

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

**Judicial Review Case
No. 23/2620 SC/JUDR**

**BETWEEN: Steve Kiel, Morris Demas, Samuel Iani,
Berry Dick, Afred Namas, William
Aaron, Adrien Melepsis, Melanie
Shem, Daniel Albert Sandy, Davies
Nambaru and Marie Louise Milne**
Claimants

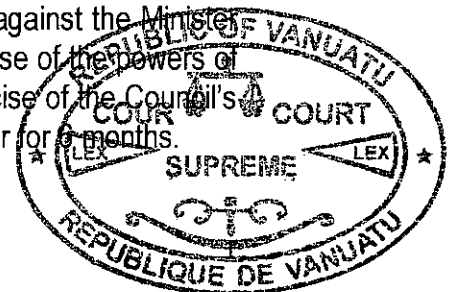
**AND: Hon. Anthony Harry Iaris, Minister of
Internal Affairs of the Republic of
Vanuatu**
First Defendant

**AND: Ben Tabi, Commissioner of the Port
Vila City Council**
Second Defendant

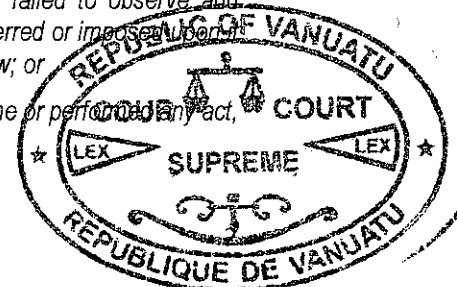
Date of Rule 17.8 Conference: 23 October 2023
Before: Justice V.M. Trief
In Attendance: Claimants – Mr E. Nalyal
Defendants – Mr T. Loughman

DECISION AS TO RULE 17.8 MATTERS

1. The Claimants Steve Kiel, Morris Demas, Samuel Iani, Berry Dick, Afred Namas, William Aaron, Adrien Malepsis, Melanie Shem, Daniel Albert Sandy, Davies Nambaru and Marie Louise Milne are elected councillors of the Port Vila Municipal Council also known as the Port Vila City Council (the 'Council').
2. By the Amended Urgent Claim for Judicial Review, they seek an order quashing the First Defendant Hon. Anthony Harry Iaris, Minister of Internal Affairs' decision by way of Instrument of Suspension of the Port Vila Municipal Council Order No. 166 of 2023 dated 25 September 2023 (the 'decision') and indemnity costs against the Minister (the 'Claim'). By the decision, the Minister suspended the exercise of the powers of the Council by the Council for 6 months and conferred the exercise of the Council's powers on the Second Defendant Ben Tabi as the Commissioner for 6 months.



3. The Sworn statements of Steve Kiel, Danny Kalo Daniel and Harry Charlie were filed in support.
4. The Claim is wholly disputed: Defence filed on 11 October 2023. On 13 October 2023, the Sworn statement of Leith Veremaito was filed in support of the grounds of the Defence.
5. Rule 17.8(3) of the *Civil Procedure Rules* (the 'CPR) provides that the judge will not hear the claim unless he or she is satisfied as to all four matters set out in that rule:
 - (i) the Claimants have an arguable case (rule 17.8(3)(a), CPR);
 - (ii) the Claimants are directly affected by the decision under challenge (rule 17.8(3)(b), CPR);
 - (iii) there has been no undue delay in making the Claim (rule 17.8(3)(c), CPR); and
 - (iv) there is no other available remedy which resolves the matter fully and directly (rule 17.8(3)(d), CPR).
6. If the judge is not satisfied about those matters, he or she must decline to hear the claim and strike it out (r. 17.8(5), CPR).
7. The Defendants' counsel Mr Loughman accepted that the Claimants are directly affected by the decision under challenge (rule 17.8(3)(b), CPR). He also accepted that there has been no undue delay in making the Claim (rule 17.8(3)(c), CPR) and that there is no other available remedy which resolves the matter fully and directly (rule 17.8(3)(d), CPR). However, it was submitted that the Claimants did not have an arguable case (rule 17.8(3)(a), CPR).
8. Having considered the documents filed and having heard counsel Mr Nalyal and Mr Loughman, I am satisfied that the Claimants have an arguable case (rule 17.8(3)(a)) for the following reasons:
 - a) It is alleged in the Claim that the Minister made the decision in direct breach of s. 61 of the *Municipalities Act* [CAP. 126] (the 'Act') as he did not comply with any of the requirements in that section, that he did not appoint a person under subs. 61(1) of the Act to conduct an inquiry into the Council, that he took into account irrelevant considerations in making the decision, and that he did not give reasons for the decision thus breaching natural justice;
 - b) Section 61 of the Act provides as follows:
 61. (1) If the Minister –
 - (a) has cause to suspect that a council has failed to observe and perform any of the duties and powers conferred or imposed by the provisions of this Act or any other law; or
 - (b) has cause to suspect that a council has done or performed any act, matter, or thing without due authority; or



(c) is otherwise of the opinion that an investigation should be made into the affairs of a council;

he may in his discretion, appoint a person or persons to inquire into such matter.

(2) If upon an inquiry under this section the Minister is satisfied that the council has done or suffered any of the act, matter and things contained in paragraphs (a) and (b) of subsection (1), he may by directive in writing require the council to remedy the same within such time as he may appoint.

(3) If a council fails to comply with the terms of a directive of the Minister made under subsection (2) or if the Minister, having appointed a person or persons to make an inquiry under subsection (1) considers it expedient so to do, the Minister may in addition to any other powers conferred upon him by the provisions of this Act –

(a) suspend the exercise by the council of any of the powers conferred upon it by this or any other act for such period as he may think fit

and, confer upon a person known as the Commissioner, the exercise of any powers so suspended for such period as the Minister considers expedient which must not exceed the expiry of 12 months following the date on which the term of the council so suspended expired.

(3A) If the exercise of any of the powers of a council is suspended under paragraph (3)(a), the mayor, deputy mayor and councillors are not entitled to during the period of such suspension, to receive any allowances which are payable to them under this Act.

(4) The expenses incidental to –

(a) any inquiry under this section; or

(b) the exercise of any of the powers of the council under this section;

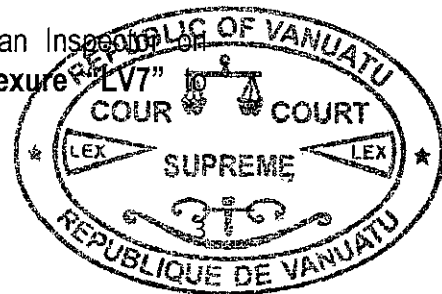
shall be a debt due by the council to the Government and shall be paid and discharged out of the funds or revenues of the council in such manner as the Minister shall direct. Any such direction may include a direction that the expenses shall be deducted from any grant payable by the Government to the council.

(my emphasis)

c) The Defendants' case is that the Minister made the decision in the exercise of his power under subs. 61(3) of the Act, based on the outcome and recommendations set out in an Investigation Report dated 24 March 2023 by an Inspector, Lionel Kaluat;

d) The wording of subs. 61(3) of the Act is, relevantly, that "if the Minister, having appointed a person or persons to make an inquiry under subsection (1) considers it expedient so to do" may suspend the Council's exercise of its powers. That wording refers to the appointment of a person or person appointed under subs. 61(1) to make an enquiry and if the Minister having appointed such person(s) considers it expedient so to do, then he may exercise his power under subs. 61(3) to suspend the exercise by the Council of any of its powers;

e) The evidence shows that Mr Kaluat was appointed as an Inspector on 20 December 2022 pursuant to s. 59 of the Act [Annexure LV7 to Mr Veremaito's Sworn statement];



- f) There is no evidence that Mr Kaluat was appointed pursuant to subs. 61(1) of the Act;
- g) Mr Loughman invited the Court to assume that Mr Kaluat's appointment was also made under subs. 61(1) of the Act. However, this submission is contrary to the express terms of Mr Kaluat's instrument of appointment which set out that his appointment was made by the Minister in the exercise of his power conferred by s. 59 of the Act and which does not refer to the Minister's power under any other section. With respect, there is no basis for the Court to make the assumption that it was invited to and no basis for that submission;
- h) In the circumstances, I must conclude that the Claimants have an arguable case that the Minister made the decision to suspend the exercise of the powers of the Council by the Council without having appointed a person or persons to make an inquiry under subs. 61(1) of the Act and thus without having complied with the requirements of s. 61 of the Act;
- i) For completeness, I note that the Defendants' case as to the allegation that the Minister took into account irrelevant considerations is that he made the decision based on Mr Kaluat's Investigation Report and therefore did not take into account any irrelevant considerations. This is arguable but will depend on whether or not there was compliance on the Minister's part with the requirements of s. 61 of the Act; and
- j) Finally, the Defence is silent on whether or not the Minister gave the Claimants reasons for making the decision to suspend the exercise of the powers of the Council by the Council.
9. As I am satisfied that the Claimants have an arguable case and there was no dispute as to the other rule 17.8(3) matters, this matter needs to be listed for hearing of the Claim.
10. As I stated to counsel, this matter is concerned only with reviewing the process by which the decision under challenge was made. It is open to the Minister at any time to revoke the decision for its non-compliance with the requisite process, and to make a new decision in accordance with s. 61 of the *Municipalities Act*.
11. Liberty granted to the Claimants to file and serve sworn statements in reply, if any, **by 4pm on 25 October 2023**.
12. This matter is listed for Hearing of the Claim **at 9am on 26 October 2023** at Dumbea Courtroom.

DATED at Port Vila this 23rd day of October 2023
BY THE COURT


Justice Viran Molisa Trief

