

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

**Judicial Review**  
**Case No. 21/3446 SC/JUDR**

**BETWEEN: Hase Patrick Rua**  
Claimant

**AND: Attorney General**  
First Defendant

**AND: Commissioner of Police**  
Second Defendant

*Date of Rule 17.8 Conference:* 17 November 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr T.J. Botleng  
Defendants – Mr K.T. Tari  
*Date of Decision:* 23 November 2021

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**JUDGMENT AS TO RULE 17.8(3) MATTERS**

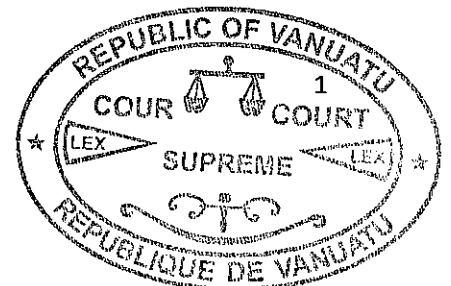
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A. Introduction

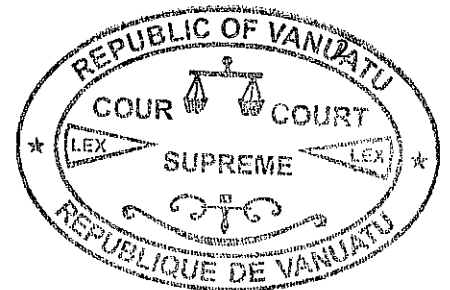
1. The Claimant Hase Patrick Rua is challenging his termination as a Vanuatu Police Force ('VPF') Cadet Trainee Officer by the Second Defendant Commissioner of Police (the 'Commissioner').
2. I conducted a Rule 17.8 Conference and then reserved my decision and granted leave for both parties to provide further documents. Having considered the Claim, Defence and sworn statements filed and having heard counsel, I now set out the decision.

B. Issues

3. Rule 17.8(3) of the *Civil Procedure Rules* requires that a Court must be satisfied as to 4 matters in order for the case to proceed to trial. If any one of those matters is not established, the Court must strike out the proceeding.



4. It was accepted for the Defendants that 3 of those matters were satisfied therefore there was an issue only as to whether Mr Rua has an arguable case.
  5. The other issue arising is from the Defence allegation that the Claim be struck out as there was no notice given pursuant to s. 6 of the *State Proceedings Act* 2007. This requires that a claimant must give prior written notice to the State Law Office of intention to sue the Government. The only exceptions are urgent proceedings and Constitutional proceedings. I deal with this issue first.
- C. Notice under s. 6, *State Proceedings Act*
6. It is accepted that notice was not given pursuant to s. 6 of the *State Proceedings Act* however Mr Botleng submitted that notice was not required as this was an urgent proceeding. He pointed to the notice given through his letter dated 6 October 2021 to the Commissioner. With respect, I do not agree. Mr Rua's termination was made by letter dated 17 September 2021, Mr Botleng wrote on 6 October 2021 giving 48 hours' notice but the Claim was not filed until 19 October 2021, a month and 2 days after the termination. An urgent proceeding would have been filed within weeks or at the most, within a month of the termination.
  7. Not being an urgent proceeding, this matter must be struck out therefore for failure to provide a notice under s. 6 of the *State Proceedings Act*.
  8. In case I am wrong on that, I will now consider whether Mr Rua has an arguable case.
- D. Whether Mr Rua has an arguable case
9. Mr Rua alleges in his Claim that he was not provided with an opportunity to respond to the allegations against him before his termination. Further, that he was not provided with particulars of the charges against him nor the evidence of those charges. Finally, that the termination is of no legal effect as it was made in breach of ss 59-62 of the *Police Act* [CAP. 105] (the 'Act'), of his Constitutional rights, of his rights to natural justice and to be heard which may additionally indicate bias against him, and in breach of s. 14 of the Act.
  10. The Claim is disputed in the Defence filed. It is alleged that Mr Rua is not of good moral character, a qualification for appointment to the VPF under rule 3(1)(e) of the *Police Rules Joint Rules 7 of 1980* (the 'Police Rules'), as he has a conviction and sentence in the Magistrates' Court on 1 charge of domestic violence. Further, that he knowingly omitted to disclose these in his VPF application form. It is alleged that the Commissioner only became aware of the conviction and sentence after Mr Rua commenced police recruit training on 30 August 2021. Finally, that the Commissioner considered that the conviction and sentence meant that Mr Rua did not meet the qualification for appointment in rule 3(1)(e) of the Police Rules and therefore discharged him.
  11. There is no merit to the allegation in the Claim that Mr Rua was not provided with particulars of the charges against him as the letter to him dated 17 September 2021

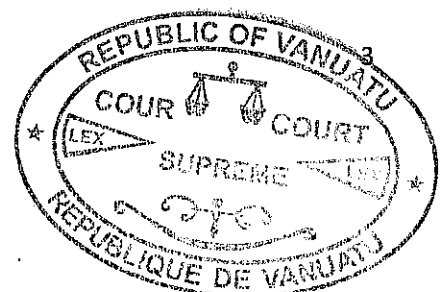


stated that it had come to the Commissioner's attention that Mr Rua had a conviction and sentence in the Magistrates' Court for domestic violence offending.

12. There is also no merit in the allegation that Mr Rua was not provided with the evidence for the charge. If anything, he had to be given an opportunity to be heard but not the evidence at that initial stage.
13. There is no merit to the allegations in the Claim as to breach of the sections of the Police Act as s. 14 applies to successful candidates for appointment as probationary constable and ss 59-62 apply to subordinate officers. Mr Rua is neither of those.
14. There is also no merit to the allegations of breach of Mr Rua's Constitutional rights as this must be instituted by way of Constitutional application.
15. There is no merit either in the allegation of bias against Mr Rua as other police recruits were discharged earlier this year for not meeting the qualification for appointment in rule 3(1)(c) of the Police Rules – that candidates have a minimum height of 1.80 metres for men and 1.70 metres for women. That was challenged by way of judicial review and the Court held that the non-selection of those claimants was lawful as they did not meet the minimum qualification: *Songi v Commissioner of Police* [2021] VUSC 197. Mr Rua has not been treated in a different manner from those claimants so there is no merit to the allegation of bias.
16. It is accepted for Mr Rua that he pleaded guilty to a charge of domestic violence and was convicted in the Magistrates' Court, then sentenced in November 2020. Mr Bolleng submitted that Mr Rua did disclose this in his application form.
17. In Mr Rua's application, he answered the question, "Have you ever had any proceedings instituted against you anywhere in relation to: Criminal courts/petty sessions/traffic courts?", "No". He answered yes to being the subject of cautionary proceedings and explained that, "The offence committed was drunkenness and act disorderly". Both answers are incorrect in the face of the Magistrates' Court conviction for domestic violence.
18. I am satisfied that Mr Rua did not meet the minimum qualification for appointment prescribed by rule 3(1)(e) of the Police Rules of good moral character as he had a conviction in the Magistrates' Court for domestic violence. Further, he did not disclose this in his VPF application form.
19. In the circumstances, Mr Rua does not have an arguable case as he lacks one of the minimum qualification for appointment.

E. Result and Decision

20. For the reasons given, this matter must be struck out for failure to provide notice under s. 6 of the *State Proceedings Act* and as the Claimant does not have an arguable case.
21. The proceeding is **struck out**.



22. Costs must follow the event. The Claimant is to pay the Defendants' costs summarily assessed at VT50,000 within 28 days.

**DATED at Lavatu, North Pentecost this 23<sup>rd</sup> day of November 2021  
BY THE COURT**

*VM Trief*  
.....  
Justice Viran Molisa Trief

