

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU

Civil Case No.137 of 1998

(Civil Jurisdiction)

BETWEEN: MR WILTON TOR
Plaintiff

AND: THE COMMISSIONER OF
POLICE
Defendant

Malcolm for Plaintiff
Attorney General for Defendant

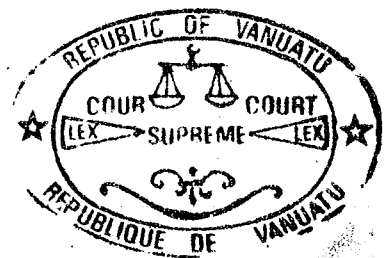
JUDGMENT

Nature

The plaintiff is a Lance Corporal and attach to the Vanuatu Mobile Force. The Police Commissioner dismissed him by letter dated 24th September 1997. And since then terminated from the force and no longer paid any salaries. By this dismissal he proceed by way of Originating Summons against the Commissioner.

He seeks the following declarations: -

1. For a declaration that the plaintiff is a permanent officer within the meaning of the Act.
2. In the alternative, that the plaintiff was an officer not able to be dismissed other than by giving reasonable notice.



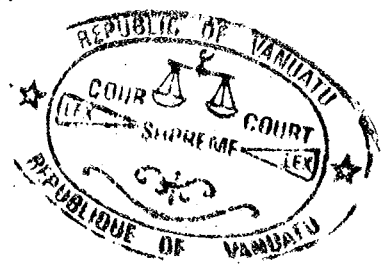
3. That the plaintiff is entitled to remain in his position as a Lance Corporal until dismissed in accordance with the law.
4. An order for the plaintiff's reinstatement in the Police Force.
5. That when he is reinstated then plaintiff remuneration and other entitlement since purported dismissed to date of judgment be paid.

Agreed facts

The plaintiff was employed as a police officer prior 24th September 1997. On about 12th October 1996 the plaintiff was charged together with other VMF stand down group. He was suspended on 20th November 1996. He was arrested and held in custody and was placed on bail condition and his bail was revoked and was remanded in custody. The charge laid against him were dismissed along with the other defendants. On the 24th September 1997 he was dismissed from the force without notice or hearing. He appealed his dismissal by letter of the 30th September 1999. And there were no response or hearing of his appeal.

The essential issue is whether the plaintiff was dismissed in law.

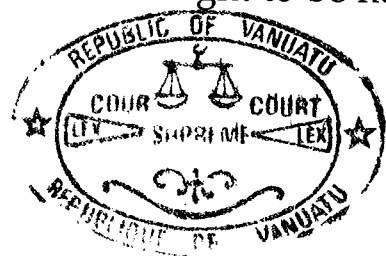
The starting point was whether the plaintiff was actually convicted for an offence. Conviction is an official record by a Court of competent jurisdiction after pronouncing that the defendant is guilty of an offence. In this case what I was referred to was that he was in breach of his bail condition that bail condition was revoked and he was remanded in custody. And the counsel for the Respondent refer to this as a conviction against the plaintiff. In view of this application, conviction can not be assumed or implied. It must be recorded in the Court records followed by a form of penalty prescribed by law as a criminal offence. There were no evidence produce to this Court i.e.: a certificate of conviction to record that the plaintiff was convicted for an offence. Neither, any records to show to this Court what were the bail conditions and if breach what will be the outcome.



Now if he was convicted for contempt of Court, pursuant to either section 3 or 23 of the Court Act, then again there is no record to show to the Court that he was actually charged for Contempt of Court. No record of any minutes of the court that the plaintiff was cited for contempt of court order and convicted and punished. And therefore, I am satisfied that the plaintiff was never convicted of any offence prescribed by law including the offence of contempt of Court. In the plaintiff's case, his case was dismissed together with other defendants by judgment of the Court dated the 16th May 1997 and that was the only official record of the court showing that the case against him was dismissed.

Boar advances that the plaintiff had no right to be heard. And referred the Court to Sections 58, 59, 60 and 63 (2). What I find of these sections all refer to disciplinary offence under section 50 of the Police Act which such section prescribed the procedure to follow in committing any offence against discipline (s. 50) and not for criminal conviction. As s. 65 of the Police Act specifically provide only for conviction by the Court for a criminal offence provided for in law and no others. And by section 63 (2) if the plaintiff was not happy with the Commissioner's decision then he had a right to appeal to the Commission within 7 days. So in other way the law that affected the plaintiff was section 65 of the Police Act. Now on dismissal letter of the 24th September 1997 by the Commissioner the plaintiff appealed such decision to the Commission by letter dated 30th September 1997 and that was done within the prescribed period of 7 days under s. 63 and 63 (2) of the Act. And at the same time request reason for dismissal. There were no response from the Commissioner or the Commission as to the plaintiff's appeal. And in my view that appeal is yet to be heard. Now pending such hearing yet to be heard the plaintiff salary was terminated. And because his appeal was not heard he rightfully brought the matter to Court as the matter has now long delayed.

The counsel for the Commissioner advances that the plaintiff had no right to be heard. In my view it is fundamentally important that where there is no rule law governing any administrative process then the principle of natural justice then pops up to be exercised by the authority. And that the plaintiff must be afforded a right to be heard

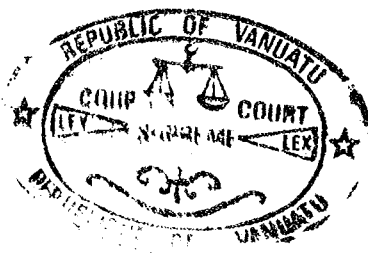


before the commission or the Commissioner. In my view if he had appeared before the Commissioner and give an explanation the Commissioner would quite easily find out that there were no actual conviction by the Court recorded against him apart from non-compliance with the bail condition.

I find that the Commissioner had no basis to rely on that a criminal conviction was actually recorded against the plaintiff pursuant to section 65 of the Police Act. And therefore that exercise of his power under section 65 in dismissing the plaintiff was wrong in law.

Not only that, the plaintiff had a right to be heard before the Commission pursuant to section 63 (2) of the Act by way of his appeal. Since today, no hearing has been made to his appeal. And by this process he is seeking a right to be heard on his dismissal from the force. However, in finding that the Commissioner was wrong in dismissing the plaintiff, the process under section 63 no longer applicable to the plaintiff. Nevertheless if the decision of the Commissioner was within the law then the proper cause for this Court to take was to refer the matter back to the Commission and direct them to make a decision on his appeal and this matter can be adjourned pending such decision of the Commission. However, in finding that the decision of the Commissioner was wrong in law then it is no longer necessary to refer the matter to the Commission. For all these reasons I find that the plaintiff was wrongfully dismissed. In finding that the plaintiff was wrongfully dismissed I make the following orders;

1. The plaintiff is still a permanent officer from the date of his suspension.
2. The officer is to remain a Lance Corporal from the date of dismissal.
3. The plaintiff be reinstated to the police force.
4. The plaintiff is entitle to his entitlement from the date of dismissal.



5. Defendant is ordered to pay costs of this application to be taxed or agreed.

Dated at Port Vila, this 16th day of March 2000.


Reggett MARUM MBE
Judge.

