

BETWEEN: AUGUST LETLET
Applicant

**AND: CHARLOT SALWAI TABIMASMAS as the Prime Minister of
the Republic of Vanuatu**
First Respondent

AND: THE REPUBLIC OF VANUATU
Second Respondent

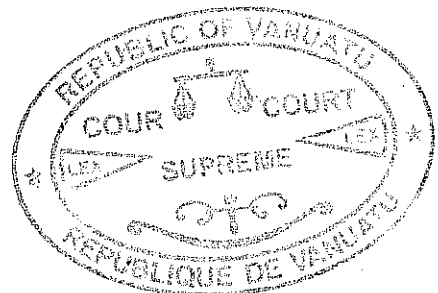
AND: THE RESERVE BANK OF VANUATU
Third Respondent

Date of Hearing: 26th day of February, 2024
Before: Justice W. K. Hastings
Distribution: Mr. G. Blake for the Applicant
Mr. D. Yawha for the First Respondent
Mr. L. Huri for the Second Respondent
Mr. J. Malcolm for the Third Respondent

RULING ON ADMISSIBILITY

Introduction

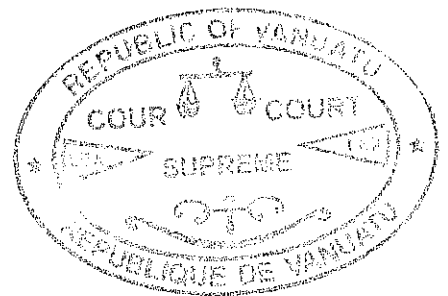
1. The Claimant August Letlet has challenged the admissibility of 5 sworn statements filed by the Third Respondent, the Reserve Bank of Vanuatu.
2. The sworn statements are from:
 - a. Floyd Ray Mera, who deposed on 15 January 2024 that he is Director of the Financial Intelligence Unit (FIU). Mr Mera provides information on which he bases his opinion that the Claimant is not a fit and proper person. He also states that he will "have no choice but to enforce the AML/CTF Act" if the Claimant "is allowed to take office as Governor against the FIU's declaration." Mr Blake pointed out that Mr Mera does not state in his sworn statement that he has been suspended as Director.



- b. Josiah Kuatpen, Acting Director of the FIU, provides information he alleges is related to the Claimant's fitness and propriety going back to 2020. He also states that if the Claimant takes office, the FIU will suspend the RBV from the register of reporting entities, amongst other actions.
- c. John Tabiusu, Manager of the Bank Supervision Unit of the Reserve Bank of Vanuatu (RBV) provides information going back to 2017 which he alleges goes to the Claimant's fitness and propriety. He states that allowing the Claimant to become Governor "*will undermine the processes that are being carried out to rectify ... his illegal decision to appoint*" a person as General Manager of the Vanuatu National Provident Fund when he chaired the VNPF Board.
- d. Kensen Seri, Officer in Charge of the Department of Support Services, RBV, provides information which he says supports his view that the Claimant is not a fit and proper person, and his view that the recruitment process "*did not seem transparent and fair.*"
- e. Simeon Malachi Athy, Former Governor of the RBV, deposes that "*by failing the fit & proper test of the VFIU, Mr Letlet August's appointment will further tarnish Vanuatu's standing with the FATF [Financial Action Task Force] and the APG [Asia Pacific Group on Money Laundering], and with other international standard setting bodies ...*"

Submissions

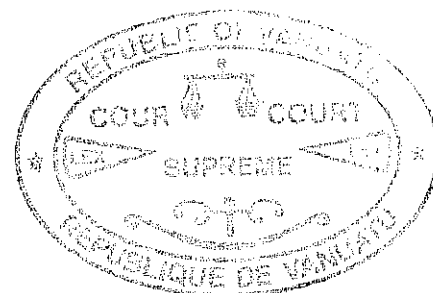
- 3. The Claimant's application sets out the reasons for his objection to the admissibility of these sworn statements. In summary, those reasons are:
 - a. The sworn statements consist of opinion evidence and legal submissions about the Claimant's fitness and propriety to be appointed Governor of the RBV which are not substantially helpful in resolving the issue to be tried;
 - b. None of the sworn statements reveal that any of the deponents contacted the Prime Minister with the information in their sworn statements, which also refer to events occurring after the Prime Minister's decision to revoke the Claimant's appointment, conveyed in his letter to the Claimant dated 8 November 2023; and
 - c. The sworn statements are not relevant to the issue to be tried.



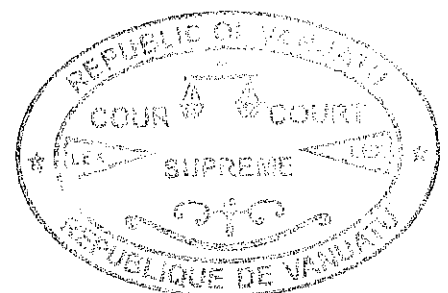
4. Mr Malcolm for the Third Respondent submitted that this judicial review requires a broad approach to be taken, given its significance. He submitted it is important for the Court to have the best evidence, and that matters concerning the appointment and matters concerning the revocation are intertwined.
5. Mr Yawha for the First Respondent submitted that in his letter of 8 November 2023, the Prime Minister stated that the reasons for the revocation were twofold: first, the process followed when the Claimant was appointed "*was not fair and transparent*"; and second, he had reason to believe that the Claimant did not meet "*the fit and proper criteria required by law.*" Mr Yawha submitted that because the Prime Minister raised these two issues, the sworn statements are relevant and should be admitted.
6. In reply, Mr Blake emphasized that judicial review claims are concerned with the decision-making process, not with the substantive merits of the decision itself. Replying mostly to Mr Yawha, Mr Blake submitted that the material in the sworn statements was only relevant if that material was in front of the Prime Minister when the decision was made to revoke the appointment of the Claimant.
7. Mr Blake submitted that none of the 5 sworn statements refers to any delivery of the information contained in them to the Prime Minister. The only sworn statement that does this is the sworn statement of John Salong in support of the First and Third Defendants' Defence to which are annexed exhibits JDS7 and JDS8. Exhibit JDS7 is a letter dated 20 October 2023 from Simon Athy, Governor of the RBV to John Salong, Minister of Finance, in which he refers the FIU's due diligence report on the Claimant of the same date to Mr Salong. Exhibit JDS8 is a letter dated 20 October 2023 from Mr Salong to the Prime Minister recommending the Claimant's appointment be cancelled on the basis of information he received from the FIU and the RBV that he was not a fit and proper person under the Anti-Money Laundering legislation. Mr Salong's sworn statement and annexures are already in evidence.
8. Mr Huri for the Second Defendant said the Republic would abide my ruling.

Discussion

9. There was no objection to Mr Blake's application to amend the claim. The amended claim better defines the issue, which is the alleged denial of natural justice to the Claimant by the First Defendant before the decision to revoke his appointment was made. This was covered in the cross-examination of the Prime Minister in the hearing of the application for interim orders, and does not come as a surprise to any of the Defendants. I gave leave for the Claim to be so amended by the addition of paragraph 19(d).
10. The amended claim also focused the issue in this hearing. Both the claim and the amended claim seek a declaration that the Prime Minister unlawfully exercised his powers when he purported to revoke the Claimant's appointment as Governor in the letter of 8 November 2023. The evidence sought to be admitted must be relevant to the issue to be resolved, which is the legality of the decision to revoke.



11. This judicial review proceeding is not concerned with the legality of the decision to appoint, or with whether the Claimant is a fit and proper person. This claim is about the legality of the process followed when the First Defendant made the decision to revoke the appointment, not about the substantive merits of the decision itself or the legality of the decision to appoint. It is about whether the claimant was afforded natural justice by being given notice of, and an opportunity to respond to, matters the Prime Minister proposed to consider before he made his decision: *Minister of Education and Training v Tabi* [2023] VUCA 30 at para 31; *Duvu v Commissioner of Police* [2024] VUCA 8 at para 12.
12. Mr Yawha's submission that the First Defendant's reference to fitness and propriety means that the 5 sworn statements, which largely deal with the Claimant's fitness and propriety, are relevant and should be admitted, has some attraction. They are potentially relevant to consideration of the merits of the appointment (the appointment decision), and they are potentially relevant to the third branch of the test in *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223, which is whether a decision is so unreasonable that no reasonable decision-maker could have made it (the revocation decision).
13. I agree with Mr Blake's submission however that the *Wednesbury* test should be considered only after it has been established that there was an appropriate level of compliance with procedural fairness to give the person affected an opportunity to respond to matters the decision-maker proposes to take into account. It may be that the decision in this case would pass the *Wednesbury* test, but if the person adversely affected by the decision about to be made was not given an appropriate level of procedural fairness, then the decision is open to challenge. I therefore disagree with Mr Malcolm's submission that this evidence is admissible because matters concerning the appointment are so intertwined with matters concerning the revocation that they must be considered together, and with Mr Yawha's submission that this evidence is admissible because the First Defendant in his letter of 8 November 2023 refers to fitness and propriety. The first step must relate to the procedural fairness of the challenged decision which is the decision to revoke, not to the reasonableness of the decision to revoke or to the merit or otherwise of the decision to appoint.
14. There are three other matters concerning relevance. The first is that none of the deponents depose in their sworn statements that they provided this information to the decision-maker. This may become relevant if there is a *Wednesbury* challenge to a decision where it is alleged that the decision-maker took into account irrelevant matters, or did not consider relevant matters, or that the decision is so unreasonable that no reasonable decision-maker could have made it, but we are not yet at that stage.
15. The second is that the deponents offer opinions about the Claimant's fitness and propriety, as well as the appointment procedure, neither of which is relevant to the procedural fairness of the decision to revoke. To be admissible, opinion evidence must be relevant, must be offered by a person properly qualified to give it, it must be reliable, and it must be substantially helpful in resolving the issue, which in this proceeding, is the procedural fairness of the First Defendant's decision to revoke. The deponents do not offer opinions on the issue to be tried and are also not relevant for that reason.



16. The third is that even if I am wrong about relevance, I consider that the probative value of these statements to the issue to be tried is outweighed by the risk that this evidence would needlessly prolong this proceeding.
17. This evidence is not relevant to the procedural fairness of the challenged decision to revoke, and is therefore ruled inadmissible in the present proceeding.
18. This evidence may, however, have relevance in a different proceeding that does not concern the procedural fairness of the decision to revoke. Even a procedurally fair decision can be quashed if it is so unreasonable that no reasonable decision-maker could have made it. That will be a matter for another day.

Result

19. The sworn statements of Floyd Ray Mera, Josiah Kuatpen, John Tabiusu, Kensen Seri and Simeon Athy are ruled inadmissible in this proceeding.

DATED at Port Vila this 6th day of March, 2024

BY THE COURT


Justice W. K. Hastings

