

(Civil Jurisdiction)

10/9/04

**BETWEEN: SGT VICTOR RON**

Claimant/Applicant

**AND: COMMISSIONER OF POLICE**

Defendant/Respondent

**Coram: Mr Justice Oliver A. Saksak  
Mrs Cynthia Csiba – Clerk**

**Counsel: Mr Saling N. Stephens for the Applicant  
Mr Tom Joe for the Respondent**

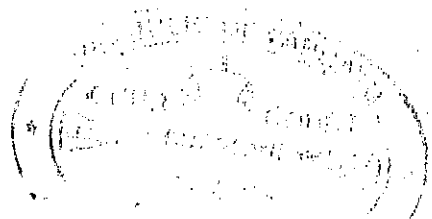
**Date: Thursday 9<sup>th</sup> September, 2004.**

### **JUDGEMENT**

By Application filed on 27<sup>th</sup> May 2004 the Applicant seeks orders that –

- (1) The execution of the orders of this Court dated 14<sup>th</sup> May 2004 be suspended until the final determination of the Applicant's appeal.
- (2) Costs be in the cause.
- (3) Further orders as the Court seeks fit.

The Application is supported by sworn statements of the Applicant and of Wilson Garae. They are taken as read. No oral evidence or cross-examination was led.



In his submissions Mr Stephens refers me to Rule 14.10(1)(2) to submit that the Application is proper. Further that under Rule 13.4 the Court should grant the orders suspending its orders dated 14<sup>th</sup> May 2004. The reason for seeking this order is stated in paragraph 3 of the sworn statement of the claimant. He claims that he was not given sufficient opportunity on 14<sup>th</sup> May 2004 to call evidence in rebuttal.

Mr Joe objects to the Application and submits that it should be dismissed with costs on the grounds that it had no basis.

I am satisfied that there is an appeal in place in respect to this matter. But Rule 13.4 states clearly that –

“Filing of an appeal against a judgment does not affect the enforcement of a judgment unless:-

- (a) the party appealing applies for a suspension; and
- (b) the Court grants a suspension.”

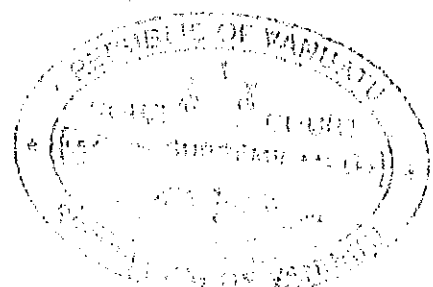
In my view that is a discretionary power of the Court. To grant a suspension order on a mere existence of an appeal does not qualify the grant of a suspension order. The Court has to satisfy itself as to the reason for the appeal before it can exercise its discretion.

Here I am not satisfied that the Applicant was not given sufficient opportunity to call evidence in rebuttal. The case is his. He had counsel on 14<sup>th</sup> May.

The Court could not tell him how to run his case. It was up to him and his counsel.

In the judgment dated 14<sup>th</sup> May 2004 at the top of the page 3 paragraph 1, it is clearly stated that the evidence of the Respondent was not rebutted. In the records of proceedings Counsel for the Applicant at the time conceded that the allegation for contempt could not stand.

For those reasons I agree with Mr Joe that this Application should be dismissed with costs.



Accordingly I order that –

- (1) The Applicant's Application be dismissed.
- (2) The Applicant will pay the Respondent's costs of this hearing which comprises of –
  - (a) Return Airfares;
  - (b) Accommodation costs; and
  - (c) Meals

**DATED at Luganville this 9<sup>th</sup> day of September, 2004.**

**BY THE COURT**



**OLIVER A. SAKSAK**  
**Judge**

