

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

Judicial Review Case No. 27 of 2015

**BETWEEN : FLOYD BAMBU FREDERICK**  
**Claimant**

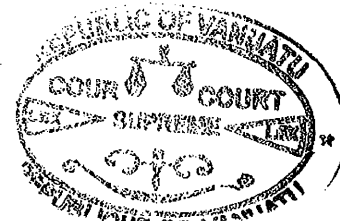
**AND: PUBLIC SERVICE COMMISSON**  
**Defendant**

Coram: Justice Aru

Counsel: Mr. G. Boar for the Claimant  
Mr. S. Aron for the Defendant

**JUDGMENT**

1. This is a claim for judicial review filed by the claimant Mr Floyd B Frederick. He is one of the applicants who applied for the position of Airworthiness Officer advertised by the Public Service Commission (the PSC). As he was not successful in his application, he is seeking to challenge the PSC's decision of 28 August 2015 appointing Mr Alfred Veremaito to the position. Mr Veremaito however is not a party in this proceeding.
2. The orders sought are for the court to quash the PSC's decision appointing Mr. Veremaito to the position of Airworthiness Officer and to direct the PSC to appoint the claimant to the position.

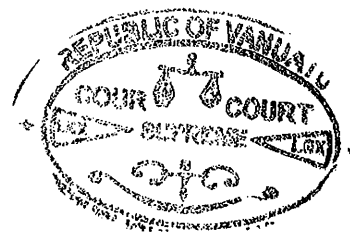


3. Following the filing of a defence by the defendant, a conference was called as required by Rule 17.8 (1) of the Civil Procedure Rules for the purposes of considering matters specified under Rules 17.8 (3). If I am not satisfied of those matters I must decline to hear the claim and strike it out pursuant to Rule 17.8 (5). Rule 17.8 provides:

***"17.8 Court to be satisfied of claimant's case***

- (1) As soon as practicable after the defence has been filed and served, the judge must call a conference.*
- (2) At the conference, the judge must consider the matters in subrule (3).*
- (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.*

4. The defendant's position is that the claimant does not have an arguable case. It does not take issue with the remedy sought or the timing for the filing of the claim or whether the claimant is affected by decision.

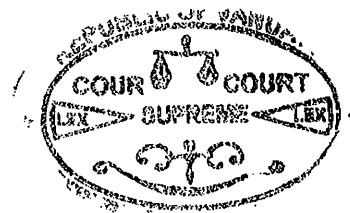


5. The facts are not disputed. On 24 March 2014, the defendant advertised the position of Airworthiness officer post No.6058 (the First Advertisement ) with the following selection criteria:-

Qualification	Diploma of degree
Special Business Education	Aircraft Engineers license and or Airworthiness Inspector qualification
Experience	At least 5 years' experience in the aviation sector. Must understand Civil Aviation legislation and regulatory framework and be familiar with FRT0 standard phraseology and aviation technical terms. Some knowledge of systems management.
Special skills	Supervision skills/ auditing skills/ inspection skills /liaison skills /competent user of core Microsoft suite and email auditing skills
Thinking style	Practical, and logical
Communication /interpersonal skills	Sound written and verbal communication skills interpersonal skills, including assertive listening and communication
Behavioral competencies	Confident, cooperative, punctual and trustworthy, able to work under pressure and able to work independently
language	Fluent in English and bislama, French desirable



6. Following the First Advertisement, the defendant received applications for the position from three applicants including Mr Veremaito. The claimant did not apply. In line with clause 2.8 of the Public Service Staff Manual, a selection panel of three was then set up to consider the applications. As none of the applicants met the selection criteria, the position was re advertised in June 2015 (the Second Advertisement). Following the Second Advertisement, three applications were again received. The applicants were Mr Veremaito, the claimant and a Mr Alain Roger. None of the applicants had a degree or diploma in Aircraft engineering or Airworthiness inspection which is the qualification requirement. All three applicants were then shortlisted on 15 July 2015 for interview by the panel to assess them on other aspects of the selection criteria. They were each interviewed on 22 July 2015 and individually assessed and scored. The assessments were done in line with procedures set out in the Public Service Staff Manual. Following these assessments, Mr Veremaito stood out as the leading candidate who was then recommended for the position. The claimant was advised by letter dated 28 August 2015 that he was eligible for the position if Mr Veremaito was for any reason unable to take up the position.
7. The defendant submits that the process of recruitment for the post of Airworthiness officer was done in compliance with the Public Service Act and the Public Service Staff Manual and Mr Veremaito was appointed as the Airworthiness officer pursuant to section 23 of the Public Service Act therefore the claimant has no arguable case.
8. The claimant on the other hand submits that the PSC decision should be quashed as it failed to take into account the fact that Mr Veremaito had not obtained any qualification, certificate or diploma from Massey University whereas he has the experience and qualification in engine and flying aircrafts. This submission is flawed as a judicial review proceeding is not an appeal on the merits of the decision. The

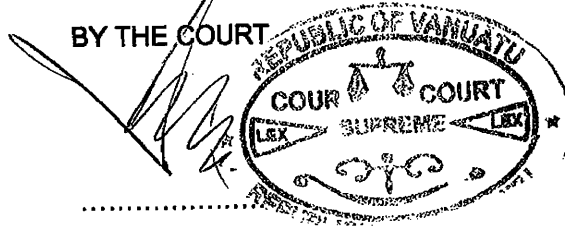


Court is only concerned as to whether the legal requirements have been complied with.

9. Having also considered sworn statements filed by the parties, I am not satisfied that the claimant has an arguable case.
10. The Claim is therefore struck out. The defendant is entitled to costs on a standard basis to be taxed failing agreement.

DATED at Port Vila this 1 day of June 2016

BY THE COURT



D. Aru  
Judge