

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

**Civil**  
**Case No. 21/730 CVL/Civil**

**BETWEEN: Jean Yves Bibi**  
Claimant

**AND: Republic of Vanuatu**  
Defendant

*Date of Hearing:* 2 December 2021  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms M. Nari for the Claimant  
Mr K. Ture for the Defendant  
*Date of Decision:* 17 January 2022

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**Judgment**

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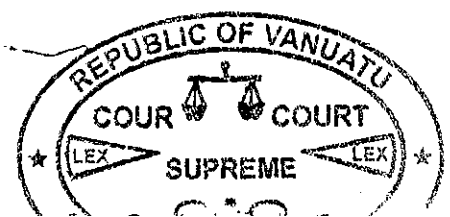
**A. Introduction**

1. This is an action for some VT 40.5 million in damages arising from the alleged unjustified termination of Mr Bibi's employment contract with the Public Service Commission.

**B. Background**

2. Mr Bibi entered into a contract of employment with the Public Service Commission ("PSC") on 24 September 2019 as the Secretary General to the PSC for a period of 4 years. Of note in the contract was paragraph 24 which dealt with disciplinary procedures for serious misconduct. Paragraph 24.1 records:

"24.1 The Employer must terminate this Contract on the grounds of serious misconduct by following the disciplinary procedures provided in Schedule D and the manual."



3. Schedule 5 set out a prescriptive 15-point process for dealing with allegations of serious misconduct. In brief, that required all staff to refer such allegations to the PSC Chair. The Chair was then required to suspend the subject of the allegations and the Compliance Unit was to investigate and provide a report within 2 weeks. Thereafter, the PSC could either reinstate or terminate the employee. If termination was intended, the PSC was required to charge the employee and provide a copy of the investigation report and the supporting evidence. The employee was to be given 7 days to respond, failing which termination was to follow. If a response is received, the PSC was required to hear the disciplinary case and give the employee written notice of that hearing. The Compliance Unit was to determine the procedure at the hearing. The employee had to be present at the hearing. Upon conclusion of the hearing a report was to be prepared and given to the PSC. Thereafter, the PSC was to proceed with termination in writing, with detailed reasons provided. An employee terminated for serious misconduct was not entitled to the entitlements set out in the employment contract.
4. On 24 December 2020, the Manager of the PSC Compliance Unit wrote to the PSC Chair, Mr Johnson, advising of an incident of alleged serious misconduct by Mr Bibi. The appended Incident Report, signed by Ms Helen John, a cleaner, relevantly alleges that at around 8.30am on 23 December 2020 she was delivering a cup of coffee to her Manager, Ms Louise Nasak when she came across Ms Nasak and Mr Bibi. Ms John opened the door to Mr Bibi's office and saw, in her words:

"Mi kasem door blong Office blong Secretary mo mi openem door. Long time ia mi luk Secretary mo Manager bong mi istap long left side long corner, place we Coffee table istap long hem, inside long Office blong Secretary. Tufala I stanap closap long tufala mo facem each other. Detail blong wanem we I happen between tufala long time is bae mi no save talemaot but mi prefer se bae tufala nomo I talemaot."

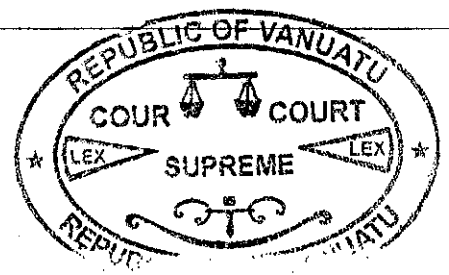
5. By way of comparison, a different version in a statement dated 24 December 2020 and signed by Helen John, appears in a report prepared by the investigation team:

"Mi kasem door blong Office blong Secretary mo mi openem door. Long time ia mi luk Secretary mo Manager bong mi istap long left side long corner, place we Coffee table istap long hem, inside long Office blong Secretary. Tufala I stanap closap long tufala mo facem each other. Time mi luk tufala, ikat wan filing ikam long mi after mi no save holemtaet mi, so mi ko outside mo mi sherem wetelem anty Liah long PIU mo Driver Benard.

Mi bin talem se bae tufala ino talemaot long nara man.

"hands blong Secretary istap long hip blong Manager blong mi mo mtufala hands blong manager blong mi istap left mo right chiks blong Secretary. Be time tufala is sek long mi tufala I slakem of hands blong tufala hariap nomoiko down olsem se inokat wan samting I happen...."

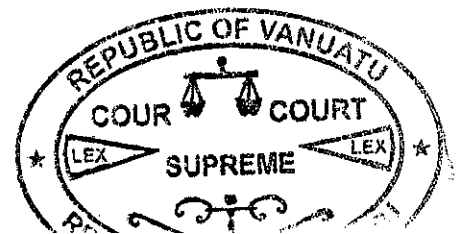
6. Despite the time of year, Mr Johnson was called into the office to deal with the matter. He had a meeting with Ms John to ascertain for himself what she had observed.



7. The PSC met later that afternoon and resolved to refer the allegations to the Compliance Unit for investigation, with both Mr Bibi and Mrs Nasak to be suspended. The Unit's composition was agreed at the meeting.
8. Mr Johnson wrote to Mr Bibi the same day, and advised that he was suspended for a period of 4 weeks on full pay. The letter recorded the complaint as:

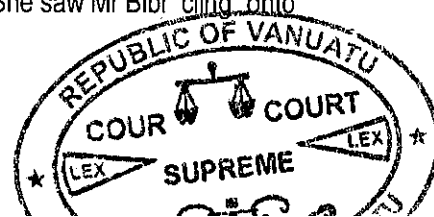
"...sometime on 23 December 2020, Mrs. Helen John of OPSC has spotted you and the Manager Corporate Service, Mrs Louise Nasak engaged in an unacceptable behaviour. This action is contrary to Section 34(1)(a)(i) of the Public Service Act [CAP 246]."

9. After Mr Johnson's suspension letter had been served on Mr Bibi at his home in the early evening of Christmas Eve, Mr and Mrs Bibi attempted to speak to Ms John, but they were unable to locate her. They caught up with her the next morning and asked her about what she had reported. Mr and Mrs Bibi explained that Ms John did not maintain her allegation to them.
10. Mr and Mrs Bibi took Ms John to see Mr and Mrs Nasak on Christmas morning to advise them that Ms John had recanted her allegation. Following that, attempts were made to speak with Mr Johnson, firstly at his home but subsequently outside the Air Vanuatu office in Port Vila. Mr Johnson declined to entertain Mr and Mrs Bibi and Mrs Nasak at that time, offering no comment as the matter was under investigation.
11. On 28 December 2020, the investigation team's terms of reference were documented. The document records that Ms John had found Mr Bibi and Mrs Nasak "standing and facing each other".
12. On 29 December 2020, a memorandum was circulated to the PSC members requiring several matters to be immediately determined by a process described as Flying Minutes. Certain items were listed with proposed action recommended. One by one the PSC members were given the memorandum for their consideration, and if they agreed, to countersign the proposed actions. Accordingly, a number of acting appointments were agreed. Further, it was agreed the investigation team was to be added to by the inclusion of a Mr Brian Bani; and the team were to also look into allegations that Mr Bibi and Mrs Nasak had attempted to influence Ms John and Mr Johnson. Finally, it was agreed Mr Bibi must surrender his PSC vehicle pending resolution of the allegations against him.
13. As part of the investigation, on 30 December 2020 the Acting PSC Secretary wrote to Mr Bibi instructing him to return vehicle G.1081 and the keys to the vehicle.
14. On 31 December 2020, the PSC received a letter from Ms Nari dated 30 December 2021. She was acting for Mr Bibi, seeking the decision as to suspension be re-considered and Mr Bibi reinstated. Ms Nari complained of the news of the suspension had been leaked and that the PSC was not acting as a good employer.



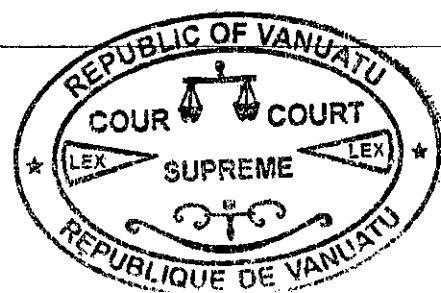
15. On 31 December 2020 also, the Acting PSC Secretary wrote to Mr Bibi advising that his government e-mails would be accessed as part of the investigation. That same day, the Acting Secretary wrote a second letter to Mr Bibi, reminding him that he should not interfere with the investigation.
16. On 5 January 2021, the investigation team interviewed Ms John, and produced a written record of the interview, signed by Ms John. It is 8 pages long and deals with what occurred on 23 to 25 December 2020. In the course of the interview, Ms John contradicted the accounts of Mr Bibi, Mrs Bibi and Mr Nasak about what had occurred between them on 25 December 2020. Of particular significance is the description of what Ms John saw when she entered Mr Bibi's office at around 8.30am on 23 December 2020. This relevant part of the statement reads:
- "Taem mi openem door mi look true class, mi look Jean Yves mo Louise se tufala I stap kiss. And mi confirm se tufala I stap kiss ia nao from the way tufala istanup, secretary I blockem hem be olsem quicktime Louise penam hem I stap pulpullum ol robe andanit long table."
17. On 6 January 2021, the Chair of the investigating team wrote to Mr Bibi, inviting him to attend an interview. That invitation was cancelled the next day by letter explaining that the correct process to be followed was set out in Schedule D of Mr Bibi's employment contract.
18. On 11 January 2021, the investigation team completed its investigation and completed a 115-page report which was sent to the PSC, it being received by the PSC on 13 January 2021. The report included some 17 findings made by the investigation team which related to Mrs Nasak as well as numerous other matters going back to August 22019 relating to Mr Bibi, besides the matter reported by Ms Helen John. In relation to that aspect, the investigation team concluded Mr Bibi and Mrs Nasak had failed to comply with generally accepted behaviour when found to be hugging and kissing which violated section 34(1)(a) of the Public Service Act.
19. Of note, the following parts of the report are significant:

- at page 5, it is recorded that the allegation involves "hugging and kissing" between Mr Bibi and Mrs Nasak at the Secretary General's office and during official government hours.
- at page 6, the terms of reference are listed, which included to establish whether Mr Bib and Mrs Nasak standing together and holding each other within close proximity amounts to unacceptable behaviour; whether what occurred was serious misconduct; and whether or not they had been having an extra marital affair.
- at page 12, a summary of what Ms John witnessed is recorded and it includes that she saw Mr Bib and Mrs Nasak hugging and kissing each other.
- at page 16, it is recorded that the investigation team interviewed Ms John. In this passage Ms John is stated as having seen Mr Bibi and Mrs Nasak standing together in close proximity with Mr Bibi's back to the door of his office. She saw Mr Bibi "cling" onto



Mrs Nasak's hips, which Mrs Nasak was holding Mr Bibi's face in both her hands. The passage concludes: "It is obvious and as confirmed by Helen in Helen John in her statement [sic], Mr Bibi and Mrs Nasak were hugging and kissing."

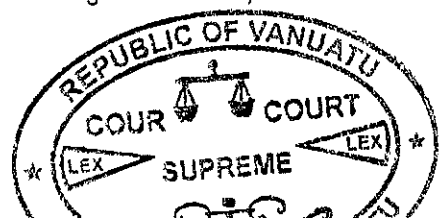
20. On 14 January 2021, the PSC met and considered the investigation report. The PSC approved the report and directed a copy be served on Mr Bibi, which was done with an accompanying Notice of Charges totalling 14 in number, dated 15 January 2021. Charge 10 related to the incident witnessed by Ms John. This Notice advised Mr Bibi that he was required to attend a subsequent disciplinary hearing, of which notice would be given. Mr Bibi was also provided with witness statements by the PSC Chair, Mr Johnson and by Ms Helen John.
21. Mr Johnson's statement reveals that he was called into the office to deal with the allegation. He insisted on speaking with Ms John. She told him that when she entered Mr Bibi's office, Ms John saw Mr Bibi quickly lower his hands, as if he had been hugging Mrs Nasak. They were standing close together at the time. He also referred to being met by Mr and Mrs Bibi and Mrs Nasak on Christmas morning, which he considered inappropriate.
22. Mr Bibi was asked by letter of 15 January 2020 to respond to the report and the charges by 25 January 2021. He did so on 20 January 2021 in writing over 7 close-typed pages. He commenced by pointing out what he considered to be unfair and improper procedures adopted. In relation to Charge 10, he completely denied unacceptable behaviour, and he pointed to the inconsistencies of Ms John's various accounts as evidencing her unreliability. He pointed to the fact that somebody else had written her statement, and he also challenged her accuracy as he alleged she is a spiritual medium. He appended to his response a statement by his wife relating to what had occurred when Mr and Mrs Bibi had confronted Ms John on the Christmas morning as confirming his version of events.
23. On 22 January 2021, the PSC wrote to Mr Bibi extending the period of his suspension from that date onwards, until further notice.
24. On 26 January 2021, the PSC wrote to Mr Bibi and advised his disciplinary hearing would take place on 28 January 2021. Mr Bibi duly attended. The meeting was Chaired by Mr Johnson. Following the hearing, the PSC prepared a compliance report dated 1 February 2021, which set out what had occurred, a copy of which was sent to Mr Bibi. It recorded that Mr Bibi had pleaded not guilty to all the charges put. In relation to Charge 10, Mr Bibi told the hearing, as it is recorded at length in the compliance report, that he was very busy, there were people in and out of his office and when he reconstructed in his own mind what had occurred after becoming aware of Ms John's allegation, he could recall no unacceptable behaviour of any kind. He completely denied Ms John's allegation as having occurred. He explained, that is why he went to speak to her on Christmas morning and why he sought out Mr Johnson to explain that there was a mistake.



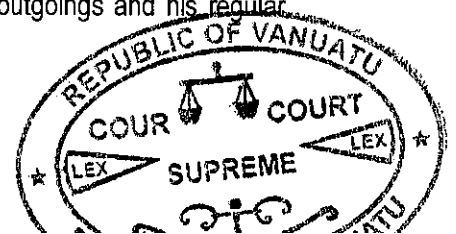
25. On 3 February 2021, the PSC wrote to Mr Bibi advising him he had 14 days to provide reasons why his employment should not be terminated. Mr Bibi responded on 16 February 2021 repeating his previous responses in a short letter.
26. By letter of 18 February 2021, the PSC terminated Mr Bibi's contract of employment on the grounds of serious misconduct. The letter recorded 3 acts which constituted serious misconduct as paraphrased:
- Interfered with the investigation and interacted with the complainant Ms John – contrary to section 34(1) and 46(1) of the Public Service Act;
  - Attempted to influence the PSC's decision when confronting Mr Johnson, by threatening to take further action, contrary to section 46(1) of the Public Service Act; and
  - Ms John's confirmation that Mr Bib and Mrs Nasak were hugging and kissing during work hours, such conduct being unacceptable behaviour contrary to section 34(1) and section 36(1) of the Public Service Act.
27. News of Mr Bibi's dismissal was widely publicised on social media the next day.

C. Evidence

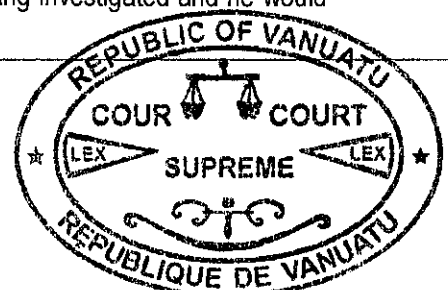
28. Mrs Nelly Naviti Bibi was the first witness called. She produced a sworn statement as her evidence-in-chief. She stated that she was present on 24 December 2020 when her husband was advised of being suspended. She learnt that Helen John had made a report, and she wished to urgently speak to her. She did not locate Ms John that evening, but did on Christmas morning, by which time social media had reported her husband's fate.
29. Mrs Bibi reported a conversation she had with Ms John that morning, which suggested that her complaint had been recorded by another person and was incorrect, and that nothing untoward had occurred on the morning of 23 December 2020. There was talk of Ms John having seen things in a dream, which dream recurred in Mr Bibi's office. Mrs Bibi asked Ms John to go with her and husband to see Mr and Mrs Nasak and explain the situation to them, which she did. Mrs Bibi related that her husband then determined to see Mr Johnson, the PSC Chair, to straighten out the misunderstanding. They found Mr Johnson at the Air Vanuatu office and asked him to call an urgent meeting to sort the matter out. Mr Johnson responded that the matter was under investigation and he had no further comment.
30. Mrs Bibi also stated that she had assisted Mrs Nasak in her disciplinary proceedings, following which Mrs Nasak was reinstated.
31. She related also that Mr Bibi has not found alternative employment following his dismissal, and that as a result the family has suffered financially.



32. Mrs Bibi was cross-examined to little effect. She confirmed she did not know who had caused the social media posts on the morning of 25 December 2020.
33. I accepted Mrs Bibi as an accurate witness of the truth. Indeed, it was not suggested that she was anything other than that.
34. Mr Yves Jean Bibi, the Claimant, was the second witness in support of the Claim. He produced no less than 6 sworn statements as his evidence-in-chief.
35. In his first sworn statement Mr Bibi, appended a number of relevant exhibits and confirmed much of the background described earlier. That does not warrant repetition. Over and above that, he complained that his 24 December 2021 suspension was leaked to social media in the morning of Christmas Day, and asserted that this can only have been done by someone within the PSC as no others had knowledge of the development. He claimed the manner of the social media posting was defamatory and injurious to his reputation. He appended examples of such posts.
36. Mr Bibi further complained that the investigation team's report was prepared without him being first interviewed, which he regarded as a necessary step in the process.
37. Mr Bibi considered Mr Johnson should not have chaired his disciplinary hearing due to being conflicted.
38. Mr Bibi considered the process followed by the TSC to be flawed and unjust. He asserted that the PSC did not act as a good employer should in its dealing with him. He considered that the PSC had paid no regard to his responses to their allegations and findings.
39. He further considered the TSC had breached section 50(4) of the Employment Act [Cap 160] as he had no adequate opportunity to answer the charges made against him, which has resulted in his unjustified dismissal.
40. Mr Bibi pointed to the inconsistencies between the various accounts of the events of the morning of 23 December 2020 by Ms John. In his view, her report(s) held no credibility.
41. He ended by claiming some VT 40 million by way of damages, and itemised the various amounts under numerous heads.
42. Mr Bibi's second sworn statement he complained about the lack of proper appointment of Mr Bani as Chair of the investigation team, and expressed the view that the entire team were conflicted. Accordingly, he sought to categorise the report produced as null and void. Other than that, it is repetitious of his earlier statement.
43. Mr Bibi's third sworn statement he produced evidence of a bank loan secured by his home which required regular repayments. He produced a budget showing his outgoings and his regular school expenses for his children.

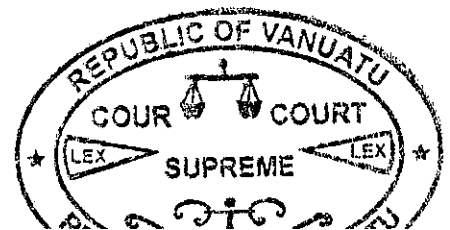


44. In Mr Bibi's fourth sworn statement he attacked the veracity and reliability of Ms John. He pointed to her several versions of events, the finding of the Public Service Disciplinary Board that Ms John's evidence was "conflicting" and difficult to accept, plus the fact that Mrs Nasak was reinstated. He considered that Ms John made up her accounts to assist the PSC to remove Mr Bibi from office. He accused that she was rewarded for her assistance.
45. In his fifth sworn statement, Mr Bibi responded to the sworn statement of Mr Melteres in which Mr Melteres challenged the calculations made by Mr Bibi in respect of the damages sought. Mr Bibi did not accept that he had been paid out all his leave owed. Ultimately, he re-calculated the damages he sought to amount to just over VT 40.3 million.
46. Finally, Mr Bibi produced a sixth sworn statement in which he re-iterated that he felt he been badly treated, and without humane consideration. He pointed to the timing of his dismissal, the unwanted publicity which he ascribed to the TSC, the fact that so many more issues all unrelated to the report by Ms John were involved in the investigation, and he concluded that the whole incident was a ruse designed to enable the TSC to dismiss him without valid cause.
47. Mr Bibi was cross-examined. It was put to him that he been seen by Ms John kissing and hugging Mrs Nasak in office time. He responded that there is no mention of that in his suspension letter. He was challenged that the appropriate course had been followed by the TSC in investigating the matter and affording him every opportunity to understand the process and to respond to the allegations. Mr Bibi contended that the TSC had already made the decision to dismiss prior to the disciplinary hearing.
48. Mr Bibi was prone to exaggeration to make his point, which did him little credit. However, his core evidence was consistent with that of his wife and the documentary exhibits. In short, putting aside some of the emotion and the natural tendency to slightly embellish for effect, I accepted him an honest and accurate witness.
49. Mr William Nasak was the final witness in support of the Claim. He was not required for cross-examination, and accordingly his sworn statement was produced as his evidence. Without any challenge to what he asserted, I accepted his evidence.
50. He confirmed his wife was suspended on 24 December 2020. He confirmed also that Mr and Mrs Bibi came to see he and his wife on Christmas morning with Ms John. As a result, he learned of the social media coverage of the suspensions. He considered the allegations to be defamatory and untrue after hearing Ms John's explanation of what had occurred. He set out Ms John's explanation, which matched Mrs Bibi's version.
51. Mr Nasak confirmed also the trip to Mr Johnson's home, and subsequently seeing him outside the Air Vanuatu office. Mr Johnson told them the matter was being investigated and he would not comment further.

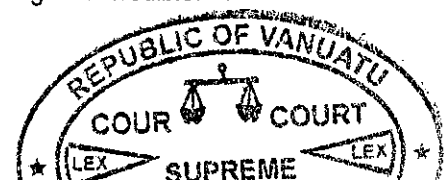




52. He also confirmed that his wife was ultimately reinstated and he appended the Public Service Disciplinary Board's written decision. He was aware that Mr Bibi was dismissed. He considered that to be wrong, and supported the claim for damages.
53. Mr James Melteres gave evidence for the State, in defence of the Claim. He was one of the investigation team appointed to look into Ms John's allegation against Mr Bibi.
54. He was the Acting Secretary to the PSC in April 2021 when he made his first sworn statement as part of his evidence-in-chief. He confirmed the background that is set out earlier in this decision.
55. He confirmed also that the PSC and the Office of the Public Service Commission did not authorise information about Mr Bibi's suspension to be disseminated.
56. He appended as exhibits the documents referred to in his chronological description of the history of this matter, most of which were already in evidence through other witnesses.
57. By the time he made his second and third sworn statements, which were in response to further evidence produced by Mr Bibi in support of his Claim, he had reverted to being the Manager of the Vanuatu Institute of Public Administration & Management. He confirmed that the procedures set out in Schedule D of Mr Bibi's contract of employment were followed to the letter by the PSC. He considered the PSC had acted as a good employer.
58. In his third sworn statement, Mr Melteres re-calculated the benefits to which Mr Bibi would be entitled if his Claim was successful. The amount he submitted came to a total of VT 27,257,055. He appended his working papers showing how he arrived at that final figure.
59. Mr Melteres was cross-examined about the quantum of the damages sought. He did not waiver from his calculations. He was asked why Ms John's allegation was only summarised in the report to Mr Johnson but later expanded to the investigation team. He explained one was a summary only, the other was the fuller version to assist the investigation team. The process followed by the TSC was challenged, but he did not agree with those criticisms. He accepted that only someone from within the Office of PSC could have posted the social media reports on Christmas morning of Mr Bibi's suspension.
60. He was cross-examined on the basis that was a reliable witness. There was no challenge to his veracity. I accepted his evidence.
61. Ms Helen Lukai John gave evidence for the State in defence of the Claim. She was employed as a cleaner at the office of the PSC. In her first sworn statement she confirmed that she had seen "unacceptable behaviour" by Mr Bibi and Louise Nasak. She confirmed she had made a written report of the incident on 24 December 2020. She gave a more detailed account to the investigation team on 5 January 2021.



62. In her second sworn statement she explained that when she had stated in her 24 December 2020 report that she did not want to describe what happened between Mr Bibi and Mrs Nasak, that was due to the fact they were both her superiors and she feared for her job. That's why she felt it better that they explain what had occurred. She went on to say that she had seen Mr Johnson that same afternoon and told him what she had seen.
63. Ms John's third sworn statement referred again to her meeting with Mr Johnson. She stated that she had told Mr Johnson that she had seen Mr Bibi and Mrs Nasak "in an act of kissing". She stated it was not a normal kiss. It was a mouth-to-mouth kiss, which she had never come across before. She considered it to be unacceptable.
64. In cross-examination, Ms John confirmed that she had recorded her 24 December 2020 report herself and signed it at about 9am that day. The second, more complete, report of the same date was written by another, not her; although she signed it after reading it first. That was done at about 3pm. Mr Johnson had asked her to complete the second version, she said "to complete the sentence". When asked which sentence she was to complete, she did not respond.
65. When asked if the longer version of her report included the allegation of hugging and kissing, she claimed the font size was too small for her to read.
66. Ms John confirmed she had been interviewed by the investigation team. She agreed that in the course of the interview she had told about Mr Bibi and Mrs Nasak hugging and kissing. When asked to explain why she had stated in her third sworn statement that the kiss was not a normal kiss but not referred to that in her 5 January 2021 interview, she responded that the statements served different purpose. She agreed she should have provided the full details from the beginning. When suggested to her that her statements were untrue and made up, she retorted that she had seen the incident, and that it was only out of respect for her bosses that she did not include the full details in her first report.
67. There was also a final matter put – where had the incident taken place? Her reply was in the PSC conference room. It was then put that in her first report of 24 December 2020, she had stated it was in Mr Bibi's office. There was a noticeable pause prior to Ms John confirming it had in fact occurred in the conference room. When asked to explain the initial incorrect description, she stated that the 2 rooms were near to each other and that she had written her report out of respect for Mr Bibi.
68. In my assessment of Ms John, I had no doubt that she respected her seniors and that accordingly something out of the ordinary must have occurred for her raise her allegation. She was clearly embarrassed and reluctant to discuss the detail of what she had seen; and was insufficiently articulate to describe what it was about the kiss she observed that was out of the normal yet unacceptable in the workplace. That explained in my view the inconsistencies apparent between her versions. I accepted her to be a witness of the truth, and that she was reliable. I considered her responses in cross-examination were appropriate and indicative of her veracity. Her indignation when denying that she had made up her allegation was telling and credible. I

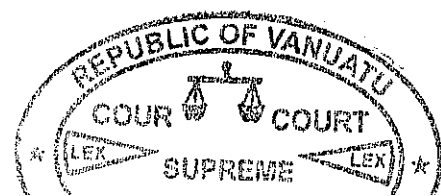


consider it more likely than not that she did not recant her allegation on Christmas morning as suggested by Mr and Mrs Bibi and Mr Nasak. I was untroubled by Ms John's confusion over which room was correct.

69. Mr Simil Johnson gave evidence for the defence. He produced a sworn statement as his evidence-in-chief. He confirmed that he was the PSC Chair, and that he was called into the office on 24 December 2020 to deal with Ms John's allegation which he had received in writing. He also spoke to Ms John that afternoon, at which time the allegation was explained as involving an out off the norm kiss in Mr Bibi's office. Ms John demonstrated what she had seen.
70. Mr Johnson then called for a PSC meeting to be summonsed at which the matter was discussed. He stated that Ms John had also demonstrated to the meeting what she had seen, but the Minutes do not record wither her presence or her demonstration.
71. Ms John had worked for the Office of the PSC for over 25 years, and had very recently received a gift as the best employee of the year, awarded by Mrs Nasak. Mr Johnson was accordingly inclined to believe Ms John - he could not imagine that she was lying.
72. In cross-examination, Mr Johnson agreed there was no mention of kissing or hugging in Ms John's two reports of 24 December 2020. It was also put to him that Mr Bibi had appeared at the disciplinary hearing and given extensive responses to the charges, which the PSC had not considered. Mr Johnson agreed that Mr Bibi had attended and given responses, but he maintained the PSC had considered all the relevant material and issues prior to the decision being taken to terminate Mr Bibi. He re-iterated that Ms John was a long-serving employee, who, in his opinion, was looking to preserve the reputation of the PSC.
73. Mr Johnson could not recall asking Ms John to give a second report on 24 December 2020, but accepted that if she said he had he could not contradict that.
74. I accepted Mr Johnson as an honest and reliable witness. Despite that I was unconvinced that the conduct alleged by Ms John could or would affect the reputation of the TSC. However, the subsequent conduct by Mr Bibi was unacceptable.
75. Mr Brian Bani was not required for cross-examination. Accordingly, his sworn statement was produced as his evidence, which I accepted. He was part of the investigation team, and confirmed the invitation to Mr Bibi of 6 January 2021 was an error and not in accordance with the procedure set out in Schedule D of Mr Bibi's employment contract. Hence the invitation was retracted the following day.

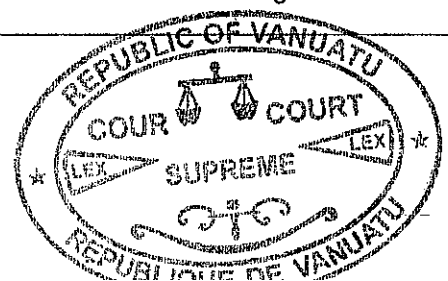
#### D. Findings

76. On 23 December 2020 at around 8.30am, when delivering coffee to Mrs Nasak and Mr Bibi, Ms John witnessed an intimate moment in which Mr Bibi and Mrs Nasak were hugging and kissing each other. They were surprised by Ms John's re-entry into the room which had caught them

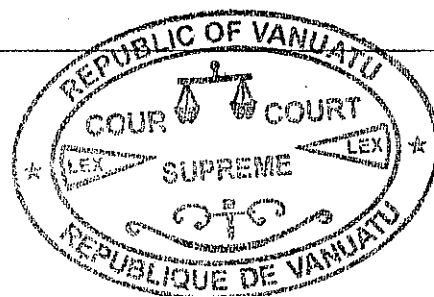


unawares, and after hurriedly disengaging, they made a pretence of re-organising some computer wires to cover their embarrassment. What had occurred was, to Ms John, unusual and unacceptable behaviour in the workplace.

77. Ms John did not really know what to do about what she had seen, but shared her experience with other low-level staff, which ultimately led to the matter coming to the attention of Mr Johnson as Chair of the PSC. He sought a more detailed description, and demonstration, of her observations from her at first in person and later in writing.
78. That then put in train a PSC meeting, Mr Bibi's immediate suspension, an investigation into the allegation and other matters, and the receipt of Mr Bibi's explanations. All those steps were carried out in accordance with the procedures set out in Schedule D of Mr Bibi's contract of employment – I reject all criticisms to the contrary. I accept that the PSC is obligated by section 15 of the Public Service Act to be a good employer. There is no evidence to suggest that the PSC's conduct was anything other than that of a good employer.
79. I reject the criticism of members of the investigation team having bias as unsubstantiated; as well as the criticism of Mr Johnson taking part as Chair of the Disciplinary Hearing. It was submitted that Mr Johnson was too close to be able to take part, but it was not Mr Johnson's acts that were being investigated. All Mr Johnson did was to decline to comment as there was an investigation underway.
80. Further, the basis for this Claim is that the incorrectness of the allegation by Ms John, caused Mr Bibi to lose his position. That of course ignores the other charges laid by the PSC against Mr Bibi.
81. Significantly, those other charges include matters accepted by Mr Bibi.
82. It is indefensible, knowing that an investigation would be conducted, for Mr and Mrs Bibi to effectively confront Ms John firstly, and Mr Johnson secondly. Those approaches were ill-considered, and despite the protestations to the contrary, clearly designed to impact the investigation yet to occur. My finding that Mr and Mrs Bibi then were less than honest about their conversation with Ms John is highly damaging to the Claimant's case.
83. There were other charges considered at the Disciplinary Hearing, but they were of much less consequence.
84. There was criticism also of the fact that not only Ms John's allegation was considered by the investigation team and at the disciplinary hearing. No authority was put forward to support this submission. The investigation team was directed by the PSC to look into some of those other matters, and in the course of the investigation, other matters cropped up which were then also included in the consideration. I can see no legal basis to restrict the PSC's investigation or disciplinary hearing.



85. The fact that the investigation team also made mention of issues relating to Mrs Nasak does not detract from the finding made against Mr Bibi, even if not best practice.
86. Mr Bibi contended that Schedule D meant the PSC had no option but to terminate his employment due to the use of the word "shall". I do not agree with that analysis. The schedule is mandatory in the sense that if the PSC is considering termination, then the procedures set out must be followed. To read the schedule otherwise, as Mr Bibi wanted, would be to make it mandatory to terminate whenever an allegation was made and make it impossible to re-instate.
87. Ultimately, Mr Bibi's denials and explanations were not accepted and his employment was terminated. He was duly notified of this, with reasons provided.
88. The Public Service Act is the appropriate standard against which to assess the alleged behaviour by Mr Bibi. Section 4 of this Act requires the PSC and all members thereof to perform their functions in a professional manner and provide a workplace that is free from discrimination, as well as have the highest of ethical standards. Section 34 of this Act sets out the obligations of PSC employees, all of which are mandatory. Subsection (a) requires employees to comply with generally accepted behaviour in the conduct of their employment. Subsection (b) requires employees to comply with any reasonable direction given by the Director General, the Director or the Commission.
89. These requirements result in intimate hugging and kissing by married employees with persons other than their partners can fairly be described as unacceptable conduct in the work place during working hours. The PSC has categorised the conduct as serious misconduct, as it was entitled to do. This Court cannot decide otherwise as to do so would be a finding of morality, not legality.
90. Section 29 of the Public Service Act enables the PSC to terminate employment for serious misconduct.
91. Accordingly, I find the termination of Mr Bibi's employment to be lawful in the circumstances.
92. The fact that Mrs Nasak was reinstated is of no consequence, as her situation is quite different to that of Mr Bibi.
93. According to Mr Bibi's contract, once terminated for serious misconduct, Mr Bibi is no longer entitled to his contractual benefits.
94. Mr Bibi also sought damages in respect of defamation. In order to succeed evidence was required linking the social media posts to a particular person. There is no such evidence. Although Mr Melteres accepted that it could only have been by a member of the PSC, the PSC cannot be legally held responsible unless it had authorised such publication. Mr Melteres stated that this was not the position.



95. Further the fact of Mr Bibi's suspension was accurately reported. As was the cause for the suspension.

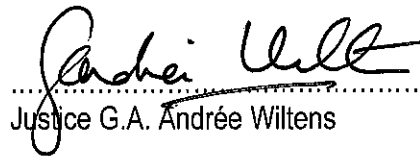
96. Accordingly, this part of the claim has also not been established.

E. Result

97. The claim fails and is dismissed.

98. Costs are to follow the event. I set them at VT 200,000. They are to be paid within 21 days.

Dated at Port Vila this 17th day of January 2022  
BY THE COURT

  
Justice G.A. Andrée Wiltens

