

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

Judicial Review
Case No. 20/3486 SC/JUDR

BETWEEN: Crem Mandavah
Claimant

AND: The Republic of Vanuatu
Defendant

Coram: *Justice Aru*
Counsel: *Mrs. M. G. Nari for the Claimant*
Mr. S. Aron for the Defendant

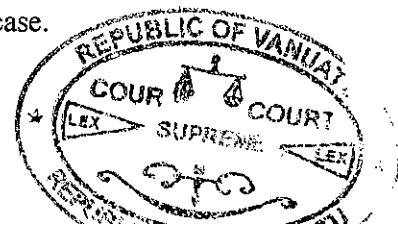
JUDGMENT

Introduction

1. This is a claim for judicial review filed by the claimant challenging a decision of the Teaching Service Commission (TSC) appointing the Principal of Ecole Centreville.
2. At the first conference I am required to be satisfied of the matters set out in rule 17.8 (3) otherwise I must decline to hear the claim and strike it out. The parties agree that the only matter being contested is whether the claimant has an arguable case.

Summary of pleadings

3. Rensy Kone Ilaisa (Mrs Ilaisa) was appointed Principal of Ecole Centreville by the TSC on 4 November 2020. This is the decision under challenge and the claimant seeks a number of orders namely a declaration that the decision to appointing Mrs Ilaisa was made contrary to sections 18, 19 and 20 of the Teaching Service Act No. 38 of 2013 (the Act). Second, a mandatory order requiring the TSC to meet and reconsider the position and appoint the person recommended by the Panel on 9 October (being the claimant himself)
4. Third he seeks a quashing order to quash the appointment of Mrs Ilaisa as Principal of Ecole Centreville pursuant to s2(b), s 9(a), s10, s18, s19 and s20 of the Act.
5. The TSC on the other hand says that it complied with the required standard procedures to appoint Mrs Ilaisa Principal of Ecole Centreville. Furthermore it says that the claimant did not meet the qualification criteria to be appointed and lacks standing to challenge the decision. It says the claimant does not have an arguable case.

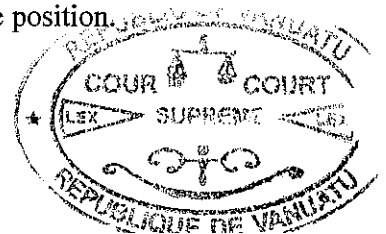


Discussions

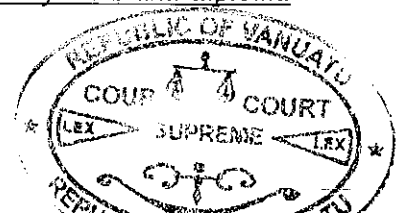
6. Mrs Ilaisa was not party to these proceedings. She is an interested party as the orders sought if granted will affect her.
7. Rule 17.8 of the CPR provides:-

- “(3) *The judge will not hear the claim unless he or she is satisfied that:*
- (a) *the claimant has an arguable case; and*
 - (b) *the claimant is directly affected by the enactment or decision; and*
 - (c) *there has been no undue delay in making the claim; and*
 - (d) *there is no other remedy that resolves the matter fully and directly.*
- “(4) *To be satisfied, the judge may at the conference:*
- (a) *consider the papers filed in the proceeding; and*
 - (b) *hear argument from the parties.*
- “(5) *If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.*”

8. As alluded to earlier the parties agree that the claimant is directly affected by the TSC decision as he was not appointed Principal of Ecole Centreville; there was no undue delay in filing his claim and the only way to challenge the decision is through judicial review.
9. The only issue in dispute is whether the claimant has an arguable case .The decision appointing Mrs Ilaisa as Principal of Ecole Centreville was made on 4 November 2020. In a letter of the same date the TSC advised her that “*the Commission at its meeting No 15 of 4 November 2020 has approved your appointment on contract basis to the post ...*” The post being Vanuatu School Principal of Ecole Centreville.
10. The claimant filed a sworn statement on 19 March 2021 in support of the claim. The TSC in response filed a sworn statement of Hopkins Dick on 25 August 2021.
11. Mrs Nari submits that the criteria to appoint a Principal was set out in the job description and requires an applicant to have a Bachelors or Masters Degree. She accepts that the claimant only has a Diploma not a Bachelors or Masters degree as required by the job description. Out of all the applicants interviewed by the panel for the post of Principal of Ecole Centreville, the claimant was ranked at the top with the most points out of three candidates shortlisted and was recommended to the TSC for the position.



12. Mrs Nari further submits that the claimant was not appointed by the TSC following the panel's recommendation. Instead Mrs Ilaisa who did not apply for the position but has a Bachelor and Masters qualification was appointed. It was submitted that other applicants with Diplomas were appointed Principals of other secondary schools and were allowed 4 years to upgrade their qualifications. It was submitted that being the recommended candidate for Ecole Centreville he was entitled to be appointed like the others and be allowed 4 years to upgrade his qualification.
13. The evidence of Hopkins Dick shows that there was one job description for the position of Principal for all the secondary schools advertised. The advertisement informed all teachers interested in applying that the qualification requirement for the position was at the Bachelors or Masters level. There were 294 applicants altogether for 52 Principals' positions. For Ecole Centreville, the interview panel recommended the claimant for the position. He did not have a Bachelors or Master's degree. He had a Diploma.
14. The TSC is established under the Act and its function is to "*recruit and employ teachers, principals and all associated staff in all government and assisted non-government schools*" (s9 (a)). One of its duties as a good employer is "*to ensure selection for employment and promotion is based only on merit and without undue influence*" (s18 (2) b). When determining a person's merit for appointment, it is mandatory that the TSC have regard to the person's "*qualifications and trainings undertaken*" (19 (c)).
15. Section 34 (1) of the Act provides that all appointments to the teaching service are to be made by the TSC. An interview panel may only make recommendations for appointment but the final decision rests with the Commission.
16. A number of decisions were made by the TSC before appointing Mrs Ilaisa. First is, **Decision No 1** made at its meeting of 23 October 2020. Where it resolved that "*before making its decision to appoint candidates to the school principal positions (it) resolved that the criterial for the appointment is MA or BA in Education as specified under the job description of the Vanuatu School Principal and to align in principle with the Registration and Licensing Policy as mandated by the Teaching Service Act No 38 of 2013. The Commission made the decision on the basis that the Commission would like to see improvement in school management which will result in effective teaching and learning in schools .*"
17. On 4 November 2020 the Commission made **Decision No 2** continuing from the Decision No 1 to appoint 52 school principals as advertised. It resolved that "*Based on decision 1 of the Commission meeting 23/10/20, the Commission approved that all eligible and shortlisted candidates with MA or BA in Education be put on Stand By List and to be considered for appointment to the positions that certificates and diploma*



holders were recommended for and for positions recommended by the panel to be readvertised."

(emphasis added)

18. **Decision No 3 and Decision No 4** were also subsequently made on 4 November 2020 following decision No 2. In decision No 3 the Commission resolved that *"Based on decision 1 of the Commission meeting of 23/10/2020, the Commission approved to task the Secretariat of the Commission to identify applicants with MA or BA in Education who were not shortlisted by the panels and to present to the board for consideration . In addition , the Commission also approved to task the Secretariat of the Commission to identify Diploma holders who were recommended , eligible and shortlisted to be placed on a standby list for further consideration."*

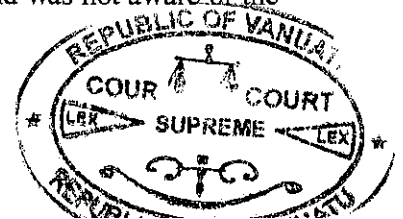
(emphasis added)

19. Decision No 4 resolved that *"the Commission after making most of the principals' appointments resolved to appoint technical schools principals who hold technical certificate qualifications. The Commission also approved those candidates who have a certificate in technical or diploma in Education who were appointed to a school principal position MUST upgrade their qualification to the Bachelor (BA) or Masters (MA) level within their 4 year contract ."*

20. On 8 December 2020 the Commission made **Decision No 5** to finalise the appointment of 52 school principals and resolved *"the Commission decides that ALL recommended applicants by the panels with lower qualifications such as Certificate in Primary Education or Diploma in Secondary Education will be recommended to the Vanuatu Scholarship Board to be awarded a scholarship in 2021 onwards to urgently upgrade their qualifications."*

21. All these five (5) decisions relate to and concern the appointment the 52 Vanuatu school principals as advertised. None of these five (5) decisions are challenged. Mrs Ilaisa was an eligible candidate for the principal's positions as she had a Bachelors and a Masters degree. The fact that she applied and was recommended but not appointed as principal of a different school is immaterial. In its Decision No 2 and Decision No 3 the Commission put Mrs Ilaisa on the Stand By List for consideration for appointment to the position of principal. As the claimant being the recommended candidate for Ecole Centreville only had a diploma Mrs. Ilaisa was appointed to the position. The claimant was to be recommended for a scholarship to upgrade his qualification pursuant to decision No.5.

22. This decision is also not being challenged. The claimant therefore does not have an arguable case as he has not challenged any of these decisions which formed the basis for appointing Mrs Ilaisa. Mrs Nari confirmed that the claimant is only challenging the decision to appoint Mrs Ilaisa Principal of Ecole Centreville and was not aware of the decisions made prior to the appointment letter being issued.



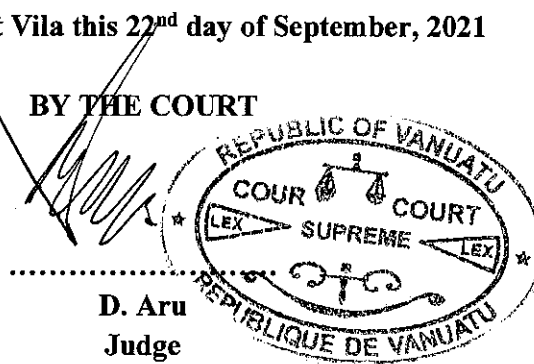
23. Even if an arguable case is made out the claim must be struck out as it fails to join Mrs Ilaisa as an interested party who will be affected if the claim is successful.

Result

24. The claim fails and is hereby struck out. The defendant is entitled to costs assessed at VT 60,000 to be paid within 21 days.

DATED at Port Vila this 22nd day of September, 2021

BY THE COURT



D. Aru
Judge

