

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PMB 081
Port Vila
Vanuatu

**PUBLIC REPORT
ON THE
APPOINTMENT OF DEPUTY TOWN
CLERK - LUGANVILLE
MUNICIPAL COUNCIL**

7 January 2003

1031/2003/01

**PUBLIC REPORT ON THE
APPOINTMENT OF DEPUTY TOWN CLERK -
LUGANVILLE MUNICIPAL COUNCIL**

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1. JURISDICTION

- 1.1 The Constitution, the Ombudsman Act and the Leadership Code Act allow the Ombudsman to look into the conduct of government, government agencies, related bodies, and Leaders. This includes Luganville Municipal Council, its committees and its councillor members
- 1.2 The Ombudsman can also look into defects in laws or administrative practices.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this paper is to present the Ombudsman's finding as required by the Constitution, Ombudsman Act and Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts about the procedure followed by Luganville Municipal Council when it recruited Mr Leo Tamata as deputy Town Clerk in April 2002, determine whether procedures required by law were followed and whether there is evidence that councillors breached the Leadership Code Act.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

Relevant parts of the following laws are reproduced in **Appendix E**.

Ombudsman Act No.27 of 1998
Municipalities Act [CAP 126]
The Luganville Municipal Council (Staff Regulations) Order
Leadership Code Act No.2 of 1998

4. OUTLINE OF EVENTS

- 4.1 At some time prior to 11 April 2000, an informal decision was made by some of the then councillors to appoint Mr Leo Tamata to the position of deputy Town Clerk of Luganville Municipal Council. The then Town Clerk informed the Ombudsman, in a letter dated 1 February 2001, that it had been a "political decision" agreed to by the three running political parties and that the VP and UMP members of the previous Council had also decided to make the appointment (see **Annexure A**).
- 4.2 At a meeting of the Council's finance committee on 11 April 2000, the recruitment of **Mr Leo Tamata** as deputy Town Clerk was endorsed and approved (see **Annexure B**).
- 4.3 The members of the committee present at the 11 April 2000 meeting are listed in **Annexure C**.
- 4.4 The Town Clerk confirmed that the position had not been advertised before the appointment was made (see **Annexure A**).

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of the public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 No responses were received to the working paper.

6. FINDINGS

6.1 Finding 1: **The Council failed to follow the legal procedure set out in its own staff regulations when appointing Mr Leo Tamata as deputy Town Clerk.**

6.1.1 The Council's staff regulations require that any recruitment notice must be advertised publicly on the Council's notice board, as well as in the Government's news media.

6.2 Finding 2: **The procedure followed by the Council in appointing the deputy Town Clerk also showed poor administrative practices in general.**

6.2.1 Other applicants were given no opportunity to apply.

6.2.2 There was no transparency in the selection process, which appears to have taken place informally and without objective selection criteria.

6.2.3 It seems that Mr Leo Tamata was selected for political reasons rather than on his experience, qualifications and or on merit.

6.3 Finding 3: **The Ombudsman finds there is evidence that members of the Council's finance committee who formally endorsed the appointment breached the Leadership Code Act.**

6.3.1 The Leadership Code Act required Leaders to obey the law, and not obeying the law is a breach of the Act punishable by a fine not exceeding VT5 million or imprisonment not exceeding 10 years.

6.3.2 Additional penalties such as dismissal, disqualification and loss of employment benefits may also be imposed by the Court on conviction.

7. RECOMMENDATIONS

7.1 Recommendation 1: Since the councillors of Luganville Municipality remain suspended at the date of this report - the Municipality being instead administered by a commissioner, - the Ombudsman recommends that the Commissioner should review current internal office administrative procedures for improvements to the administration of Luganville Council by its councillors, especially in relations to appointment of the Town Clerk.

7.2 Recommendation 2: The Ombudsman recommends that the Public Prosecutor consider whether charges under the Leadership Code Act should be laid against the councillors involved in the breaches of laws mentioned in this report.

Dated the 7th day of January 2003.

Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. APPENDICES

- A** Copy of letter from Luganville Municipal Council to Ombudsman dated 1 February 2001.
- B** Copy of extract from minutes of Council's finance committee meeting held 11 April 2000.
- C** Copy of extract from minutes of Council's finance committee meeting held 11 April 2000 showing attendees.
- D** Copy of letter from Luganville Municipal Council to Ombudsman dated 18 July 2002.
- E** Relevant laws

**MUNICIPALITÉ
DE
LUGANVILLE**

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**MUNICIPALITY
OF
LUGANVILLE**

P.O. Box 232
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Republic of Vanuatu

Ref: BK/20.9/64/01/bm

1st February 2001

RECEIVED
15.02.01

The Ombudsman
Office of the Ombudsman
PO Box 378
Luganville
Santo

Dear Sir

**RE: ALLEGED NON ADVERTISEMENT OF THE POSITION OF DEPUTY
TOWN CLERK**

Terribly sorry for the delay of our response and the inconveniences that may have caused your high office.

Response are as follows :-

1. No advertisement have been publish
2. Attached is the minute of the endorsement of the deputy town clerk.
3. It was a political decision to recruit a deputy town clerk.
4. It has been signed by the three running political parties to recruit a deputy town clerk.
5. Previous Council between VP and UMP also agreed to recruit a deputy town clerk.

Thank you

Yours Sincerely,

Batick Kan
TOWN CLERK

blong Mayor and wan blong Town Clerk. Hemi look nogud long wan local authority olsem Luganville Municipal blong Town Clerk hemi sharem truck wetem ol officer mo labourer.

Councillor Gaetan Pikioune - mi now move blong Administration i replacem car blong Mayor mo tekem two new cars.

Councillor Kalmer Vocor - hemi secondem.

ITEM 8 : SUBMISSION OF LMC BUDGET

Town Clerk - Advise we mi casem long Audit. Hemi askem Council sapos after long audit report then Council i save basem new budget blong Council long hem.

Councillor Kalmer Vocor - Council i stap operate illegally wetem fund blong hem because Minister i never signem budget blong 1999 - 2000 mo naoia bambae Council i preparem budget 2000-2001, Minister oli should givem Council in writing why oli no save signem budget blong 1999-2000. Hemi blong guarantee Council.

Councillor Gaetan Pikioune - mi now move blong Mayor mo Town Clerk i travel long Vila blong askem Minister blong signem budget blong Council 1999-2000 budget.

Councillor Kalmer Vocor - hemi secondem.

Vote pass unanimously

OTHER BUSINESS

1. Approval of Recruitment

Councillor Gaetan Pikioune - olsem recruitment i tekem place finish hemi proper blong this Council i endorsem mo givim approval long these new recruitment blong Deputy Town Clerk mo Office Supervisor.

Deputy Mayor Louis Vatu - emi move blong Council i acceptem tufala recruitment wei stap.

Appendix C

FINANCE MEETING WEI SITDAON LONG NAMBA 11/04/2000
TIME - 4:15 PM LONG LMC CHAMBER

<u>PRESENT</u>	-	Lord Mayor Sam Toa	-	Chairman
	-	Deputy Mayor Louis	-	Member
	-	2nd Deputy Mayor Joe Narua	-	Member
	-	Councillor George Tabimal	-	Member
	-	Councillor Gaetan Pikioune	-	Member
	-	Councillor Jack Avock	-	Member
	-	Councillor Kalmer Vocor	-	Member

OPENING PRAYER - Councillor Jack Avock

IN ATTENDANCE - Town Clerk - Batick Karl
- Acting Treasurer - James Ulas

OTHER BUSINESS ADDED

1. Approval of recruitment
2. Ban of Occassional Licence

Councillor Kalmer Vocor - emi move to accept to ol agendas.
Deputy Mayor Louis Vatu - emi secondem.

Vote all in favour

Lord Mayor Sam Toa - emi advisem councillors se previous minute
babae yumi considerem olsem minutes blong
Finance meeting blong this Council.

ITEM 1 : APPROVAL BLONG ADVERTISEMENT LMC TREASURER

Lord Mayor Sam Toa - mi think advertisement i bin go aot finish
mo Council i should givim endorsement mo
givim approval blong hem.

Councillor Gaetan Pikioune - hemi move blong Council i acceptem
advertisement blong recruitem wan
new LMC Treasurer mo Councillor
Kalmer Vocor hemi secondem.

Vote all in favour

APPROVED

16/06/2000

**MUNICIPALITÉ
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LUGANVILLE**

P.O. Box 232
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Republic of Vanuatu

Our Ref: PB/395/20.9/02/jt

18th July 2002

To Mr Iyan Bill
Ombudsman Office
P O Box 378
Luganville
Santo

Dear Sir,

RE: APPOINTMENT OF Mr LEO TAMATA AS DEPUTY TOWN CLERK

Refer long investigation blong yu dated 11th July 2002 about subject antap office blong mi iglad blong ansarem ol points we yu indicatem blong yu.

1. Emi no bin wan Council meeting but emi wan Finance Comiti meeting wei bin sitdaon long 11th April 2000 (Annex A).
2. Members blong working Comiti ia i attack long (Annex B)
3. Comiti ia emi bin established accordance long section 2 subsection 2(i) under long staff regulation order No 5 of 1989.

Hopefully office blong mi i ansarem enquiry blong yu respectively and for more information, call in long office.

Yours Sincerely,

Prosper Buletare
ACTING TOWN CLERK

Appendix E – Page 1 of 2

OMBUDSMAN ACT NO. 27 OF 1998

DEFINITIONS

- 1 "government agency" means:
- ...
- (c) a municipal council; or
 - (d) a department, agency or instrumentality of the Government or a local government council or a municipal council;

MUNICIPALITIES ACT [CAP 126]

STAFF REGULATIONS

- 23.(1) A council shall make internal regulations, to be known as staff regulations, which subject to the provisions of this Act, may make provisions for all or any of the following matters relating to persons in the service of the council:
- ...
- (b) appointments, promotions, leaves, termination or appointments and dismissals;

THE LUGANVILLE MUNICIPAL COUNCIL (STAFF REGULATIONS) ORDER NO. 3 OF 1989

CHAPTER 2 APPOINTMENTS – ELIGIBILITY

- 2.4 Any recruitment notice for any post in the service of the Council including temporary employment or any other employment shall be advertised publicly on the Council's notice board and also on the Government's news media.

LEADERSHIP CODE ACT NO. 2 OF 1998

LEADER'S BEHAVIOUR

- 3 A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership.

DUTIES OF LEADERS

- 13(1) A leader must:
- (a) comply with and observe the law;
 - (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;
 - (c) comply with and observe the duties obligations and responsibilities established by this Code or any other enactment that affects the leader; and
 - (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty.

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BREACH OF LEADERSHIP CODE

- 19 A person who does not comply with Part 2, 3 or 4 is guilty of a breach of this Code and is liable to punishment in accordance with Part 6.

OBEYING THE LAW

- 28 A leader acting in his or her capacity as a leader who fails to abide by an enactment that imposes on the leader a duty, obligation, or responsibility is in breach of this Code.

SPECIFIC PROVISIONS

- 29 Without limiting the generality of section 28 a leader who fails to abide by the provisions of an Act that provides for:
- (a) the public service; or
 - (b) public finance or economic management; or
 - (c) expenditure review committee or audit functions; or
 - (d) government contracts or tenders;
- is in breach of this Code.

FINE OR IMPRISONMENT

- 40(1) A leader who is convicted of a breach of section 19, or 20, or 21, or 22, or 23, or 24, or 26 or 27 is liable to—
- (a) a fine not exceeding VT5,000,000; or
 - (b) imprisonment for a period not exceeding 10 years.
- 40(3) A leader who is convicted of a breach of this code for which no specific penalty is provided is liable to a fine not exceeding VT2,000,000.

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