

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

CONSTITUTIONAL CASE No.10 OF 2012

BETWEEN: JOSHUA BONG
Applicant

AND: POLICE SERVICE COMMISSION
First Respondent

AND: PRESIDENT OF THE REPUBLIC OF
VANUATU
Second Respondent

AND: AUTHOR CAULTON EDMANDLY
Third Respondent

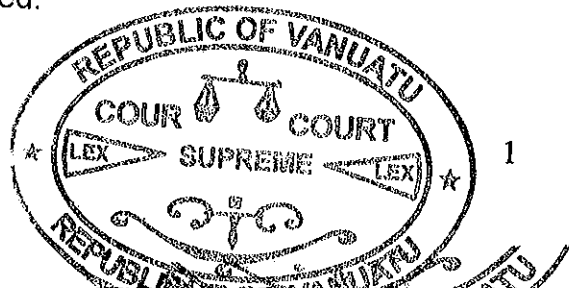
AND: ATTORNEY GENERAL
Fourth Respondent



*Mr Saling Stephens for the Applicant
Mr Fredrick Gilu for the Respondents*

**MINUTES OF FIRST CONFERENCE HEARING AND
ORDERS**

1. An Urgent Constitutional application has been filed by the Applicant Mr Joshua Bong on 8 October 2012. The Applicant applies for:
 - (a) A declaration that the purported removal of the first respondent (Police Commissioner) made at Port Vila dated 5th October 2012 is null and void.
 - (b) A declaration that the Acting appointment of the third respondent (Authur Caulton Edmandly) by the second respondent (President of the Republic of Vanuatu) as Acting Commissioner of Police is null and void.
 - (c) A declaration that the applicant's appointment as commissioner of police 28th September 2009 for a term of three years pursuant to section 7A (1) of the Police Act [CAP 105] (as amended) be removed by the First Respondent unless one or more of the criteria as set out in section 7C (8) of the Police Act [CAP 105] as amended is satisfied or attained.



- (e) Damages
- (f) Such other relief as the Court deems fit
- (g) Costs.

The grounds of the Application are contained in the application.

The Applicant files two (2) sworn statements in support of his application.

2. The Court peruses the urgent application and the sworn statements filed in support. The Court requires Mr Saling Stephens, counsel for the Applicant to identify a Constitutional question warranting for the Court's enquiry into it and so as to ensure that the Court can direct the respondents to file responses to the Constitutional application and set a date for hearing.
3. Mr Saling Stephens informs the Court that the issue is whether there is a vacancy on 5 October 2012 in the office of the Police Commissioner to warrant the exercise of the power by the respondents to make an appointment pursuant to section 7C of the Police (Amended)Act [cap 105].
 - The Court requires the applicant through his lawyer to show to the Court what is or are the constitutional rights that the applicant alleged that the Respondents have breached or likely to breach in relation to him as there is no such an allegation in the urgent application.
 - Mr Saling Stephens is unable to identify such a constitutional right which was breached or likely to be breached by the respondents in relation to the Applicant.
 - The Court enquires from Mr Saling Stephens about the section and Instrument of appointment of the Applicant as Police Commissioner and the appointing authority of the applicant as the Commissioner of Police under the Police Act (Cap 105).
 - Mr Saling Stephens refers the Court to section 10 (1) of the Police Act [Cap 105]. The Court asks Mr Saling to read section 10 (1) as the Court does not have a copy. Section 10(1) reads:

."10. Appointments

(1) The Commissioner of Police shall be appointed by the President acting on the advice of the Commission, for such period as the Commission shall advise."

- The instrument of appointment is attached and marked as "A" in the sworn statement of Joshua Bong filed 8 October 2012. It is in these terms:

Republic of Vanuatu



Police Act [Cap 105]

INSTRUMENT OF APPOINTMENT
COMMISSIONER OF POLICE

In the exercise of the power conferred to me by the subsection 10 (1) of the Police Act [cap105], I, Iolu JOHNSON ABBIL, President of the Republic of Vanuatu, acting on the advice of the Police Service Commission, appoint Joshua Bong as the Commissioner of Police from a period commencing on 1 October 2009, and ending on 30 September 2012.

Made at Port – Vila this 28th day of September 2009

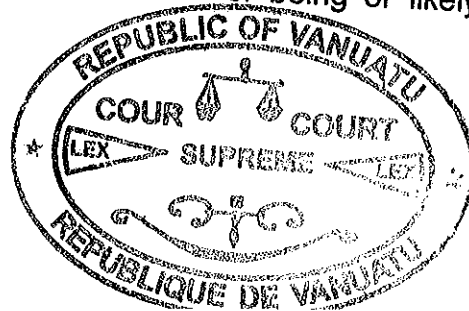
(Signature and stamp of President)

His Excellency Iolu Johnson Abbil
President of the Republic of Vanuatu.”

- The Court informs Mr Saling Stephens that the Instrument of Appointment of the Applicant, Mr Joshua Bong, dated 28 September 2009 was effective for a period commencing 1 October 2009, and ending on 30 September 2012.

There is therefore a vacancy in the position of the Commissioner of Police after 30 September 2012. There is no such an issue as Mr Saling Stephens is raising on behalf of the Applicant.

- Mr Saling Stephens refers the Court to the provisions of the Police (Amendment) Act no. 22 of 2010 and in particular section 7A (2).
- Section 7A of the Police (Amendment) Act no. 22 of 2010 does not apply to the appointment of the Applicant, Joshua Bong. Section 7A of the 2010 Police Act shall apply to Police Commissioners appointed under section 7A (1) of the Police (Amendment) Act no. 22 of 2010 and so with the requirement of a review of appointment by the commission under section 7A(2). The Applicant, Joshua Bong, was appointed under section 10(1) of the Police Act [Cap105]. Section 7C(2) does not apply to the Applicant's appointment as the Police (Amendment) Act of 2010 is not intended to have a retrospective effect.
- Again, the Court requires Mr Saling Stephens to identify any of the Applicant's constitutional rights which have been or likely to be infringed by the Respondents and unless a constitutional issue has been identified for the Court to enquire into it, the Urgent constitutional application filed by the Applicant must be struck out as none of the Applicant's rights enshrined in the Constitution has been shown to have been or being or likely to be infringed by the Respondents.



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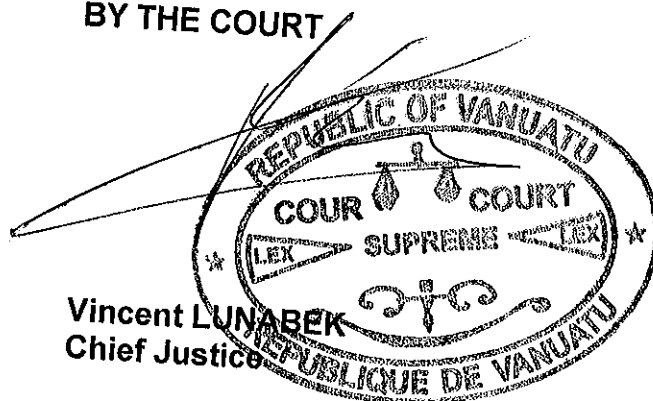
- Mr Saling Stephens informs the Court that the Applicant has a case pending before the Court of Appeal and the present application is to hold on for the determination of that case by the Court of Appeal.
- The Court informs Mr Saling Stephens it is wrong and it is misconceived. The Court does not need to hear Counsel for the Respondents.
- After a short adjournment requested by Mr Saling Stephens, Mr Saling Stephens informs the Court that he will discontinue the Urgent constitutional application on behalf of the Applicant.
- The Court informs the Applicant through his counsel that the Urgent constitutional application must be struck out as it is misconceived and amounts to an abuse of the process of the Court.
- In the light of the above, the Court makes the following orders:

ORDERS

1. The Urgent constitutional application no. 10 of 2012 filed 8 October 2012 is struck out as it is misconceived and is an abuse of the Court's process.
2. There is no order as to costs (as Mr Fredrick Gilu informs the Court that he does not wish to apply for costs).

DATED at Port-Vila this 10th October 2012

BY THE COURT



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The grounds of the Application are contained in the application.

The Applicant files two (2) sworn statements in support of his application.

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 - Mr Saling Stephens is unable to identify such a constitutional right which was breached or likely to be breached by the respondents in relation to the Applicant.
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BY THE COURT

