IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

CIVIL CASE NO. 11 OF 1995

Civil Jurisdiction

IN THE MATTER of an Application of rights under the provision of the Police Act CAP. 106

BETWEEN : **SALING STEPHENS**

- Applicant

A N D : **THE POLICE SERVICE COMMISSION OF THE REPUBLIC OF VANUATU**

- Respondent

JUDGMENT

Coram : Hon. Mr Justice Downing

Applicant in person
Hon. Attorney General for the Respondent

In this matter the Applicant seeks an order of Mandamus directing the Respondent to allow his appearance as a next friend to Superintendent Peter Bong in proceedings before the Respondent.

By charges brought against Superintendent Peter Bong dated the 30th of January 1995 he was required to attend before the Respondent on the 8th February 1995.

The procedures to be adopted by the Respondent are to be found in the Police (Senior Officers) Disciplinary Procedure Rules.

Rule 4 provides :-

"(1) A senior officer charged with a disciplinary offence shall be entitled to be represented by his next friend".

(2) In the event where a senior officer charged with a disciplinary offence fails to appoint a next friend, the Commission may appoint a police officer to act on his behalf."

Rule 1 defines "next friend" as meaning :

"a police officer who appears before the Commission to assist a senior officer charged with a disciplinary offence".

On the 8th of February 1995 Superintendent Bong sought to be represented by the Applicant as his next friend. The Respondent refused to allow the Applicant to appear on the basis that the Applicant had ceased to be a police officer and became a public servant on being appointed by the Judicial Services Commission as an Assistant Legal Officer.

Thus the issue raised in this matter is whether or not the Applicant was entitled to appear as the next friend of Superintendent Bong. This will be answered by the consideration of whether or not the Applicant was a Police Officer.

The Honourable Attorney has raised a threshold point, which must be dealt with first, namely that the Applicant has no locus standi to bring the proceedings. He submitted that the right that is being sought to be enforced by the Applicant is in fact not his right, but rather the right of Superintendent Bong to be represented by his next friend, which right is asserted by the Hon. Attorney to have been properly withheld as the chosen next friend does not fall within the definition of eligible people, namely, "police officers". It is said that this right is not the right of the Applicant, but solely the right of the Superintendent to enforce. By the analogy the Honourable Attorney referred to Article 6 of the Constitution which gives a right to a person, who considers that any right guaranteed to him have been infringed, to apply to the Supreme Court. It does not give a third party a right. In response to this the Applicant asserts that the seriousness of the issue raised his right to commence the action.

In recent years the requirement in respect of locus standi has been considerably relaxed in many jurisdictions. The question of locus standi goes to the jurisdiction of the Court to hear and determine a matter. See R v Secretary of State for Social Services and Anor, Ex parte Child Parent Action Group and Ors [1989] 1 All E.R. 1047 at 1056 per Woolf L.J.

In the case of R v H.M. Treasury : Ex parte Smedley [1985] 1 All E.R. 589, Slade L.J. expressed the current English position when he said :- at p.395

> "The speeches of their Lordships in I.R.C. v National Federation of Self Employed and Small Business Ltd [1982] AC 617 well illustrate that there has been what Lord Roskill described as a "change in legal policy "..... which has in recent years greatly relaxed the rules as to locus standi. Lord Diplock referred to a "virtual abandonment of the former restrictive rules as to the locus standi of person seeking prerogative orders against authorities exercising governmental powers ....."

In Onus v Alcoa (Aust) (1981) 149 CLR 27, Gibbs CJ observed that the rule as to standing is "obviously a flexible one" His honour stated :

> "The case is therefore one in which two private citizens who cannot show that any right of their own has been infringed bring an action for the purpose of restraining another private citizen (Alcoa) from breaking the criminal law by acting in contravention of s. 21 of the Relics Act. The question is whether they have standing to bring action. If an attempt were made to frame an ideal law governing the standing of a private person to sue for such a purpose, it would be necessary to give weight to conflicting considerations. On the one hand it may be thought that in a community which professes to live by the

rule of law the courts should be open to anyone who genuinely seeks to prevent the law from being ignored or violated. On the other hand, if standing is accorded to any citizen to sue to prevent breaches of the law by another , there exists the possibility, not only that the processes of the law will be abused by busybodies and cranks and persons actuated by malice, but also that persons or groups who feel strongly enough about an issue will be prepared to put some other citizen, with whom they have had no relationship, and whose actions have not affected them except by causing them intellectual or emotional concern, to very great cost and inconvenience in defending the legality of his actions. Moreover, ideal rules as to standing would not fail to take account of the fact that it is desirable, in an adversary system, that the courts should decide only a real controversy between parties each of whom has direct stake in the outcome of the proceedings. The principle which has been settled by the courts does attempt a reconciliation between these considerations. That principle was recently stated in *Australian Conservation Foundation Inc. v The Commonwealth (1980) 146 C.L.R. 493.* A plaintiff has no standing to bring an action to prevent the violation of a public right if he has no interest in the subject matter beyond that of any other member of the public; if no private right of his is interfered with he has standing to sue only if he has a special interest in the subject matter of the action (1980) 146 C.L.R. at pp 530 - 531. The rule is obviously a flexible one since, as was pointed out in that case, the question what is a sufficient interest will vary according to the nature of the subject matter of the litigation."

This case is one where undoubtedly Superintendent Bong has a personal right that he may complain has been denied to him, that is, the right to be represented by a next friend whom he believes and asserts is a policeman. I do not believe that the Applicant, as merely a "next friend" has a sufficiently "special interest" to be given locus standi in circumstances where there is and was nothing to prevent Superintendent Bong from commencing the proceedings. There is "no private right" of the applicant that has been the subject of interference. It would be different if the Applicant had sought to appear as Counsel and had been refused the right to appear as such. There would then have been a "private right" that would have insured that he then had locus standi. But the fact is in this case is that it was Superintendent Bong who sought the Applicant to appear merely as his next friend.

Thus I find that there is no locus standi for the applicant to have commenced this proceeding. It is thus not appropriate for the court, on the current application to consider whether Mr Stephen was a policeman or not.

I observe further however that Rule 4 appears to be an expansive Rule. That is, it expands the class of people who might otherwise appear before the Commission. In my view it does not exclude or prohibit an appearance by a solicitor or an advocate on behalf of a client. If this were the import of the rule clear words to express such would be required, such as those found in Section 27 of the Island Court Act Cap 167 which provides :- "No legal practitioner shall be entitled to take any part in the proceedings of an Island Court".

I note with interest that the learned authors of Halsbury's Laws of England 4th Edition Vol. 3 at para 1161 have state that :-

"The rules of natural justice will normally require that if there is an oral hearing of a justiciable dispute the parties ought to be entitled to be legally represented (see Simms v Moore [1970] 2 QB 327) ..... If a statute gives a person a right to appear before tribunal the inference is that he has a right to appoint as his agent for appearance any person who is not manifestly improper, and therefore may appear by counsel. (see R v St. MARY Abbotts, Kensington Assessment Committee [1891 1 QB 378 CA)"

In the case of Pett v Greyhound Racing Association [1969] 1 QB 125 at 133 Lord Denning MR made the position quite clear after considering the authorities and found that in cases where a man's reputation or livelihood or any matter of serious import were involved ..."Natural justice then requires that he can be defended, if he wishes, by counsel or solicitor". It is also observed that in Kalo v Public Service Board [1987] S.P.L.R. 405 at 407, Cooke C.J. found that Articles 5(1)(d) and 2(a) of The Constitution of the Republic of Vanuatu had been held by the Appeal Court of this Court in Boulekone v Timakata civil case No. 90 of 1986, to apply to all tribunals in Vanuatu whether administrative or judicial and that natural justice had to be accorded in all tribunals and courts in Vanuatu. In my view this must also apply to the Police Service Commission which is clearly a tribunal. I also note that as the Honourable Attorney General stated before the Court that one of the consequences of the charges being made out against Superintendent Bong could be his dismissal. If this is the case then most certainly his reputation and livelihood are involved in the proceedings before the Respondent. It thus follows that Superintendent Bong should be permitted legal representation.

There also arises in this case a very real doubt as to whether proceedings as thus far commenced are not in fact a nullity. Superintendent Bong has been charged in respect of "Section 19(z) of the Police Act Cap 105", in that he "Did an act likely to bring discredit upon the force".

There is no section 19(z) to be found in the Police Act. Further there has been a total failure on the face of the Notice of Hearing to provide any Particulars of Offence as would be required in order to accord natural justice. The Honourable Attorney has informed the Court that the error can be rectified. However it is not a matter that was argued before the court and I shall made no further observations in respect of it.

The Application will be dismissed. As the Respondent has not, quite properly I believe, sought costs, there will be no orders as to costs.

DATED at Port Vila this 15th day of March 1995.

ROWAN M. DOWNING
Judge

REPUBLIC OF VANUATU
COUR SUPREME COURT
REPUBLIQUE DE VANUATU