

BETWEEN: **PACCO SIRI**
Applicant

AND: **THE GOVERNMENT OF THE REPUBLIC OF
VANUATU**
First Respondent

AND: **THE ATTORNEY GENERAL**
Second Respondent

Dates of Hearing: **21st and 22nd October 2020**
26th November 2020

Coram: **Hon. Chief Justice Vincent Lunabek**

Counsel: **Mrs Christina Thyna for the Petitioner**
Mr Lenon Huri for the Respondent

Date of Judgment: **22nd July 2024**

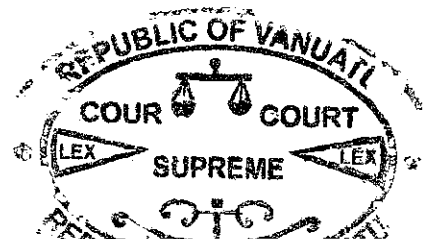
JUDGMENT

Introduction

1. The Petitioner, Mr Pacco Siri, seeks declarations that his constitutional rights under paragraph (b), (c), (d), (i), (j) and (k) of the Article 5(1) of the Constitution were infringed by the conduct of the four police officers during their interaction with him during the late afternoon of 31st January 2019.
2. Article 5(1) of the Constitution reads:

"5. Fundamental rights and freedoms of the individual

- (1) *The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and*



freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –

- (a) life;*
- (b) liberty;*
- (c) security of the person;*
- (d) protection of the law;*
- (e) freedom from inhuman treatment and forced labour;*
- (f) freedom of conscience and worship;*
- (g) freedom of expression;*
- (h) freedom of assembly and association;*
- (i) freedom of movement;*
- (j) protection for the privacy of the home and other property and from unjust deprivation of property;*
- (k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas."*

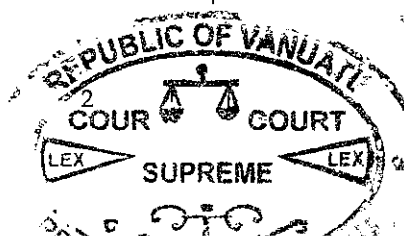
3. The Constitution in Articles 6 and 53 gives the Supreme Court jurisdiction to determine alleged contraventions of the rights recognised in Article 5(1), and to make such orders as the Court considers appropriate to enforce those rights. That jurisdiction is invoked by the present constitutional petition.

Short Background

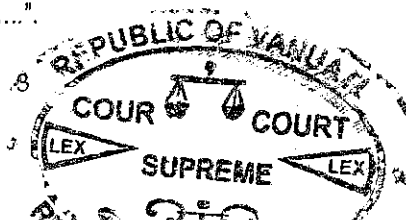
4. In the period leading up to 31st January 2019 the petitioner was employed as the Price Controller with the Department of Finance and Economic Management. On 31st January 2019, the day when the events in question occurred, he was on annual leave. It is common ground that during the day the petitioner attended his work place, had a brief exchange of pleasantries with three other staff members in the office, then collected files which he took away from the office. He says he took the files intending to work on them at home to sort out some outstanding calculations of remuneration payments that were due to other people in relation to two Commissions of Inquiry. He says he proposed to undertake this work to assist the new Acting Director General of the Ministry who was at the time Mrs Doesday Kenneth.

Complaint/Claim and statements in support

5. Later that afternoon, at about 5pm, the Petitioner drove to the Reserve Bank where his wife works to collect her. In his sworn statement dated 3rd July 2019 filed in support of his petition, he sets out the facts about which he complains, and which he contends infringed his fundamental rights recognised in Article 5(1) of the Constitution. Mr Siri deposed that:



8. *On or about 31 January 2019 I was on my way to Reserve Bank at around 5:00pm, to pick up my wife when I was stopped by a few police officers on a grey double cabin vehicle and the driver asked me whether I had taken some office files home.*
9. *The police followed me and my wife on their truck home as if I was a criminal. My wife was scared not knowing what will happen when we reach home.*
10. *At that time, no criminal complaint was lodged against me yet.*
11. *On or about 31 January 2019 at around 5:15pm – 5:20pm the police trespassed into my residence at Bladinière without any warrant and illegally searched my house and myself.*
12. *The male police officer further threatened me in front of my family that if I don't comply, they will take further action against me. I take it as arresting me personally. Since I applied for a Director position at that time, I was compelled to agree to their demand so as not to jeopardise my change.*
13. *The police officers asked me where the office files were, I pointed towards a deep freezer in my living room where I put them that morning to work on the files the following weekend and return the files once complete the next following Monday.*
14. *The police took pictures of my living room without my permission and my wife demanded that they don't publish the photos publicly, but be used solely for their purpose.*
15. *At that time, I did not understand that I was a subject to an official complaint.*
16. *Further, I was not informed by the police about the nature of the complaint laid against me.*
17. *During the unlawful search of my residence, I was treated as a criminal in front of my wife, children and tenants.*
18. *As a result of police officers' actions, I felt undermined, disrespected and ashamed of being threatened in front of my wife and children.*
19. *The police actions have also caused psychological trauma to my family and myself.*
20. *Additionally, the actions of the police have also tarnished my reputation as I was unlawfully abused in front of my tenants.*
21. *As a result of the police actions and the hurt, humiliation and distress I have suffered, I tendered my resignation on 4 February 2019. ...*
22. *On 11 February 2019, the Director General, suspended me and issued a Disciplinary Complaint against me which she never attended as the Complaints was issued after I had resigned as the Organisational Performance Coordinator."*



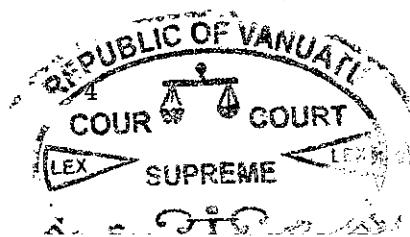
6. In a subsequent sworn statement dated 26th May 2020 the Petitioner gave a similar account of the main events which occurred on 31st January 2019, but with some added details.
7. The petitioner's wife in her sworn statement in support of the petition confirms that the police vehicle followed their car back from the bank to their house. She says that on arrival, she and the petitioner were instructed to remain outside whilst three police officers from the police vehicle searched their house and one officer took photographs which she asked not to be published on social media. The statement continues:
 - “11. *My children came out in shock and enquired why the police officers were searching our home and why they were taking photos of our home. They scared my children as it is not normal for police officers to enter homes and take photos. The officers painted a picture of a criminal father to my children.*
 12. *Our tenants from room number 3 were watching with concern the police actions and enquired later why the police searched our home.*
 13. *I strongly believe that as a family our constitutional rights have been infringed when the police entered illegally our home and searched for files.”*
8. A sworn statement dated 12th August 2020 from the petitioner's daughter, Ms Romabeth Siri, was also filed in support of the petition to which reference will later be made.

Relief sought

9. By way of remedial orders for the alleged infringement of his fundamental rights and freedoms the petitioner seeks declarations that the alleged infringement occurred and compensation of VT1 million for wrongful imprisonment, a further VT1 million for hurt humiliation and distress, and an order for costs.
10. The petitioner correctly names the Republic and the Attorney General as the nominal representatives of the police officers whose conduct is under challenge.

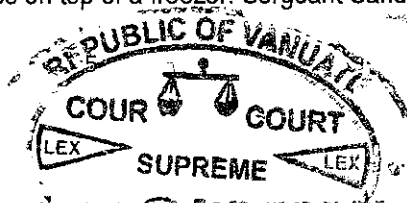
Response to the claim and statements in support

11. The respondents deny that there has been any infringement of the fundamental rights and freedoms of the petitioner. Sworn statements in reply have been filed by four employees of the Ministry of Justice and Community Services, and a further four sworn statements from the four police officers that were involved in the events of 31st January 2019. The evidence therein from



the police officers put a different complexion on the events in question from that which the evidence of Mr and Mrs Siri seeks to convey.

12. The police officers were Sergeant Terry Sandy and Constables Jimmy Namisa, Nina Biagk and Christinia Liu. They say that on 31st January 2019 they had been responding to a crime report at another location when at about 4pm they received a radio call from Inspector Tallis to attend a crime scene at the Ministry of Justice and Community Services. On arrival there they were informed by A/DG Kenneth that the petitioner had removed files from the Ministry and she urged them to assist in bringing the files back as they contained important and sensitive documents. Mrs Kenneth said that she had received reports from the three staff members with whom the petitioner had conversed earlier that day when he was in the office. They had reported to her that the petitioner had taken the Commission of Inquiry files without authorisation. On learning this information Mrs Kenneth had discussed the removal of the files with other senior officers in the Ministry and attempted to contact the petitioner by telephone to ask him to return the files. The phone contact numbers Mrs Kenneth and the Ministry had for the petitioner were not responding. She therefore contacted the Acting Commissioner of Police seeking assistance to retrieve the files. This led to Sergeant Sandy and the other officers arriving at the Ministry offices. Mrs Kenneth briefed them about what had happened and, at the request of the police officers, she and the staff members who had witnessed the removal of the files filled in witness statement forms. Mrs Kenneth urged the police officers to assist in retrieving the files. Later that day, but after the police officers had made contact with Mr Siri, Mrs Kenneth made a formal complaint to the Acting Commissioner of Police regarding Mr Siri's unauthorised removal of Commission of Inquiry reports. The communication with the Acting Commissioner of Police said: "*Given the sensitivity of these reports, I am requesting your assistance in ensuring that these reports are brought back to the office without delay and the officer be charged accordingly*". There is no suggestion in the evidence that this communication with the Acting Commissioner of Police was known to the police officers who were then communicating with Mr Siri, and the timing of events also indicates that the police officers would have been unaware of the formal complaint contained in that letter.
13. Following the contact with Mrs Kenneth, the police officers set off in their vehicle towards Mr Siri's house but on the way saw him driving in the opposite direction into town. They turned the vehicle around and followed Mr Siri to the Reserve Bank where Mr Siri parked. The police vehicle was parked in front of Mr Siri's vehicle. They had not been waiting at the Bank for Mr Siri as he says in his oral evidence. Sergeant Sandy says he alighted from the police vehicle and approached Mr Siri. He said he explained why they were there and told him that the A/DG wants them to bring back the files. Sergeant Sandy says Mr Siri agreed to return the files saying they were safe, and invited the police to follow him to his house so he could return them. However, Mr Siri asked that the police wait until his wife finish work, then go to his house. Sergeant Sandy agreed. The police waited. They then followed Mr Siri's car to his house. Sergeant Sandy's accounts of events at the Reserve Bank are corroborated by the other three police officers.
14. On arrival at Mr Siri's house, Sergeant Sandy says that Mr Siri called the police officers inside his house and showed them the files on top of a freezer. Sergeant Sandy, who ordinarily works



in the Forensics Office, says he took photos inside the house to use as evidence and did so with the authority of Mr Siri. He agrees that Mrs Siri asked that the photos not be posted on the media. As the police were leaving Mrs Siri said she was going to report them to the police. In her oral evidence Mrs Siri says she was cross because the police had taken photos of her house and was concerned the photos would be published on the social media.

15. Each of the other three police officers in their evidence confirm that Mr Siri invited them into the house. Constable Nimisa says he stayed with the police vehicle but the other two police officers went inside the house with Sergeant Sandy.
16. The officers who went into their house do not deny that Sergeant Sandy looked about inside the house but they, like Sergeant Sandy, deny that a physical search was undertaken.
17. All police officers deny they engaged in threatening conduct but do not deny that Mr Siri and his wife were asked to wait outside when the police officers went in to collect the files. That the exchange between the police and Mr Siri was not aggressive and was not threatening in the way they alleged is supported by the evidence of Ms Romabeth Siri. She says she was lounging on the couch in the living room watching television when her parents pulled up at the veranda. She said she was not paying much attention but was taken back when she saw her father showing three police officers into the living room. In her oral evidence she said her father also showed them his bedroom and the storeroom. She watched from the couch as Sergeant Sandy checked her parents' room and then their storage room. Had the police been conducting a formal police search of the house, as Mr and Mrs Siri contend, it is most unlikely that Sergeant Sandy would have acted in the apparently casual way he did, or would have done so whilst a member of the family was still on the lounge in the living room watching. Ms Siri says it was her mother who called her out onto the veranda and instructed her to wait outside.

Discussion – Findings

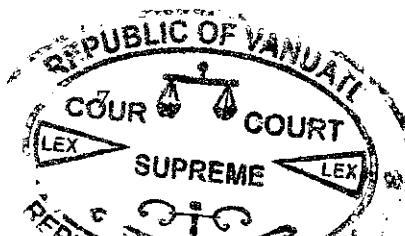
18. Mr and Mrs Siri's account of events seek to paint a frightening picture of four police officers waiting for Mr Siri in town as if he were a wanted criminal, confronting him at the bank, and then keeping him under formal police escort as their vehicle drove to his house. Once at his house, they were in effect, confined outside whilst the police conducted an unlawful search.
19. The police evidence, and that of Ms Romabeth Siri on the other hand gives a quite different picture. It was only by chance that the four police officers were involved. They were redirected from another job. When they recognise Mr Siri driving into town it seems they merely follow him in an ordinary way as they did not attract his attention. At the bank they explained why they were there, to collect the files. Mr Siri's account that an officer said "*drive straight to your home, we will follow you*" does not reflect the accepted fact that Mr Siri asked the police to wait, which they did, and then simply followed Mr Siri's vehicle to his house.



20. The evidence of Ms Romabeth Siri confirms that the police were invited into the house by Mr Siri, and in her oral evidence she said that her father also showed the police into Mr Siri's bedroom and the storeroom. Photos were taken in the living room, presumably to show the location of the files that were to be retrieved. It is standard and good practice for the police to record the facts in issue in this way. This is done for the protection of all parties in case there is a later dispute about what happened.
21. Whilst Mr and Mrs Siri were asked to wait outside whilst the police were in the house recovering the files, they were not in any formal sense restrained whilst outside the house. It seems simply that they were asked to stay outside and they complied with that request. If they interpreted this request as threatening, an actual threat is denied by each of the police officers, and the evidence of Ms Romabeth Siri does not convey a picture of their being a threatening atmosphere outside the house.
22. Sergeant Sandy may have overstepped the purpose of his entry into the house by entering and looking about the bedroom and the storeroom, although, on the evidence, he did so after being shown these rooms by Mr Siri. On the evidence, the observations of Sergeant Sandy were short and did not involve any touching or physical searching.
23. Once the files were in the possession of the police, they left.
24. Mr Siri's evidence that he tendered his resignation in the days following his interaction with the police is something which he did at his own volition. It is not a complaint about the conduct of the police. The later filing of a disciplinary report by the A/DG was something that occurred independently of the police activities and is not a complaint against them. Moreover the complaint concerns matters besides the unauthorised removal of the files by Mr Siri which are irrelevant to the events of 31 January 2019.

Application of law – Article 5(1)(b), (c), (d), (i) and (j) of the Constitution and Section 4(2)(a) and (b) of the Police Act [CAP. 105]

25. In considering whether a particular right or freedom enumerated in Art. 5(1) has been infringed it is important to recognise that the guarantee of these rights and freedoms is qualified by the opening provisions of the Article. The rights and freedoms are "*subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health ...*".
26. That qualification is relevant in this case as the police were acting in the course of a legitimate complaint that sensitive Committee of Inquiry files had been removed without authority from the Ministry officers, and were acting in pursuit of their functions to maintain law and order and protect property: s.4(2)(a) and (b) of the Police Act [CAP. 105].



27. Turning now to the submissions of counsel for Mr Siri directed to each of his rights and freedoms pleaded in the petition to have been infringed.

(1) **Liberty: Art. 5(1)(b) and Security of Person: Art. 5(1)(c).**

28. The petitioner's final submissions do not address these rights, but on the evidence these rights have not been infringed. Simply to ask Mr and Mrs Siri to remain outside the house whilst the files were retrieved, a request that they complied with, did not infringe their liberty or security of person.

(2) **Protection of the Law: Art. 5(1)(d)**

29. Counsel submits this right was infringed as the police acted on the A/DG's complaint as a criminal offence and not as an administrative offence. Counsel submitted that the A/DG could have taken other less formal action such as making a phone call to the petitioner asking for the return of the files. This submission overlooks the evidence that attempts were made to contact the petitioner by phone, but calls to him were not answered.

30. I do not think it matters how the complaint made by the A/DG is characterised. In substance she was seeking the recovery of the files, and to enlist the aid of the police was reasonable and appropriate in these circumstances. The police then proceeded to recover the files which I consider was within their powers under s.4 of the Police Act.

31. It is submitted that the right to protection of the law was infringed because the petitioner's house was searched without a search warrant being first obtained. I consider this submission is without substance because the police were invited into the house and shown the rooms that were entered. The police did not more than look in the rooms following an invitation.

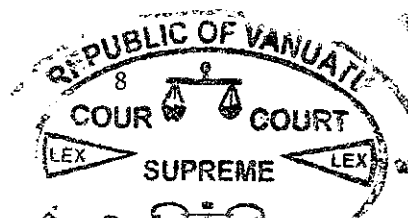
(3) **Freedom of Movement: Art. 5(1)(i)**

32. I do not consider this right was infringed. Mr Siri was never placed under arrest. He was never touched by the police. He drove voluntarily to his home, and once there voluntarily remained outside for a short time when asked to do so.

(4) **Protection of the Privacy of the Home: Art. 5(1)(j)**

33. In my judgment this right was not infringed. The police were invited into the house and entered on invitation for a legitimate purpose. They did not require a search warrant in these circumstances. Taking of photographs angered Mrs Siri. However it was normal police practice to photograph sites and objects relevant to the tasks at hand. I consider the photos were lawfully taken in the legitimate public interest.

(5) **Equal Treatment under the Law or Administrative Action: Art. 5(1)(k)**



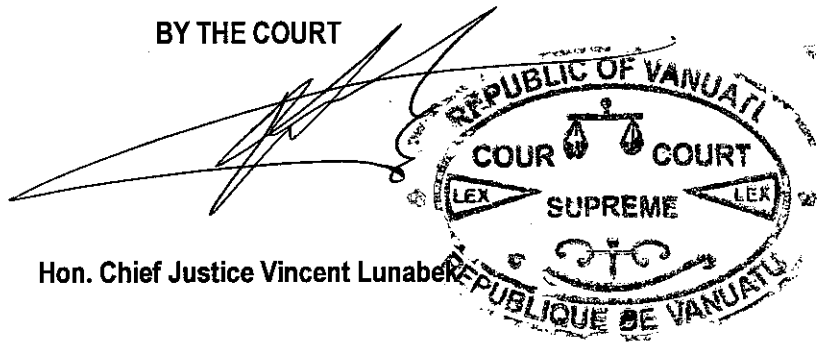
34. It is submitted that this right was infringed for the same reasons as the right to protection of the law under Art. 5(1)(d) was infringed. For the reasons given for finding there was no infringement of Article 5(1)(d) I hold that there was no infringement of Article of 5(1)(k).

Result

35. For these reasons, I find that the petitioner has not established any infringement of his rights or freedoms guaranteed under Article 5(1) of the Constitution, and I dismiss the petition.
36. Costs should follow the event. I order that the petitioner pay the respondent's costs which I fix at VT75,000 including disbursements.

DATED at Port Vila, this 22nd day of July, 2024.

BY THE COURT



Hon. Chief Justice Vincent Lunabe