

BETWEEN: George Pakoa, Melton Aru and Collins Gesa
Claimants

AND: The Public Service Commission
Defendant

AND: Harold Tarosa
Interested Party

Date: 7th October 2022
Before: Justice S M Harrop
Counsel: Mr P. Fiuka for the Claimants

JUDGMENT

1. This afternoon I was handed this urgent claim for judicial review supported by an urgent ex-parte application for an interlocutory order staying the Public Service Commission's recruitment process for the position of Director of Customs and Inland Revenue, a sworn statement of Mr Pakoa, one of the claimants, in support, a sworn statement of urgency from Mr Fiuka, counsel for the claimants and an undertaking as to damages.
2. I decline to deal with the matter urgently or on an ex parte basis for the following reasons, which I state briefly because of the alleged urgency.
3. I do not consider the matter is so urgent as to exclude the Public Service Commission from input into an application to stay one of its recruitment processes.
4. The claimants appear to have been aware of the decision to re-advertise the position since on or about 17 September 2022 (and public notice was given on 12 September 2022) but it is only today, 7 October, that papers have been filed. They themselves have not acted as if the matter was urgent.
5. It is said that the matter is urgent because "re-advertisement is due today". As I read the documents all that is happening today, at 4 pm, is that the applications close following the re-



advertisement on 12 September. The applicants, who seek to challenge the re-advertising decision, are able to preserve their positions as applicants to be considered by sending an email to the stated email address confirming they are still interested in the positions being applied for. I do not know whether they have done so.

6. Of course I will need to hear further submissions – both from counsel for the applicants and from counsel for the Public Service Commission - but I am currently sceptical that applicants for a Public Service Commission position are entitled to challenge the decision by the Commission, for whatever reason it may have, to re-advertise the position after initial advertising interviews.
7. The fact the Commission has chosen to do so does not ultimately mean that one of the claimants will not be appointed, after further consideration.
8. It could only be in the event they are not appointed that there may be – and I emphasise *may* be – some ground for complaint. But it is questionable whether any applicant has any legitimate expectation of appointment to such a position, and, accordingly, standing to take court proceedings if not appointed, or unhappy with the process adopted.
9. Ironically, one of the claimants' pleadings (paragraph 18h) is that the Commission has failed "to take into account a relevant factor that there is no legitimate expectation to be appointed to a position in the Public Service whether or not the applicant has been performing the same role prior to his application". Yet the underpinning of this claim is that they *do* have a legitimate expectation that the Commission appoint Mr Pakoa, allegedly the preferred initial candidate, and a further legitimate expectation that the Commission not re-advertise a position.
10. If the claimants, as they plead, do not have a legitimate expectation ultimately in being appointed, how can they challenge by judicial review the process which may - or may not – result in their not being appointed?
11. I direct that all of the claimants' papers be served on the defendant (and ideally but not essentially, for completeness the interested party) **by noon on Monday, 10 October 2022**, together with a copy of this judgment.
12. The matter will be listed for an initial conference **at 2 pm on Wednesday, 12 October 2022 in my chambers**. This is not strictly a Rule 17.8 conference because no defence has been filed but rather I allocate it promptly as a consequence of the ex parte papers filed today, this judgment and the need for early initial consideration of the case, with informed input from the Public Service Commission.

Dated at Port Vila this 7th day of October 2022

BY THE COURT



Justice S M Harrop

