

**IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case No. 164 of 2006

BETWEEN: ROBINSON NAVONG
Claimant/Respondent

AND: POLICE COMMISSIONER
Defendant/Applicant

Coram: Steve R. Bani

*Counsels: Mr. George Boar for the Claimant/Respondent
Mr. Frederick J. Gilu for the Defendant/Applicant*

DECISION

By a Magistrates Court Claim the Claimant claims liquidated sums of outstanding salaries claimed to have been wrongfully forfeited by the Defendants. By a defence filed for the Defendant, the substance of the claim is denied. On 19th December 2006 the Claimant obtained a summary judgment against the Defendant. The summary judgment was on 21st September 2007 set aside in its entirety. The defendant was directed by that order to file an amended defence setting out the matters pleaded in the initial defence.

Subsequently counsel in defence filed an Application to have the action struck out. The application in substance is one of lack of jurisdiction. The application is styled in the following manner:-

Take Notice that the Defendants will apply for the following order:

- 1. That the claimant's claim filed on 14 July 2006 be struck out;*
- 2. The claimant pays the defendant's costs.*

On the grounds that:

- 1. The Claimant in substance is challenging the powers exercised by the Defendant when he forfeits the claimant's salary during the period of interdiction.*

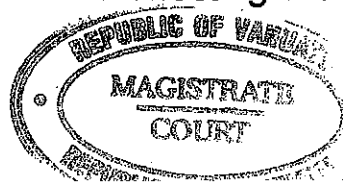


2. *That such claim alleging the Defendant to have acted ultra vires of his powers can only be instituted by way of a Judicial Review. Thus the remedies which the claimant should have sought was, to seek a quashing order (certiorari) of the First Defendant's decision and to seek a Mandatory order (Mandamus) compelling the second defendant to invoke section 64 (3) of the Police Act as they are alleging.*
3. *Given that the substance of the claim is challenging the decision of the First Defendant, and asking the court to compel the second defendant to fulfill its obligation under section 64 of the Police Act, are remedies that can only be commenced by way of judicial review. Therefore this honourable court does not have the jurisdiction to determine this matter only the Supreme Court.*
4. *In any event the claimant is now barred from instituting a judicial review claim. Hence this is an abuse of the Court process.*

For completeness, the Claimant's case is such that on 20th September 1996 the Defendant suspended the Claimant from official duties on half salary. The suspension was lifted on 25th September 2000. The Claimant resumed duties on full salaries. It transpired that the portions of the Claimant's salaries not paid during his suspension period were withheld. The forfeiture of that portion of salaries withheld was allegedly a decision made by the Defendant, by letter dated 25 September 2000.

The substance of the defendant's application and submissions is such that the Claimant is seeking the court to adjudicate the actions and/or decision taken by the Defendant to order a forfeiture of the Claimant's portion of salary not paid during the period of interdiction or suspension. To this end it is submitted that this court lacks the jurisdiction to grant the relief sought.

It is submitted that the effect of forfeiting the Claimant's portion of salary flows from the process of interdiction or suspension. And as such in refusing to reimburse the Claimant, the Defendant is exercising a statutory function stipulated under section 64 of the Police Act. It is submitted that any decisions affecting the rights or



person is a matter for judicial review (O'Reilly v Mackman and Others [1982] 3 All ER 1124).

It is further submitted that this court should take a consistent approach with the matter of Wesley Malachi -v- Lui Patu and the Police Service Commission civil case No. 56 of 2007, Magistrates Court, 16th August 2007.

It is submitted by Mr. Boar, counsel for the Claimant, that the facts of Malachi v Patu can be differentiated from the present case. On the contrary. These two matters arise from the same sets of facts. Both claimants seek the same relief that arose from the same set of facts. They were both suspended by the Defendant on half salaries and when both were reinstated (although at different dates) the Defendant allegedly ordered a forfeiture of the portions of salaries not paid. Counsel made contradictory submissions when he submitted that this court is with jurisdiction to make decisions as to the lawfulness of an act taken by the defendant, and later it is submitted that the Defendant lacked the power to exercise discretion under the relevant section of the Police Act Cap 105 (s.64). In effect the Claimant is saying that the Defendant acted ultra vires his powers under the Police Act. Obviously this must be beyond the jurisdiction of this court. It must be a matter for judicial review.

The pleadings of the Magistrate's Court Claim are very brief; however the merits of the case would require the court to investigate the matters raised in the defence. An order for the payment of the salaries withheld cannot be made in isolation to the determination of whether or not the Defendant exercised that discretionary power within or outside the law. Indeed the court must first declare that the decision of the Defendant was legally wrong to forfeit the Claimant's portion of salary withheld or that the Defendant did not have that power to exercise under section 64 of the Police Act.

On close examination of the pleadings to the Claimant's claim it is clear that for the court to grant the relief sought it must first determine and declare whether or not the action and/or decision of the Defendant was within the powers conferred on him by the Police Act Cap 105. Indeed as is submitted by counsel in defence that to grant the relief sought the court must quash the decision to forfeit portions of the Claimant's salaries. The power to do so must



be beyond the jurisdiction of this court (Enock v David [2003] VUCA 19; Civil Appeal Case No. 25 of 2003 at pages 4 - 5). Indeed the Magistrate's Court is statute barred from entertaining a claim such as the present case. Section 2 of the Magistrate's Court (Civil Jurisdiction) Act Cap 130 stipulates:

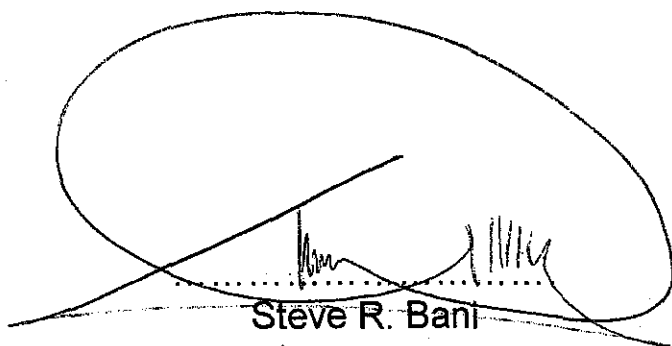
A Magistrate' court shall not have jurisdiction to try a suit concerning ... interdiction ...

The question now is whether to refer the matter to the Supreme Court (Magistrates Court (Civil Jurisdiction) Act cap 130) or grant the relief sought by the Defendants. It would be in the interest of justice to refer the matter to the Supreme Court for determination of the substantive issue; however, the Claimant is time barred. To file for judicial review the Claimant would have had to file a claim within 6 months from the date the decision and/or action was taken. Obviously the Claimant is time barred which makes it impossible to refer the matter to the Supreme Court. In circumstances such as this a claimant may seek extension of time under the Limitation Act.

Accordingly this action is struck out for lack of jurisdiction. Costs are awarded to the Defendant to be fixed by the court failing agreement.

Dated at Port Vila this 13th November 2007

BY THE COURT



Steve R. Bani

