

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

**Civil  
Case No. 23/764 SC/CIVL**

**BETWEEN: AVEN DUVU**  
*First Claimant*

**AND: JEAN MICHEL SUMU**  
*Second Claimant*

**AND: THE COMMISSIONER OF POLICE**  
*First Defendant*

**AND: THE REPUBLIC OF VANUATU**  
*Second Defendant*

**Before:** *Justice Oliver A. Saksak*

**Counsel:** *Mr Eric Molbaleh for the Claimants  
Mr Lennon Huri for the Defendants*

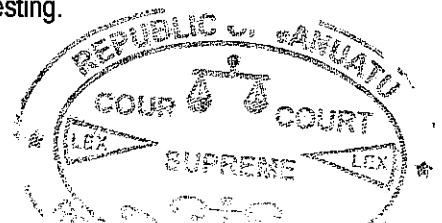
**Date of Hearing:** *5 December 2023*

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**RESERVED JUDGMENT**

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1. The two claimants complain against their respective discharge by the Police Commissioner or made by letters dated 8 November 2021 addressed to each of them.
2. The claimants allege that they were not given opportunities to answer or respond to the allegations raised against them.
3. The allegation made was that the two claimants were seen by persons detained in Cell 6 seeing the two claimants smoking cigarette and marijuana.
4. The detained persons were Neven Iau and Alto Akuma and the date on which it happened was 22 October 2021. The Police Officer who received the complaint from the two detainees was PC Lidiana Nilwo.
5. PC Nilwo and Probation Constable Simon Kondley searched the premises on the suggestion of Corporal Wesley Woleg found cigarette buds and a white rolled paper which they collected and presented to the Forensic Unit for testing.



6. The test proved positive for marijuana. The test was done by PC Winshual Garae who deposed to a sworn statement on 22 November 2023, And PC Nilwo deposed to a sworn statement on 22 November 2023.
7. Following the result, the Police Commissioner discharged the claimants under Section 14(2) of the Police Act which provides:

*“Appointment on Probation.*

*(1) A successful candidate shall be appointed as probationary constable for a period of 2 years by a letter of appointment signed by the Commissioner.*

*(2) The Commissioner may at any time discharge a probationary constable if he considers that such constable is unlikely to become an efficient member of the Force”.* (My underlining for emphasis)

8. The discharge was effective on 8 November 2021, the same date it was written.
9. The basis of the discharge is stated in paragraph 1 of the letter which states: -

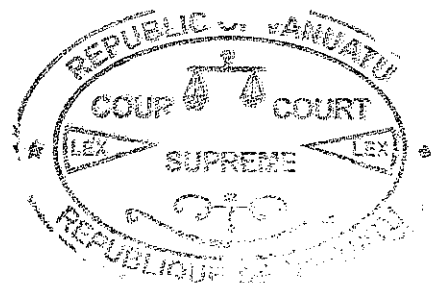
*“It has come to my attention that you have been allegedly suspected to be involved in a criminal offence in breach of the Dangerous Drugs Act CAP 12.”*

10. Both claimants accepted in evidence that both of them were respectively appointed by the Commissioner by letters dated 25 November 2019. These were conditional appointments pursuant to Section 10 of the Police Act and in accordance with Section 14(1) and (2) of the Act.

11. The appointments were made effective from 23 December 2019. The last paragraph of the letter states:

*“If you accept the conditions of appointment, please sign all copies of this letter in the space provided below and return them through the Director of Police Training.”*

12. At the bottom of the letter, it is stated: -



*"I, Aven Duvu (signed) and Jean Michel Sumu (signed) hereby accept appointment as a Police Constable on probation in the Vanuatu Police Force on the same terms and conditions set out above."*

These are dated: "19/12/19."

13. Both claimants were in recruit training for a period of 1 year and 10 months before being discharged. They had only 2 months left before completing their two years training and probation.

14. Section 16 of the Act provides: -

*"Recruit training*

*(1) Every probationary constable shall be required to complete a period of training on such term and such direction as shall be determined by the Commissioner.*

*(2) No probationary constable shall be invested with the powers and duties of his or her office in accordance with the provisions of this or any other Act for the time being in force until he or she has successfully completed the period of training provided for in sub section (1) and has made the declaration provided for in section 17."*

15. The reliefs sought were –

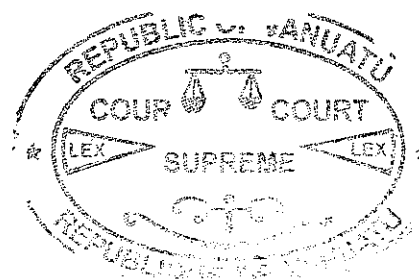
- (a) That they be reinstated to the Police College to complete their training.
- (b) In the alternative, that they be paid damages for loss of income and general damages for loss of opportunities.
- (c) Interest at 5%; and
- (d) Costs.

#### The Issue

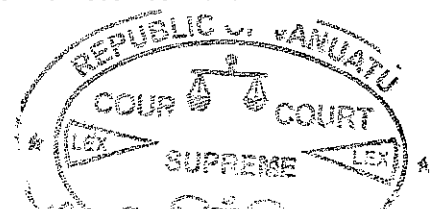
16. The issue for determination is whether or not the claimants were lawfully discharged by the defendants? This is a legal issue.

#### Discussion

17. Facts are generally accepted and not in dispute.



18. Both claimants accepted that they were appointed as probationary constables under Section 14 of the Act. Both accepted they were appointed for a period of 2 years as recruits in training. They both accepted the conditions applicable under Section 14(1) and (2) of the Act.
19. They however denied the allegations made against them about smoking marijuana on the date alleged.
20. They argued and submitted through counsel that unless and until they were found guilty by a criminal court to be the basis of disciplinary charges against them, they could not have been discharged by the Commissioner but rather they should have been suspended pending the outcome of a criminal charge and disciplinary action.
21. However, I think that is an argument that goes too far. I doubt it was the intention of Parliament that a person appointed under Section 14 of the Act as a probationary constable in training for a period of 2 years should be subject to suspension and discipline prior to a discharge. That in my view is a scheme only for "Members" of the Police Force who have gone past those 2 years of training, been confirmed permanent and made a declaration under Section 17 of the Act. It is only after making that declaration that a member of the Force becomes a "Subordinate Officer", assuming and being vested with the powers and duties of a police officer.
22. Clearly under Section 14 (2) of the Act the Commissioner has discretionary powers to discharge the claimants based on the allegation made against them.
23. The allegation was for smoking marijuana. Two detainees saw them smoke cigarette and marijuana rolled in a white paper which they saw Aven Duvu throw away. That is the part found by police officers who took it for testing. And the result showed the substance in the white paper was marijuana. Two detainees saw the claimants. They reported to PC Nilwo who together with 2 other Police Constables searched the place and found the remains. They presented them for testing. The result was positive. That was sufficient information for the Police Commissioner. He did not have to await the laying of criminal charges and a conviction by the Court. Under Section 14 (2) the Police Commissioner had discretion to discharge on that information and also on the basis of both claimants having signed their respective acceptance on 19 December 2019.



24. But I am troubled by section 31 of the Act. Neither Mr Molbaleh nor Mr Huri made any submissions on that provision. This provision is about "Discharge from the Force."

Subsection (3) states:

"Every member discharged under the provisions of sub section (1) shall be given not less than 3 months' notice of the intention to discharge him from the Force." (My underlining for emphasis).

25. Subsection (1) states:

*"At any time, a member may be discharged by the Commissioner, in the case of a subordinate officers,*

(a) ..... N/A;

(b) .....N/A; or

(c) *if, being a probationary constable, the Commissioner considers that he is unlikely to become an efficient member of the Force."* (My emphasis)

26. This is a repeat and restatement of Section 14 (2) of the Act which formed the basis of the discharge of the two claimants.

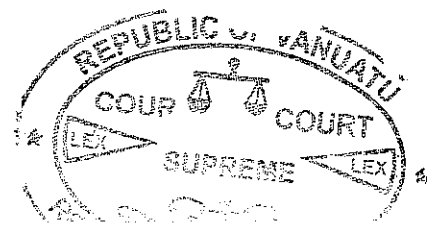
27. From that provision it appears in my opinion that the two claimants are entitled to receive a gratuity of 3 months salaries in lieu (or in place of) the notice. That is a legal entitlement under the provisions of the Employment Act [CAP 160].

28. It is either that or a gratuity of half a month available under Section 31 (5) of the Act.

29. As the Employment Act is an Act of general application it is the appropriate Act or law to be applied especially here where the claimants are claiming for damages for loss of employment opportunities.

The Result

30. That brings to the conclusion that although the Police Commissioner had lawfully discharged the two claimants, the failure to give them 3 months' notice warrants that judgment be entered for the claimants on a limited basis. They are not entitled to orders



for reinstatement. However, they are entitled to damages in the sum equivalent to 3 months of salaries as payment in lieu of notice under Section 31 (3) of the Police Act.

31. In addition, they are entitled to 5% interest on the sum, and to the costs of and incidental to the action on the standard basis as agreed or taxed.

**DATED at Port Vila this 18<sup>th</sup> day of December, 2023.**

**BY THE COURT**

.....  
**Oliver A. Saksak**  
**Judge**

