

BETWEEN: Robson Iavro

Applicant

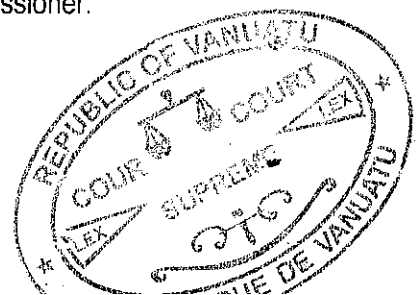
**AND: Willie Vira as Chairman of the Police Services
Commission**

Respondent

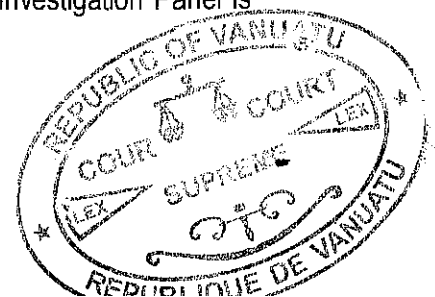
Date of HEARING: 20th of April 2020
Date of Ruling: 20th of April 2020
Before: Justice Oliver. A. Saksak
In Attendance: Sakiusa Kalsakau for the Applicant
Sammy Aron for the Respondent

RULING

1. The Police Service Commission preferred disciplinary charges against the claimant based on the Report of an Investigation Panel dated 31st December 2019.
2. The claimant filed this proceeding seeking the Court's indulgence in reviewing those decisions and seeking declarations to have the Report and the Charges quashed on the basis they are without foundation, irrational, unreasonable, arbitrary and capricious.
3. The first limb of the judicial review proceeding sought orders quashing the appointment of Namen Jean Yves Kali as Acting Commissioner of Police on the basis of it being unlawful. This includes the Commission's appointment of this officer and others as "overseers".
4. On 9th April Counsel for the claimant and the defendant signed a Consent Judgment endorsed by the Court whereby-
 - a) The Commission's appointment of "overseers" have been quashed.
 - b) The Commission's appointment of Namen Jean Yves Kali as Acting Commissioner of Police has been quashed, and
 - c) The claimant's reinstatement to his position of Acting Police Commissioner.



5. The remaining issues for determination are-
- a) Whether or not the Investigation Panel Report of 31st December 2019 is biased?
 - b) Whether or not the decision of the First Respondent to bring disciplinary action and the laying of charges against the claimant is fair, reasonable and is supported by evidence and is not an abuse of process?
6. I heard Mr Kalsakau and Mr Aron's extensive submissions. Both Counsel filed written submissions. Those submissions went further than Rule 17.8 hearing. They were in my view submissions sufficient for the Court to determine the remaining issues.
7. Taking the case wholly and in its totality, when the State agreed and accepted the appointment of "overseers" and the appointment of Namen Jean Yves Kali as Acting Commissioner of Police were void for illegality, they had in effect agreed that-
- a) The claimant had an arguable case,
 - b) He is directly affected by the decision of the Commission that flowed directly as a result of the appointments made,
 - c) There is no undue delay, and
 - d) There is no other remedy that resolves this matter fully.
8. The establishment of an Investigation Panel to investigate the allegations against the claimant and the other superior officers, their Report and the preferment of charges against the claimant and others were the direct result of the Commission's appointment of "overseers" and of Namen Jean Yves Kali as Acting Police Commissioner.
9. As such all the four tests in Rule 17.8 have been met. Mr Aron submitted amongst others that the decision by the Commission to lay charges is not amenable to judicial review. That submission is untenable and is rejected.
10. I am persuaded by the submission by Mr Kalsakau based on the Torpey R (on Application of) v. DPP [2019] EWHC, Kostas v HIA Insurances Services Pty Ltd [2010] HCA 32 and Minister for Immigration and Multicultural and Indigenous Affairs v VOAQ [2005] FCA FC 50, that the decision of the Commission to lay charges based on the Report of the Investigation Panel is amenable to judicial review.

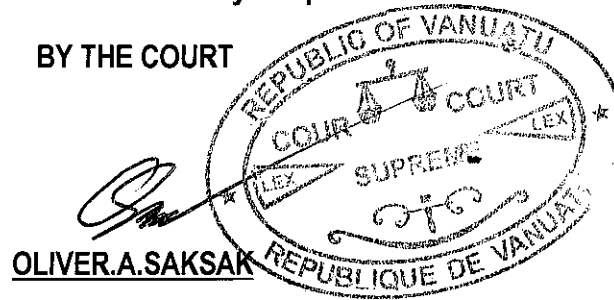


11. Accordingly I allow the matter to progress further. I direct as follows-

- a) The defendant is to file and serve responding statements within 14 days (by 4th May 2020). This will include responding submissions to the claimant's written submissions.
- b) The claimant will file and serve written submissions as to whether or not the matter could proceed further for cross-examinations within 7 days (by 27th April 2020).
- c) The matter be returnable for call-over on 4th May 2020 at 8:00am.

DATED at Port Vila this 20th day of April 2020.

BY THE COURT



OLIVER.A.SAKSAK

Judge