

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

Civil  
Case No. 23/3036 SC/CIVL

**BETWEEN:** **Gerald Malere**  
Claimant

**AND:** **Republic of Vanuatu**  
Defendant

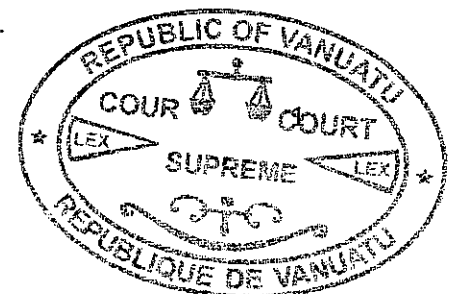
*Date:* 12 September 2024  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr R. Rongo  
Defendant – Attorney General

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**DECISION AS TO DEFENDANT'S APPLICATION TO STRIKE OUT THE CLAIM**

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1. Claim filed on 6 November 2023. Defence filed on 24 June 2024. On 19 July 2024, Defendant filed Application to Strike Out (the 'Application'). The Claimant filed submissions in response on 14 August 2024 and 16 August 2024 (duplicate). Also on 16 August 2024, the Claimant filed the Sworn statement of Gerald Malere in support.
2. The grounds of the Application are that no cause of action is disclosed as the Claimant was interdicted from duty under s. 64 of the *Police Act* [CAP. 105] (the 'Act') and the half salaries he was entitled to have been paid to him. Further, that the Claim is premature as the substance of the interdiction is yet to be finally determined. Finally, that the Claim is an abuse of process because any challenge against the exercise of power under s. 64 of the Act should be by way of judicial review.
3. Despite the Claim alleging 'unlawful suspension', it refers to the 'suspension' being made under s. 64 of the Act which provides for the Commissioner of Police to interdict from duty a subordinate officer. It is alleged that the Claimant was interdicted without pay during the period of his interdiction.



4. In para. 2 of the Defence, it was pleaded that the Claimant was interdicted from duty pursuant to s. 64 of the Act. It was also admitted that the Defendant was wrong to interdict the Claimant without pay but that the half salary that he was entitled to during the period of interdiction has already been paid to the Claimant. It was also pleaded that whether or not the Claimant is entitled to the balance of his salary will depend on the outcome of the disciplinary matter against him.
5. It is therefore common ground between the parties that the Claimant was interdicted from duty. Further, that he was entitled to half salary during the period of interdiction but that he was interdicted without pay. The State has pleaded in the Defence that it was wrong to interdict the Claimant without pay but that the half salary that he was entitled to during the period of interdiction has already been paid to him.
6. I agree that the Claim seeking the balance of pay withheld during the period of interdiction is premature as whether or not it will be paid to the Claimant is dependent on the outcome of the disciplinary matter against him.
7. Otherwise, the Claim alleges 'unlawful suspension' and seeks an award of VT20,000,000 damages and payment of utility bills, an NBV loan interest and school fees. However, this is not a judicial review proceeding in which the Court may declare that a decision taken by the relevant decision-maker is unlawful. Further, there is no pleading of a cause of action in tort which if proved would sound in an award of damages. Finally, there is no provision in the Act or other legislation (and certainly no pleading in the Claim to that effect) that if an officer is interdicted from duty and their salary is withheld, that they have a statutory cause of action to sue for damages.
8. In the circumstances, there is no reasonable cause of action disclosed in the Claim and therefore **grant** the Defendant's Application to Strike Out.
9. The Claim is **struck out**.
10. The Claimant is to pay the Defendant's costs of the proceeding fixed summarily at VT75,000 within 28 days of service of this Decision.
11. The 8 October 2024 and 29 July 2025 listings are **vacated**.

**DATED at Port Vila this 12<sup>th</sup> day of September 2024  
BY THE COURT**

  
Justice Viran Molisa Trief

