

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

**Judicial Review
Case No. 25/1223 SC/JUDR**

BETWEEN: DR SUNARAPARIPOORANAN PAKSHIRAJAN
Claimants

AND: FOREIGN SERVICE BOARD
First Defendant

**AND: MINISTER OF FOREIGN AFFAIRS & EXTERNAL
TRADE**
Second Defendant

AND: COUNCIL OF MINISTERS
Third Defendant

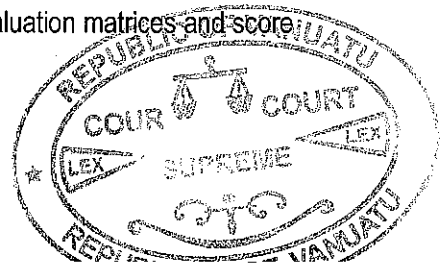
Before: Hon. Justice Oliver A Saksak

**In Attendance: Mr Justin Ngwele for the Claimant
Mr Sammy Aron for the First, Second and Third
Defendants**

**Date of Hearing: 21st May 2025
Date of Judgment: 13th June 2025**

JUDGMENT

1. The claimant filed an urgent application for interim orders pursuant to Rule 7.5 (1) of the Civil Procedure Rules on 2nd May 2025. The application is supported by the sworn statement of the claimant filed on the same date,
2. He sought Orders to –
 - a) Restrain the First, Second and Third Defendants from making any appointment or taking any further step in the recruitment or selection process in relation to the position of Ambassador or Head of Mission to India, until the conclusion of this proceeding.
 - b) Stay the operation of the Foreign Service Board pursuant to section 12 (1)(b) of the Foreign Service Act (No. 21 of 2013).
 - c) To compel the Defendants to disclose within 14 days from the date of grant of orders copies of all relevant documents relating to all advertisements and readvertisement, all applications, curriculum vitae and relevant documents, all shortlisting criteria, evaluation matrices and score



sheets used by the Board, and all internal and external correspondence including emails and letters within the Board, the Ministry of Foreign Affairs, the Council of Ministers, the Office of the Attorney General and or other third parties involved in the recruitment and selection process.

- d) After disclosing the documents requested, the claimant to be at liberty to file a Judicial Review claim.

3. The grounds for the application were that-

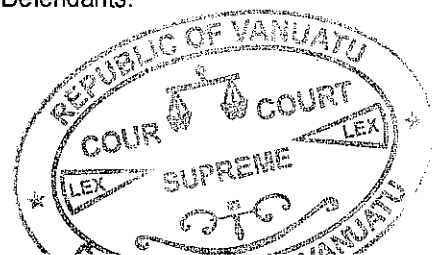
- a) The decision by the Board to readvertise the position after completing interview in the first recruitment was unreasonable, procedurally unfair, and unlawful and contrary to section 12 of the Act.
- b) The decision not to shortlist or interview the claimant in the second recruitment was unreasonable, procedurally unfair, unlawful and contrary to sections 6 and 12 of the Act.
- c) The ongoing recruitment and appointment process conducted without fair consideration of the claimant's application was unlawful, procedurally unfair and invalid.
- d) The Defendant's adverse actions and/or omissions affecting the claimant's application are tainted with bias due to conflict of interest of the Board members, and
- e) The Defendants acted ultra vires the Act in the recruitment process.

- 4. On 13th May 2025 the Court heard Mr Ngwele and Mr Aron who basically agreed that the application be allowed in part and that the orders sought in paragraphs 1 and 2 only be issued.

- 5. The Court directed the claimant pursuant to its request in paragraph 2 of its orders to file and serve a proper judicial review claim by close of business on 14 May 2025, and for defences and sworn statements to be filed and served by 4:00pm on 16 May 2025, and that a Rule 17.8 Hearing be held on 21 May 2025 at 10:30am.

- 6. The Defendants filed their defence on 19 May 2025 and the sworn statement of Noah Patrick Kouback on 21st May 2025 at 10:30am.

- 7. At the hearing on 21 May 2025 Mr Ngwele had not had the opportunity of taking instructions to respond to the sworn statement of Noah Patrick Kouback. And Counsel requested for an opportunity to make supplementary submissions after the written submissions by the Defendants.



8. The Court had the opportunity of seeing written submissions filed by Mr Ngwele on 21 May 2025 at 9am. However following request by Counsel the Court allowed 7 days to Mr Aron to file written submissions by 26th May 2025 and for Mr Ngwele to file any supplementary submission within 7 days thereafter by 31 May 2025.
9. Mr Aron filed late supplementary submissions on 6th June 2025. And another sworn statement by Asilika Tokona was filed on 4th June 2025 by the defendants. Mr Ngwele filed submissions in reply on 11th June 2025.

Discussion

10. Rule 17.8, provides:-

"Court to be satisfied of claimant's case

17.8 (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."

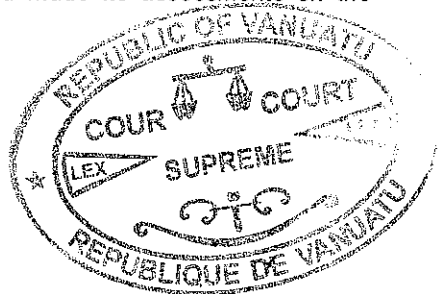
11. The claimant's main ground of complaint is that the Foreign Service Board (Board) did not comply with section 12 (1) (b) of the Act by making a recommendation to the Minister. Section 12 provides:

" Requirement of Board in Recruitment Process

(1) The Board must:

a) Ensure that a shortlisted applicant must undertake a written assessment and interview, and

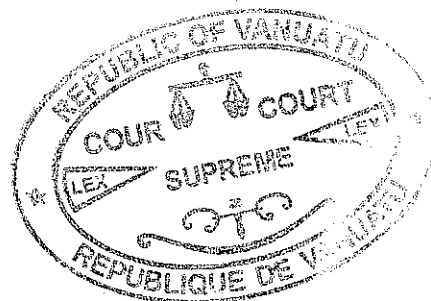
b) Ensure it submits its recommendation on the recommended candidate and 2 eligible candidates to the Minister after the Board has interviewed the candidates to the Minister after the Board has interviewed the candidates and made its assessments on the candidates..."



12. The reason for the Board's omission is clearly given in paragraph 7, and 8 and 9 of the sworn statement of Noah Patrick Kouback. As I understand it it is simply this that with the recommended candidate and one of the eligible candidates having been appointed to another position within the Government, that left only one eligible candidate left who was the claimant. In such a circumstance, the Board could not proceed with the recruitment process in compliance with section 12 (1)(b). The only reasonable and fair way to get around it is to re-advertise the position as the Board has done.
13. The complaint of the claimant is therefore unwarranted and his application is misconceived. Furthermore, it is an application without any substantial Judicial Review claim , for which he was directed to have filed by and on 14 May 2025.
14. The claimant has not satisfied the Court that he has an arguable case. Further, the omission by the Board not complying with section 12 (1) (b) of the Act was a lawful prerogative of the Board which did not directly involve the claimant. As an applicant, he had to adhere to and comply with the process to the end. That has not yet occurred therefore the claimant has taken a pre- mature step in filing an application without a proper Judicial Review Claim. That is an abuse of process.
15. Finally from the evidence available from the sworn statement of Noah Patrick Kouback documents reveal that the claimant holds two Vanuatu passports No. RV0184180 (See pages 16 and 20, 48 and No. RV0184524 on page 55 of the sworn statement. How does the claimant explain that?

Result

16. The claimant has no arguable case and he is not directly affected by the omission of the Board in not completing the lawful process of section 12 (1)(b) of the Act.
17. The Court is therefore not satisfied and declines to hear the claimant's case further as there is no substantial claim filed anyway
18. The application is dismissed. The orders of 13 May 2025 are vacated.



19. The Defendants are entitled to their costs of the application on an indemnity basis, to be paid by the applicant, as agreed or be taxed.

DATED at Port Vila this 13th day of June 2025

BY THE COURT

Hon. Justice Oliver A Saksak

