

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

Judicial Review
Case No. 20/3369 SC/JUDR

BETWEEN: Dorosday Kenneth Watson
Claimant

AND: Republic of Vanuatu
Defendant

Date of Rule 17.8 Conference: 26 February 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mr M. Hurley
Defendant – Mr S. Aron
Date of Decision: 2 March 2021

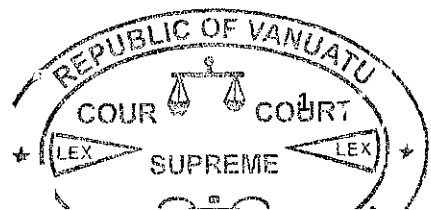
JUDGMENT AS TO RULE 17.8(3) MATTERS

A. Introduction

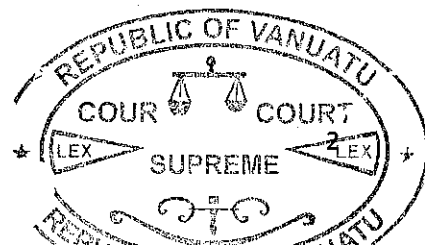
1. The Claimant Dorosday Kenneth Watson seeks judicial review of the process by which Council of Ministers' Decision No. 179 was made on 15 October 2020 regarding the re-structure of the Ministry of Justice and Community Services into a Ministry of Fisheries, Ocean and Maritime Affairs (the 'COM Decision'). The Claim alleges that the COM Decision was made in breach of provisions of the *Government Act* [CAP. 243] (the 'Act') and it is ultra vires.
2. As required by the *Civil Procedure Rules* ('CPR'), I listed this matter for a Rule 17.8 conference.
3. Having heard counsel and having considered the Claim, Defence and sworn statements filed, I now set out my decision as to the r. 17.8(3) matters.

B. Discussion

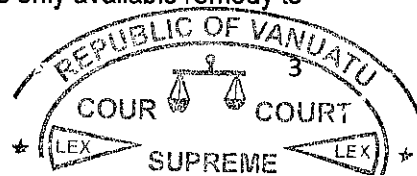
4. Rule 17.8(3) of the CPR requires that a Court must be satisfied as to 4 matters in order for the case to proceed to trial:



- (i) the Claimant has an arguable case;
 - (ii) the Claimant is directly affected by the decision under challenge;
 - (iii) there has been no undue delay in making the Claim; and
 - (iv) there is no other available remedy which resolves the matter fully and directly.
5. If any one of the 4 aspects is not established, the Court must strike out the proceeding.
6. The Claim alleges breaches of subss 13(5) and (6) and 15 of the Act, and that Ms Watson was not afforded natural justice by reason of the failure to inform her of the DCO submission prior to 13 October 2020.
7. Subsections 13(5) and (6) of the Act provide :
13.
- (5) *Before the DCO considers any submission or paper, the secretary to the DCO must send a copy of the submission or paper to each member of the DCO and to the first political advisor for each minister.*
 - (6) *Subject to subsection (7), the Chairperson of the DCO must not list a submission or paper for the DCO to consider unless he or she is satisfied that:*
 - (a) *there has been proper consultation with other Ministries in relation to the submission or paper; and*
 - (b) *the first political advisor in the Ministry sponsoring the submission or paper has approved it.*
8. The Developmental Committee of Officials ('DCO') is established by s. 12 of the Act. Subsection 13(1) of the Act provides that the Prime Minister will appoint members of the DCO which will be comprised of the Director General of the Prime Minister's Office who shall be the Chairperson, each Director General of each Ministry, a political advisor from each Ministry, the Director of the Department of Strategic Management who is to be the Secretary to the DCO, and the Secretary to the Council of Ministers who shall be the liaison person between the Council and DCO.
9. Section 15 of the Act provides:
15. (1) *The Council must not consider a submission unless the Council has available to it advice from the Attorney General on the legal implications of the submission.*
- (2) *The Council must not consider a submission unless the Council has available to it advice from the Director General of the Ministry of Finance and Economic Management on the financial implications of the submission and whether the submission complies with the principles of responsible fiscal management.*
- (3) *The advice referred to in subsection (1) or (2) must be provided within a reasonable time before the Council meets.*



10. For the following reasons, I consider that the Claimant has an arguable case in relation to alleged breaches of subss 13(5) and (6) and 15(1)-(3) of the Act thus satisfying the requirement in r. 17.8(3)(a) of the CPR:
- a) The Defendants sworn statements of August Letlet, Arnold Kiel Loughman, Esmon Esai Saimon and Gregoire Nimbtik do not contain any evidence that subs. 13(5) of the Act has been complied with;
 - b) The Defendants' sworn statements do not contain evidence that the first political advisor of the Prime Minister's Office (the Ministry which sponsored the submission or paper for the COM Decision) had approved the submission of paper for the COM Decision – subs. 13(6) of the Act;
 - c) On the Attorney General Arnold Kiel Loughman's own evidence, subs. 15(1) of the Act was complied with in that he gave verbal advice to the Council of Ministers, however not subs. 15(3) as his advice was given at the Council's meeting, *not before* the Council met;
 - d) Taking the Director General of the Ministry of Finance and Economic Management August Letlet's evidence at the highest, he gave verbal advice to the DCO meeting. However, there is no evidence that the Council of Ministers had available to it the Director General's advice before it met – subss 15(2) and (3) of the Act;
 - e) The Defendants' sworn statements do not contain evidence that Ms Watson as an affected person, namely the Director General of the Ministry of Justice and Community Services, was informed of the DCO submission prior to 13 October 2020.
11. I am satisfied that Ms Watson is directly affected by the COM Decision. I held in my decision on 27 November 2020 granting an injunction staying the COM Decision pending final determination of the Claim for judicial review in this matter that Ms Watson would be seriously disadvantaged if the order was not granted. Further, it is set out at paras 20-22 of the Claim that following the grant of the injunction on 27 November 2020, that Ms Watson's employment was suspended for reasons including that she sought and obtained the injunction. It is manifest therefore that she is directly affected by the COM Decision, satisfying the requirement in r. 17.8(3)(b) of the CPR.
12. It is undisputed that there has been no undue delay in making the Claim. The requirement in r. 17.8(3)(c) of the CPR is satisfied.
13. I am satisfied that there is no other available remedy which resolves the matter fully and directly. I reject Mr Aron's submission that the Task Force appointed pursuant to the COM Decision should be left to complete its task before Ms Watson seeks any remedy from the Court. As I stated in my Minute and Orders dated 27 November 2020, the Task Force was scheduled to meet on 1 December 2020, with a timeframe to complete its task before the Christmas holidays therefore orders were made to maintain the status quo rather than have events occur before the outcome of this matter is known that cannot be later unwound. The Claim alleges breaches of the Act. That is not a matter that the Task Force has been tasked to look into; Ms Watson's only available remedy to resolve that is judicial review.

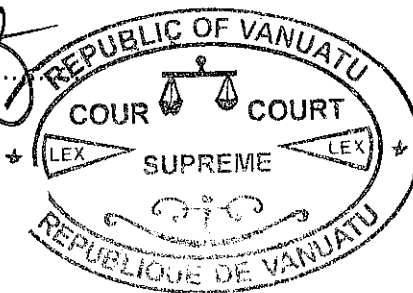


C. Result and Decision

14. I am satisfied as to the 4 matters set out in r. 17.8(3) of the *Civil Procedure Rules* that:
- (v) The Claimant has an arguable case in relation to the alleged breaches of subss 13(5) and (6) and 15(1)-(3) of the *Government Act* (r. 17.8(3)(a));
 - (vi) It is manifest that the Claimant is directly affected by the decision under challenge (r. 17.8(3)(b));
 - (vii) It is undisputed that there has been no undue delay in making the Claim (r. 17.8(3)(c)); and
 - (viii) There is no other available remedy which resolves the matter fully and directly (r. 17.8(3)(d)).
15. I will list this matter for Trial.
16. This matter is concerned only with reviewing the process by which the decision under challenge was made. It is open to the Defendant at any time to revoke the decision for its non-compliance with the requisite process, and make a new decision in accordance with the provisions of the *Government Act*.

**DATED at Port Vila this 2nd day of March 2021
BY THE COURT**

..... *VM Trief*
Viran Molisa Trief
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, and "LEX" is written in two small boxes on either side of the word "SUPREME" at the bottom.