

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

**Civil**  
**Case No. 24/331 SC/CIVL**

**BETWEEN: GELY ROBERT PAKOA**  
Claimant

**AND: POLICE SERVICE COMMISSION**  
First Defendant

**AND: THE REPUBLIC OF VANUATU**  
Second Defendant

Before: Justice M A MacKenzie  
Counsel: Claimant – Mr E Molbaleh  
Defendant – Ms J Toa Tari

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## **JUDGMENT**

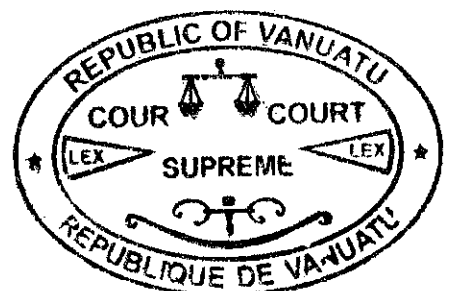
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### **Introduction**

1. The Claimant, Mr Pakoa, was appointed to the Vanuatu Police Force ("VPF") on conditional probation on 18 December 2009, with effect from 28 September 2009.
2. By letter dated 5 December 2022, Mr Pakoa tendered his resignation from his position as Infantry Officer in the VPF, effective from 5 January 2023. His resignation was approved with effect from 1 March 2023.
3. On 12 February 2024, Mr Pakoa filed a claim seeking payment of various asserted entitlements, including severance pay, annual outstanding leave, days off and a gratuity payment under s 31(5) of the Police Act [CAP 105].
4. All issues have now been resolved except for the issue of whether Mr Pakoa should be paid a gratuity. Mr Pakoa contends that he is entitled to be paid a gratuity in the sum of VT 1,266,540.<sup>1</sup>

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<sup>1</sup> As per the particulars set out in the claim



5. The Defendants dispute that Mr Pakoa is entitled to a gratuity, contending that he does not meet the criteria in s 31 of the Police Act to receive a gratuity payment.

## Discussion

6. Mr Pakoa contends that he is entitled to a gratuity payment under the Police General Orders ("PGOs"), Class C: Severance. In his written submissions, Mr Molbaleh submits that gratuity is stipulated as part of the severance payment set out in the PGOs. As I understand his submission, a gratuity payment is to be calculated in accordance with s 31(5) of the Police Act.
7. For the Defendant, Ms Toa Tari contends that Mr Pakoa has no entitlement to be paid a gratuity as he does not meet the criteria set out in s 31(5) of the Police Act, as he resigned from the VPF, as opposed to being discharged.
8. Ms Toa Tari further contends that the severance provisions in the PGO only apply to police officers who satisfy the criteria set out in s 31(1)(4) of the Police Act.
9. The starting point is to consider the relevant legislation. Police Officers in Vanuatu are given special treatment under the law. Section 76(3) of the Employment Act provides that:

*"Nothing contained in this Act shall apply in relation to members of the armed forces, police force or prison service".*

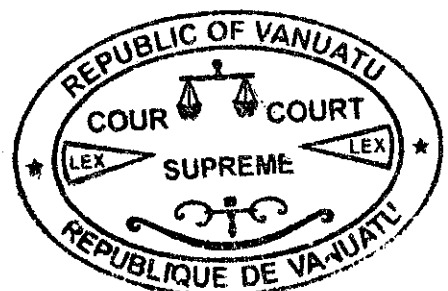
10. Severance payments are determined in accordance with s 29 of the Police Act, which says:

### **29. Severance payment**

*A member who has:*

- (a) Retired in accordance with section 28; or
- (b) Died in service or due to a natural case; or
- (c) An illness and is discharged on medical ground; or
- (d) Resigned,

*Is to receive from the Government a severance payment calculated at a rate as is determined for public servants by the Public Service Commission and pro-rata for each uncompleted year.*



11. The purpose of s 29 of the Police Act is to provide for severance payments for VPF members. Harrop J considered the text and purpose of 29 in *Lukai v Republic of Vanuatu* [2022] VUSC 222, and said:

*"26. The critical words in section 29 are: "... a severance payment calculated at a rate as is determined for public servants by the Public Service Commission and pro rata for each uncompleted year".*

*27. I read this provision as (a) directing that the member is to receive a severance payment; and (b) the calculation of the rate at which that severance payment is to be paid, is that which for the time being is determined for public servants by the Public Service Commission".*

12. Section 31 of the Police Act provides for payment of a gratuity in certain limited circumstances. Section 31 provides:

**31. Discharge from the Force**

*(1). At any time a member may be discharged by the Commissioner, in the case of a subordinate officer or by the Commission acting on the recommendation of the Commissioner, in the case of a senior officer –*

*(a). if he or she is certified by a recognized medical practitioner to be mentally or physically unfit for further service;*

*(b). on reduction of establishment or on re-organization of the Force to promote efficiency; or*

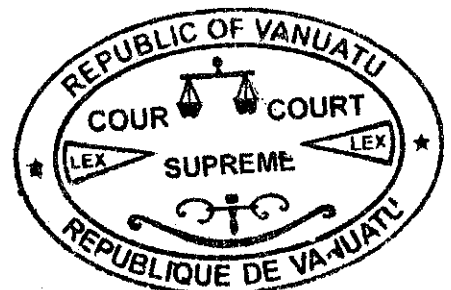
*(c). if being a probationary constable the Commissioner considers that he or she is unlikely to become an efficient and effective member of the Force.*

*(2). A discharge under the provisions of subsection (1) or any subordinate officers who has completed 2 years service in the Force shall be subject to confirmation by the Commission.*

*(3). Every member discharged under the provisions of subsection (1) shall be given not less than 3 months notice of the intention to discharge him or her from the Force.*

*(4). Where –*

*(a). A member is discharged in accordance with subsection (1)(b); or*



(b). *the Minister is satisfied that a member discharged in accordance with subsection (1)(a) has been permanently injured –*

(i). *in the actual discharge if his or her duty; and*

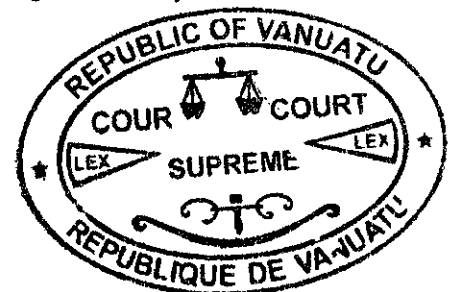
(ii). *without his or her own default; and*

(iii). *by some injury specifically attributable to the nature of his or her duty,*

*the Minister may after consultation with the Minister responsible for finance grant that member such gratuity as he or she may consider fit in addition to any pension to which he or she may be entitled.*

(5). *A gratuity awarded in accordance with subsection (4) shall not exceed half a month's salary paid immediately before discharge.*

13. Under s 31 of the Police Act, a gratuity only becomes payable to a VPF member in the two circumstances provided for in s 31(4) of the Police Act. Those two circumstances are:
  - a. discharge on reduction of establishment or on re-organization of the force to promote efficiency; s 31(4)(a); or
  - b. discharge where a member has been permanently injured in the actual discharge of duty; s 31(4)(b)
14. If a VPF member meets the criteria set out in s 31(4) of the Police Act, then there is a discretion to grant the member "*such gratuity as he or she may consider fit*".
15. Mr Molbaleh places emphasis on s 31(5) of the Police Act. However, s 31(5) simply establishes the rate at which a gratuity may be paid once a VPF member meets the criteria set out in s 31(4) and a decision has been made to pay a gratuity.
16. I make the following three points.
17. Firstly, s 31 of the Police Act must be read as a whole and in context. The section is headed "*Discharge from the Force*". To be considered for a gratuity payment, a VPF member must have been discharged from the VPF in the circumstances contained in s 31(4). The section does not contemplate payment of gratuity in any other circumstances. Mr Pakoa resigned and was not discharged in any of the circumstances listed in s 31(4) of the Police Act.



18. Secondly, any contention that a gratuity payment is an entitlement is misconceived. That is because s 31(4) is expressed in discretionary terms. A VPF member “may” be granted a gratuity. There is no entitlement or right to a gratuity payment. All that s 31(5) provides for is the rate of a gratuity award, which will only be considered if a VPF member meets the eligibility criteria in s 31(4) and the Police Minister in consultation with the Minister for Finance, exercises his or her discretion to grant as gratuity.
19. Thirdly, when ss 29 and 31 of the Police Act are read together, a gratuity does not form part of the severance entitlement. Under the Police Act, they are separate and distinct payments. This is in contrast to the PGOs, as I explain below.
20. Given that Mr Pakoa resigned voluntarily from the VPF and was not discharged in the circumstances provided for in s 31(4) of the Police Act, he is ineligible to receive a gratuity payment under s 31 of the Police Act, and there is no other provision in the Police Act which provides for the payment of a gratuity.
21. Mr Molbaleh contends that Mr Pakoa is entitled to a gratuity payment pursuant to the PGOs, being Class C: Severance. He submits that is because a gratuity is stipulated as part of the severance payment. He contends that the gratuity is to be paid at the rate set out in s 31(5) of the Police Act.
22. Conversely, Ms Toa Tari contends that the Class C severance provisions in the PGO only apply to VPF members who satisfy the criteria set out at s 31(4) of the Police Act. Ms Toa Tari further contends that *Lukai v Republic of Vanuatu* [2022] VUSC 222, where the Court held that the widow of a police officer who died in service was not entitled to a gratuity, is applicable to Mr Pakoa's claim for gratuity.
23. The PGOs are purportedly issued under the authority of s 6(1)(b) of the Police Act to make Force Orders.<sup>2</sup> The purpose of Force Orders is explained in the Introduction section of Part 1 of the PGO.
24. Clause 1.1 states:

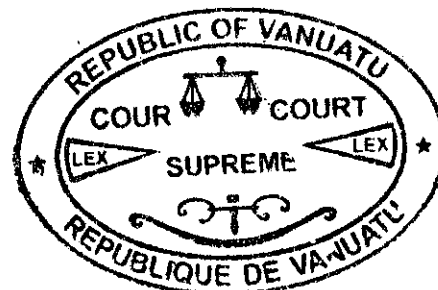
## **CHAPTER 1 – INTRODUCTION**

### **Overview**

1.1 Section 6 (1)(b) of the Police Act provides the COP with the authority to “make Force Orders for the general government of members in relation to their enlistment, discharge, training, arms, clothing, equipment, and other appointments and other particular services as well

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<sup>2</sup> As per the Explanatory Notes and Terms



*as their distribution and inspection and other such orders as he/she may deem expedient for preventing neglect and for promoting the efficiency and discipline of all members". PGOs are Force Orders for the purposes of section 6 of the Police Act and is a consolidation of all standing Force Orders in one manual.*

25. Clause 1.5 is pertinent. It states:

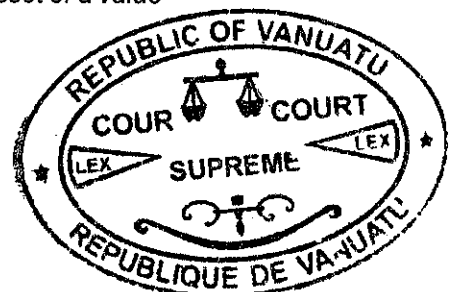
*1.5 In the event of a conflict between PGOs (or any other Force Order) and any other instruction or direction issued under the authority of the COP and the Police Executive, PGOs shall prevail unless a contrary intention is stated but where any conflict exists between the law and PGOs, the law shall prevail.*

26. The effect of clause 1.5 is that if there is a conflict between the law and the PGOs, the law prevails. In that sense, the PGOs must necessarily be subordinate to any relevant legislation, including the Police Act.
27. Chapter 6 of the PGOs sets out terms and conditions of employment of VPF members. Clause 6.33 of Chapter 6 provides that the VPF salary grade and benefits are outlined in the Part III, Annexes. There are a number of Annexes to the PGOs. The applicable Annex is Annex 16.37- Benefits Scale. The section of Annex 16.37 that Mr Pakoa relies on is headed "Schedule of Salary and Benefit". One of the benefits is Class C: Severance.
28. One of the severance entitlements listed is a gratuity, payable at the rate set out in the section. I set out in full the section:

**CLASS C: Severance**

*Severance entitlements when exiting the VPF based are paid as follows:*

- *Severance payment at the rate of two month's salary at the current salary scale for the duration of the contract. (if dismissed at the rate of 1 month only);*
- *Any outstanding leave owed;*
- *A gratuity payable at the rate of one twelfth of the annual salary, multiplied by 2, for each year during which a person holds the office and pro rata for each uncompleted year. (to be payable every 20th December annual calendar);*
- *Gift or asset of a value of not exceeding 100,000 VT for police officers from Constable to Senior Sgt rank. Gift or asset of a value*



of not exceeding 300,000 VT for police officers from Inspector/2LT rank to Superintendent/Major rank.

- Gift and asset to a value of not exceeding 500,000 VT for Assistant Commissioners to Deputy Commissioner. Gift and asset to a value not exceeding 4,000,000 VT for COP.

29. The status of Annex 16.37 was considered by Harrop J in *Lukai v Republic of Vanuatu* [2022] VUSC 222, as follows:

41. "Ms Raikatalau submitted that because the PGO applies (which I accept), there are additional payments on those set out in clause 9.2. She refers to one of the 38 Annexes to the PGO, 16.37, which is headed Benefits Scale.

42. This Annex is of uncertain status since, as far as I can tell, it is not referred to at all in the body of the PGO.

43. The section of Annex 16.37 on which the claimant relies for further entitlements is headed "Schedule of Salary and Benefit". Immediately underneath it the following appears: "(to be determined by a Minister responsible for police in reference to 105, section 82 by way of gazette)"

44. Section 82 of the Act provides:

#### **82. Regulations**

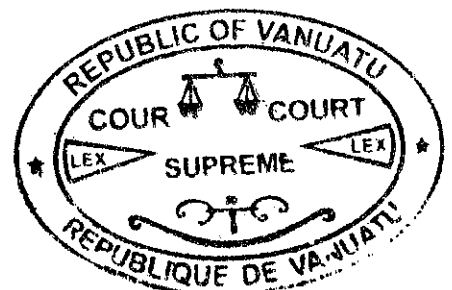
The Minister may by Order make such rules and regulations as may seem to him necessary for the good order and government of the Force and for carrying into effect any of the purposes or provisions of this Act and, without derogation from the generality of the foregoing, for any of the following purposes –

(a) the conditions of service of the Force and the various grades, ranks and appointments therein;

(b) the establishment of pension and provident funds for members and their dependents;

(c) the granting of gratuities in accordance with section 31(4);

(ca) the rates of and eligibility of members and other persons to compensation, pension or gratuity under section 32A;



(d) the duties to be performed by members, and where necessary, the fees to be charged for special duties performed and for their guidance in the discharge of such duties;

(e) the pay, retirement benefits and allowances of members;

(f) the description and issue of arms, ammunition, accoutrements, uniforms and necessities to be supplied under this Act;

(g) the disposal of any unclaimed property;

(h) the discipline of members;

(ha) the pay, allowances, benefits and compensation of members of overseas contingents;

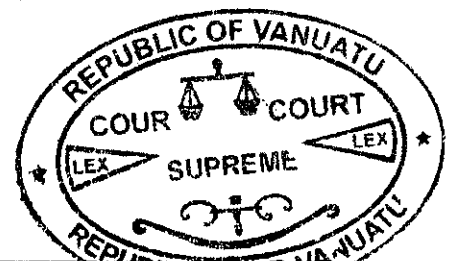
(hb) the discipline of members of overseas contingents; and

(i) all other matters which are by this Act required to be provided or prescribed.

45. Just as the Police Service Commission appears not to have made any determination under s10A, so it appears the Minister has not made under s82 any relevant rules or regulations approving or bringing into effect the benefits set out in Annex 37, or otherwise.

46. Accordingly, I reject the claimant's claims to any of the entitlements set out in Annex 16.37. This means in particular the claimant is not entitled to those she seeks which are set out in Class C, which includes (on the face of it for a member who leaves the police other than as a result of death) a severance payment at the higher rate of two months' salary together with a gratuity and several other benefits, or set out in Class K which includes compensation for death occurring in the line of duty: a one-off payment, if an officer dies before reaching 55, of VT 10 million."

30. Unlike Harrop J, I have no issue with the status of Annex 16.37 as such, as clause 6.33 in Chapter 6 sets out that the VPF benefits are outlined in the Part III, Annexes. I do though agree with Harrop J that it appears that the Minister has not made any relevant rules or regulations approving or bringing into effect the benefits set out in Annex 16.37, or otherwise. Applying *Lukai v Republic of Vanuatu*, Mr Pakoa is not entitled to a gratuity.
31. Mr Molbaleh contends that *Lukai v Republic of Vanuatu* can be distinguished because the VPF member in that case was deceased, hence the claim for





entitlements. I do not understand the logic of that submission. For Class C entitlements, there is no specified distinction between the different ways a VPF member "exits" the VPF.

32. I consider that there is a further reason why Mr Pakoa does not have any entitlement to a gratuity payment. There is a clear conflict between ss 29 and 31 of the Police Act, and Annex 16.37. As noted at paragraph 19, when ss 29 and 31 are read together, a gratuity does not form part of the severance entitlement. Under the Police Act, they are separate and distinct payments. Yet in Class C: Severance, a gratuity payment appears to form part of severance entitlements. That is difficult to understand.
33. In the circumstances where there is a conflict between the provisions of the Police Act and the PGOs ( and where there are no rules or regulations bringing the benefits into effect ), s 31 of the Police Act must prevail over the benefits set out in Annex 16.37, as the PGOs themselves state. Section 31 limits the eligibility for a gratuity payment to VPF members who are discharged from the VPF in the two situations provided for in s 31(4). Further, under s 31(4) a gratuity payment is discretionary. It does not apply to all VPF members leaving the VPF. It is inexplicable then that in a benefits schedule to the PGOs, a VPF member exiting the VPF in any circumstances would have an automatic entitlement to be paid a gratuity, when eligibility for a gratuity payment under the Police Act is limited.
34. Mr Pakoa's claim to be paid a gratuity fails, as he does not meet the criteria in s 31(4) of the Police Act to receive the discretionary gratuity.

## Result

35. Mr Pakoa's claim to be paid a gratuity fails for the reasons set out above. The claim for a gratuity is dismissed.
36. Costs to be agreed or taxed.

**DATED at Port Vila this 10th day of June 2025  
BY THE COURT**

Justice M A MacKenzie

