The claimants arrived at the Police College and took their respective Oaths for Code of Conduct and received appropriate briefings. They spent three nights at the College.
9. On 13 January 2021 the claimants were trying on their uniforms. They were however called up by the Director of the College to attend an urgent meeting. At the meeting the claimants were verbally advised that they were dismissed for reasons that they had not met the required heights of 1.70 metre for females and 1.80 metre for males.
10. This dismissal was made pursuant to a Ministerial Order dated 16 October 2020.



Evidence

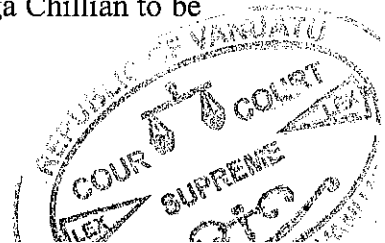
11. The claimants deposed to their evidence by sworn statements dated 11/2/21 by John Songi, Stephan Worwor, Paiadeure Jethyson, Fabrice Malsege, Chillian Iaumanga, Paul William, Samuel Weul Isaiah, Markson Niavi and Monick Kuren on 13/4/21 by Willie Reuben in support of their claim.
12. The defendants relied on the evidence by Sworn statements of Joe Warsal of 25/3/21, John Connolley of 14/4/21, Robsen Iavro of 16/3/21 and Netty Dick Vuti of 19/5/21 in support of their defence.

The Law

13. Section 3 (1)(c) of the Police Rules (as Amended) by Order No. 187 of 2020 states –
“Qualifications for appointment
(1) A candidate for appointment to the Force shall –
(a) N/A
(b) N/A
(c) have a minimum height of:
(i) 1.80 metre for men; and
(ii) 1.70 metre for women”.

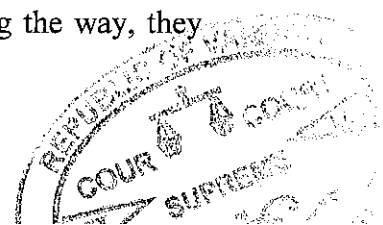
Discussions

14. The first issue: whether or not the claimant’s heights met the minimum height prescribed by the amendment order? The applications by the claimants are annexed as “RI3” to the statement of Robson Iavro dated 16/3/21. They disclosed that John Songi is 1.80 metre, Chillian Iaumanga is 1.67 metre, Weul Samuel is 1.80 metre, Kureumondie is 1.70 metre, William Paul is 1.80 metre.
15. There are no applications by Stephan Worwor, Mackson Niavi, Fabrice Malsege and Paiadeure Jethyson.
16. By Order of the Court the claimants were re-measured by Dr Joe Warsal on 21 March 2021 by the standard measurement showing Paiadeure Jethyson to be 1.75 cm, Markson Niavi to be 1.77 cm, Samuel Weul to be 1.74.5 cm, Iaumanga Chillian to be



1.67.5 cm, William Paul to be 1.76 cm, Songi John to be 1.78 cm and Kuren Monick to be 1.68 cm. These are annexed as “JW1”. Stephan Worwor was not included in the re-measurements.

17. None of the claimants explained in their sworn statements how the measurements they indicated in their respective applications as annexure “RI3” (see paragraph 14) of the statement of Robson Iavro.
18. The method used by the Central Hospital to remeasure the claimants was not the method used to measure them initially by John Connelley which disqualified them. John Connelley deposed to how he measured the claimants using simply a ruler and recording their heights as follows: Paiadeure Jethyson – 1.76 cm, Niavi Markson – 1.78 cm, Malsege Fabrice – 1.79 cm, Worwor Stephan – 1.68 cm, Songi John – 1.79 cm, Nalau Edson Jackson – 1.79 cm, Weul Isaia Tigor Samuel 1.76 cm, William Paul - 1.78 cm, Kuren Monick – 1.69 cm and Iaumanga Chillian – 1.68 cm. These are annexed as “JC3” to John Connelley’s statement of 14/4/21.
19. Applying the provision of the Police Orders No. 187 of 2020 (as amended) to these facts, I find the claimant’s heights did not meet the minimum heights set for men and women in that Order.
20. It did not matter that the claimants lodged their applications which gave different preferable heights (1.75 m to 2 m for men and 1.60 m to 1.75 m for women), their applications were not finally decided due to the circumstances explained by Netty Dick Vuti in her statement of 19/5/21 until the Order of 16 October 2020 was issued. The Order was made on 16 October 2020 and took effect from that date.
21. When the Selection Panel made their final selections based on the new heights prescribed under Order No. 187 of 2020 and excluded the 11 claimants, their selection was lawful. As such it cannot be said that the dismissal of the claimants was unjustified. It may have been unreasonable because they had been accepted into the Police College and spent 3 nights, it was not to be the last and final test they were expected to undertake. When each of the claimants lodged their applications, they had undertaken to meet all those expectations and if they fell short along the way, they



could not turn around and say the defendants had treated them unfairly or were unreasonable in their actions.

The Result

22. The Claimants' action fail and their claim is hereby dismissed.

23. In the circumstances of the case there will be no Order as to costs. Each party is to bear its own costs.

DATED at Port Vila this 20th day of August 2021

BY THE COURT


OLIVER.A.SAKSAK

Judge

