

**BETWEEN:** Letlet August  
Claimant  
**AND:** Ombudsman  
Defendant

*Date of Hearing:* 27 August 2021  
*Before:* Justice G.A. Andrée Wiltens  
*In Attendance:* Mr M. Hurley for the Claimant  
Mr A. Godden for the Defendant  
*Date of Decision:* 23 September 2021

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**Judgment**

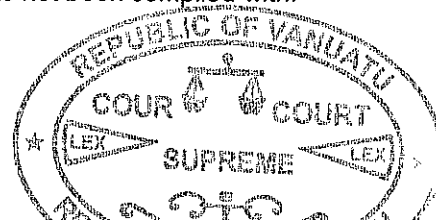
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A. Introduction

1. This was application for Judicial Review. Mr Letlet was the subject of an Ombudsman inquiry, which became known by him only when officers from the Ombudsman's Office arrived at his home armed with a Search Warrant granted by the Magistrate's Court.
2. The Warrant was granted pursuant to section 24 of the Ombudsman Act [Cap 252] ("the Act"). Mr Letlet challenges the validity of the Warrant and seeks to deny the Ombudsman of the fruits of the search executed under the provisions of the Warrant.
3. This matter was dealt with, as agreed by counsel, "on the papers" after the receipt of written submissions from counsel on 6 September 2021 and 13 September 2021 respectively.

B. Challenge

4. There is no dispute the Ombudsman is entitled to obtain Search Warrants pursuant to section 24 of the Act. However, Mr Letlet contends that the Ombudsman may only do so once he/she has first issued a Notice under section 22 of the Act which Notice has not been complied with.



C. Response

5. The Ombudsman contends that a Warrant is lawfully available both where a section 22 Notice has been issued and has not been complied with; and additionally, in circumstances where there are reasonable grounds for suspecting that a Warrant is necessary to avoid the loss or destruction of evidence.

D. Discussion

6. This decision turns on statutory interpretation.
7. Section 24 of the Act reads as follows:

"24. (1) If the Court is satisfied by information on oath that:

(a) a person served with a notice to provide documentary evidence under section 22 has:

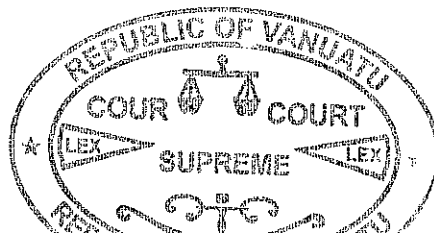
(i) failed or refused to provide the documents; or

(ii) failed or refused to provide all relevant documents in his or her possession or control; and

(b) there are reasonable grounds for suspecting that documents needed for an Ombudsman's enquiry will be destroyed or otherwise become unobtainable unless a search warrant is issued to the Ombudsman;

the Court may issue a search warrant to the Ombudsman for premises at which such documents are located or at which it is likely that such documents are located." (emphasis added)

8. The crux of this dispute is whether the word "and" is to be read conjunctively, as Mr Letlet would have it; or read disjunctively as the Ombudsman would have it.
9. It is the intentions of Parliament that must dictate the answer, and that is to be gleaned by having regard to the Act as a whole.
10. I am of the view that this application must be declined, for the following reasons.
11. Parliament has set out in the Act a comprehensive investigative scheme under which the Ombudsman can operate. The Act provides firstly that the Ombudsman is able to seek evidence through co-operation; and secondly, also to issue section 22 Notices requiring the recipient to attend to answer questions and/or to supply documentary evidence. Thirdly if there is unexpected non-compliance with a Notice, the Ombudsman may then apply for a Warrant. Lastly, only in the most dire of circumstances, namely where there are reasonable grounds to suspect the loss or destruction of evidence, can a Warrant be sought immediately.
12. It follows that where there is no reasonable ground to suspect the loss or destruction of evidence, the Ombudsman is required to obtain evidence by other means, either through co-operation or by means of a section 22 Notice. Once a Notice has been issued, it is only if there is non-compliance that a Warrant is available. This graduation of steps is fair and proportionate to the rights of individuals being investigated when the obligations of the Ombudsman are also taken into account.

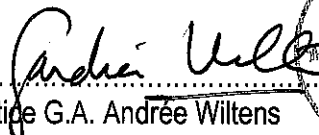


13. I consider that if there are reasonable grounds for suspecting the loss or destruction of evidence, Parliament cannot have intended that the Ombudsman must nevertheless go through the process of first issuing a Notice and waiting for time to pass prior to being certain of non-compliance with the Notice before the Ombudsman has the right to apply for a Warrant. That would undermine the value of being able to obtain a Warrant as it would, if the suspicion is correct, result in evidence being destroyed or lost prior to the Warrant being able to be issued.
14. Accordingly, I hold that "and" in section 24 should be read disjunctively as "or", so that the Ombudsman has four avenues to obtaining evidence relevant to his investigations.
15. I note that the Ombudsman placed considerable evidence in support of his application for the Search Warrant before the learned Magistrate considering the application. In it he set out his reasons for seeking the Warrant. There is no challenge to any of that material, or to the finding by the learned Magistrate that there were reasonable grounds for suspecting the loss and/or destruction of evidence in this particular case.

E. Result

16. The Search Warrant issued and executed in this case was lawful. The fruits of the search are therefore available to the Ombudsman in the course of his investigation.
17. The application for Judicial Review is declined.
18. The Ombudsman is entitled to costs. I set those at VT 125,000. They are to be paid within 21 days.

Dated at Port Vila this 23rd day of September 2021  
BY THE COURT

  
Justice G.A. Andrée Wiltens

