

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

**PUBLIC REPORT
ON THE
UNREASONABLE DELAY BY
LUGANVILLE MUNICIPAL COUNCIL
IN FINALISING STAFF
DISCIPLINARY PROCEEDINGS**

18 September 2003

3048/2003/23

**PUBLIC REPORT ON THE
UNREASONABLE DELAY BY
LUGANVILLE MUNICIPAL COUNCIL
IN FINALISING STAFF DISCIPLINARY PROCEEDINGS**

SUMMARY This report describes the unlawful action by Luganville Municipality in keeping an employee suspended for over five years instead of finalising disciplinary proceedings against him. Even though regulations only allow suspension for up to six months, the worker remains suspended at the time of preparing this report.

In August 1997, Mr George Vora received a letter from Mr Karl Batick, concerning his suspension. In October 1997, Mr Vora asked for a meeting with Mr Havo Moli, Commissioner of Luganville Municipality to discuss his suspension. Mr Vora met with three members of a committee formed to consider his suspension on 6 October 1997. On December 2001, Mr Vora raised the matter by letter with Mr Paul Hakwa, however nothing happened. The Town Clerk sent Mr Vora a letter dated 26 February 2002 stating that the issue of his suspension would be discussed at the next council meeting. Mr Vora approached Public Solicitor Mr Hilary Toa who wrote to Mr Paul Hakwa twice in relation to the suspension on 5 July 2002 and 21 August 2002. On 26 August 2002, Mr Paul Hakwa issued a letter to Mr Hilary Toa concerning Mr Vora's suspension and termination.

Mr Vora has not yet been terminated as an employee.

The Ombudsman finds that the Luganville Municipal Council failed to follow proper disciplinary procedures when disciplining Mr Vora.

The Ombudsman finds that there is evidence showing that Lungaville Municipal Council has breached regulation 6.5 (e) of the Municipalities staff regulation order, in leaving Mr Vora suspended for over five years.

The Ombudsman therefore recommends that:

- Luganville Municipal Council formally terminate Mr Vora's employment;
- Luganville Municipal Council calculate the entitlements due to Mr Vora on his termination and, pay them to him;
- Luganville Municipal Council apologise to Mr Vora for the unreasonable delay in finalising his termination; and
- The Town Clerk and Lord Mayor note the fact the staff can only be suspended for up to six months and ensure that any further disciplinary action is completed promptly.

TABLE OF CONTENTS

SUMMARY.....	2
1. JURISDICTION.....	4
2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED.....	4
3. RELEVANT LAWS, REGULATIONS AND RULES.....	4
4. OUTLINE OF EVENTS.....	4
5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM.....	5
6. FINDINGS.....	6
7. RECOMMENDATIONS.....	6
8. INDEX OF APPENDICES.....	7

1. JURISDICTION

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the Luganville Municipal Council. The Ombudsman can also look into defects in laws or administrative practices, including disciplinary procedures of the Municipalities.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the findings of the Ombudsman as required by the Constitution and the Ombudsman Act.
- 2.2 The scope of this investigation is to establish the facts about the delay in finalising disciplinary action taken by the Luganville Municipal Council against Mr George Vora and to determine whether the action was unlawful and/or unreasonable.
- 2.3 This report is not concerned with the Council's initial decision to suspend Mr Vora or the question of whether he committed the offences alleged against him.
- 2.4 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 J**:

MUNICIPALITIES STAFF REGULATION ORDER

4. OUTLINE OF EVENTS

- 4.1 On 23 August 1997, Mr George Vora received a letter from Karl Batick, Town Clerk of Luganville Municipality, concerning his immediate suspension as a Council employee (see **Appendix A**).
- 4.2 On 2 October 1997, Mr Vora asked for a meeting with Mr Havo Moli, then Commissioner of Luganville Municipality, to discuss his suspension.
- 4.3 As a result of the meeting, Mr Vora subsequently met with three members of a committee formed to consider his suspension on 6 October 1997.
- 4.4 On 2 December 2001, Mr Vora raised the matter by letter with Mr Paul Hakwa (see **Appendix B**) who was Commissioner of Luganville Municipality, however nothing positive happened.
- 4.5 The Town Clerk sent Mr Vora a letter dated 26 February 2002 (see **Appendix C**) stating that the issue of his suspension would be discussed at the next council meeting, after a report had been prepared. The letter also stated that, "Commission mo administration i considerem matter ia olsem priority blong solvem as soon as possible." However, no action was taken.
- 4.6 Mr Vora then approached Public Solicitor Hilary Toa who wrote to Mr Paul Hakwa twice in relation to the suspension on 5 July 2002 and 21 August 2002 (see **Appendices C and D**).
- 4.7 On 26 August 2002, Mr Paul Hakwa issued a letter to Mr Hilary Toa concerning Mr George Vora's suspension and termination (see **Appendix E**).

- 4.8 During an interview with an officer of the Ombudsman on 30 April 2003, Mr Andrew Ala, a member of the committee which interviewed Mr Vora on 6 October 1997, said that Mr Vora was supposed to have received a termination letter, but no decision had been made about who would prepare and send the letter. He thought that each member of the committee assumed one of the other members had already sent an official termination letter.
- 4.9 In response to the working paper issued before this public report was finalised, Mr Andrew Ala stated that the then Town Clerk, Mr Karl Batick, was supposed to have issued a termination letter (see **Appendix G**).
- 4.10 At the date of preparing this public report (August 2003) Mr Vora remains "suspended" and has not been officially terminated from his employment with Luganville Municipal Council, nor have his entitlements been determined and (if any) paid.

5. RESPONSES BY THOSE WITH FINDINGS 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 this public report to give another opportunity to respond. Below are the responses that were received in response to the working paper.
- 5.2 A letter dated 17 July 2003 (see **Appendix G**) was received from the Environmental Health Officer, Mr Andrew Ala. Mr Ala stated that the Town Clerk, Mr Karl Batick was supposed to have issued a termination letter to Mr Vora following that meeting. He also requested other changes to paragraph 4.8 above, which the Ombudsman has declined to make as they are not supported by other evidence.
- 5.3 A letter dated 18 July 2003 (see **Appendix H**) was received from the Luganville Lord Mayor, Mr Paul Hakwa. He stated that, at the time of the suspension, Luganville Municipality was managed by a commission, consisting of Mr Havo Moli and Mr Karl Batick as Town Clerk.
- 5.4 Mr Hakwa also attended the Ombudsman's Office to discuss the matter with a member of staff. He made four points:
- He was not very familiar with the suspension, as it had happened before he became commissioner;
 - He felt the suspension was the responsibility of the commission in charge of Luganville Municipality at the time of the suspension;
 - The report should explain the difference between the alleged misconduct by Mr Vora leading to his suspension and the nature of the disciplinary action taken subsequently; and
 - In the context of the letter reproduced as **Annexure F**, he stated that he believed a termination letter had already been issued to Mr Vora, hence his comment to this effect in the letter.
- 5.5 A letter dated 22 July 2003 (see **Appendix I**) was received from Mr George Vora. In his response, Mr Vora referred to **annexure F** and reiterated that he had never received any termination letter from the Luganville Municipality.
- 5.6 The Ombudsman did not receive any response from the Minister of Internal Affairs, Mr Joe Natuman, or the Town Clerk of Luganville Municipality Council, Mr Barry Illaisa.

6. FINDINGS

- 6.1. Finding 1: The Ombudsman finds evidence that the Luganville Municipal Council failed to follow proper disciplinary procedures when disciplining Mr Vora.
- 6.2. Finding 2: There is evidence that Luganville Municipal Council has breached regulation, 6.5 (e) of the Municipalities staff regulation order in leaving Mr Vora suspended for over five years

7. RECOMMENDATIONS

Based on the above findings, the Ombudsman makes the following recommendations:

- 7.1. Luganville Municipal Council formally terminate Mr Vora's employment.
- 7.2. Luganville Municipal Council calculate the entitlements due to Mr Vora on his termination and pay them to him.
- 7.3. Luganville Municipal Council apologise to Mr Vora for the unreasonable delay in finalising his termination.
- 7.4. The town Clerk and Lord Mayor note the fact that staff can only be suspended for up to six months and ensure that any further disciplinary action is completed promptly.

Dated the 18th day of September 2003.

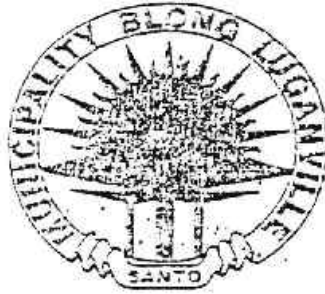
Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. **INDEX OF APPENDICES**

- A Letter dated 23.08.97 from Mr Karl Batick to Mr George Vora
- B Letter dated 02.12.01 from Mr George Vora to Mr paul Hakwa
- C Letter dated 26.02.02 from Mr Prosper Buletare to Mr George Vora
- D Letter dated 05.07.02 from Mr Hilary Toa to Paul Hakwa
- E Letter dated 26.08.02 from Mr Hilary Toa to Paul Hakwa
- F Letter dated 26.08.02 form Mr Paul Hakwa to Mr Hilary toa
- G Letter dated 17.07.03 from Mr Andrew Ala
- H Letter dated 18.07.03 from Mr Paul Hakwa
- I Letter dated 22.07.03 from Mr George Vora
- J Relevant Laws

MUNICIPALITE
DE
LUGANVILLE

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MUNICIPALITY
OF
LUGANVILLE

P.O. Box 232
Tel. 36646 / 36840
Facsimile : 36648
Republic of Vanuatu

Mr George Wora
Acting Treasurer
Luganville Municipal Council
Luganville
Santo

23rd August 1997

Our Ref : BK/ns
441-4.9
cc : 3.6

Dear Mr G. Wora,

YOUR IMMEDIATE SUSPENSION AS COUNCIL EMPLOYEE

Please refer to the attached self-explanatory letter. I am directed by the Honourable Robert David Karike Honourable Minister of Home Affairs and Decentralisation responsible directly for the two Municipalities to execute the following instructions :-

- (i) Suspend you without pay until further notice effective today 23rd August 1997.
- (ii) Remove all Municipal Council assets such as car keys, office door keys, cash box keys and any other Municipal Council properties that may be at your home or currently in your possession.

Please after reading your letter of suspension I would kindly ask you to transfer all Council assets and properties as indicated in part (ii) of this letter immediately to Mr Oscar Buleuru Treasurer, LMC.

Terribly sorry for the inconvenience that this letter may have caused.

Yours Sincerely,



BATICK KARL
TOWN CLERK LUGANVILLE MUNICIPALITY

cc : Honourable Minister of Home Affairs
Commissioner, LMC

GEORGE WORAHEJE
C/- LYDIA JACQUIER
PO BOX 81
LUGANYILLE
SANTO.

MR. PAUL HAKWA
THE COMMISSIONER
LUGANYILLE MUNICIPAL COUNCIL
LUGANYILLE
SANTO

2ND DECEMBER 2001

Dear Sir,

RE UNDER SUSPENSION 23RD AUGUST 1997

With great honour and respect, I want to state out some very important points concerning the above subject.

I am very sorry to see that I've been under suspension for almost 4 years and 3 months without receiving any official letter from the Council endorsing my suspension.

The Municipal Council staff Regulation order No. 5 of 1998 chapter 6 stated very clear when an officer is under discipline.



It seems very sad to me to saw that the former Mayors and Town Clerks deny my Suspension. I try my very best to discuss my Suspension with the former Mayors & Town Clerks, but it seems that they know nothing about my Suspension.

It seems that the Council only apply 15% of chapter 6 (staff Regulation) concerning my Suspension after the Council gave me the Opportunity on the 6th October 1997 to answer some charges made against me by Police and Mrs. Violet Willie.

The Municipal Council staff Regulation Order No. 5 of 1998 Chapter 6 stated very clear when an officer is under Suspension.

Points

1. Chapter 6 Part 4. I never received any official letter from the Council endorsing my Suspension.

2. Chapter 6 Part 5. I never received any official letter from the Council specific my Suspension.

3. Chapter 6 Part 5 (e) My Suspension is over due and I prefer the Council to terminate my appointment.

a) I was Under Suspension on the 23rd August 1997 until today the Council never put any effort to deal with my Suspension. Therefore I don't see any point why I'm under Suspension. It seems that most of the charges made against me are false and personal.

It shows out very clearly that my suspension is out of Procedure, and I don't see any point why I'm Under Suspension without salary.

Therefore with my understanding I'm still entitle to received my full Salaries and Allowances during my suspension

I hope that this matter will be solve by your Commission according to the staff Regulation order.

I'm looking forward to an early respon.

Thank you for your understanding and your co-operation will be much appreciated.

Yours Sincerely

George Worahe

GEORGE WORAHESE

**MUNICIPALITÉ
DE
LUGANVILLE**

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**MUNICIPALITY
OF
LUGANVILLE**

P.O. Box 232
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Republic of Vanuatu

Our Ref: PB/127/3.1/02/sa

26th February, 2002

To George Worahese
C/- Lydia Jacquier
P O Box 81
Luganville
Santo

Dear Sir,

RE: ISSUE BLONG SUSPENSION DATED 23RD AUGUST 1997

Mi raet nomo refer long leta blong yu dated 2nd December, 2001 about subject antap.

Folem Commission meeting we ibin sitdaon long 28th December, 2001 Commission i tekem decision se issue ia bae Administration i compilem report mo presentem long next meeting (Attach copy blong discussion long meeting).

Commission i askem yu blong yu patient until Commission i tekem wan final decision long matter ia long next commission meeting.

Commission mo administration i considerem matter ia olsem priority blong solvem as soon as possible.

Thank yu long understanding.

Yours faithfully,

Prosper Buletare
ACTING TOWN CLERK

Cc : Commissioner, Mr Paul Hakwa
: EHO, Mr Andrew Ala

GOVERNMENT OF THE REPUBLIC OF VANUATU



P.O. BOX 794
PORT VILA
VANUATU
SOUTH WEST PACIFIC

Cable: PUBSOL
Telex: 1040 VANGOV
Tel: 23450
Fax: 23451

OFFICE OF THE PUBLIC SOLICITOR

Our Ref:

Date: 5th July 2002

Your Ref:

The Commissioner
C/- Mr. Paul Hakuwa
Luganville Municipal Council
Santo.

Dear Sir,

RE: SUSPENSION OF GEORGE WORAHESI

We are writing for and on behalf of Mr.
George Worahesi.

Mr. Worahesi was suspended by the
Luganville Municipal Council on 23rd August
1997, and until today he is still under suspension.

May you or someone of your office indicate
the reason for this lengthy suspension and
why nothing has been done about it.

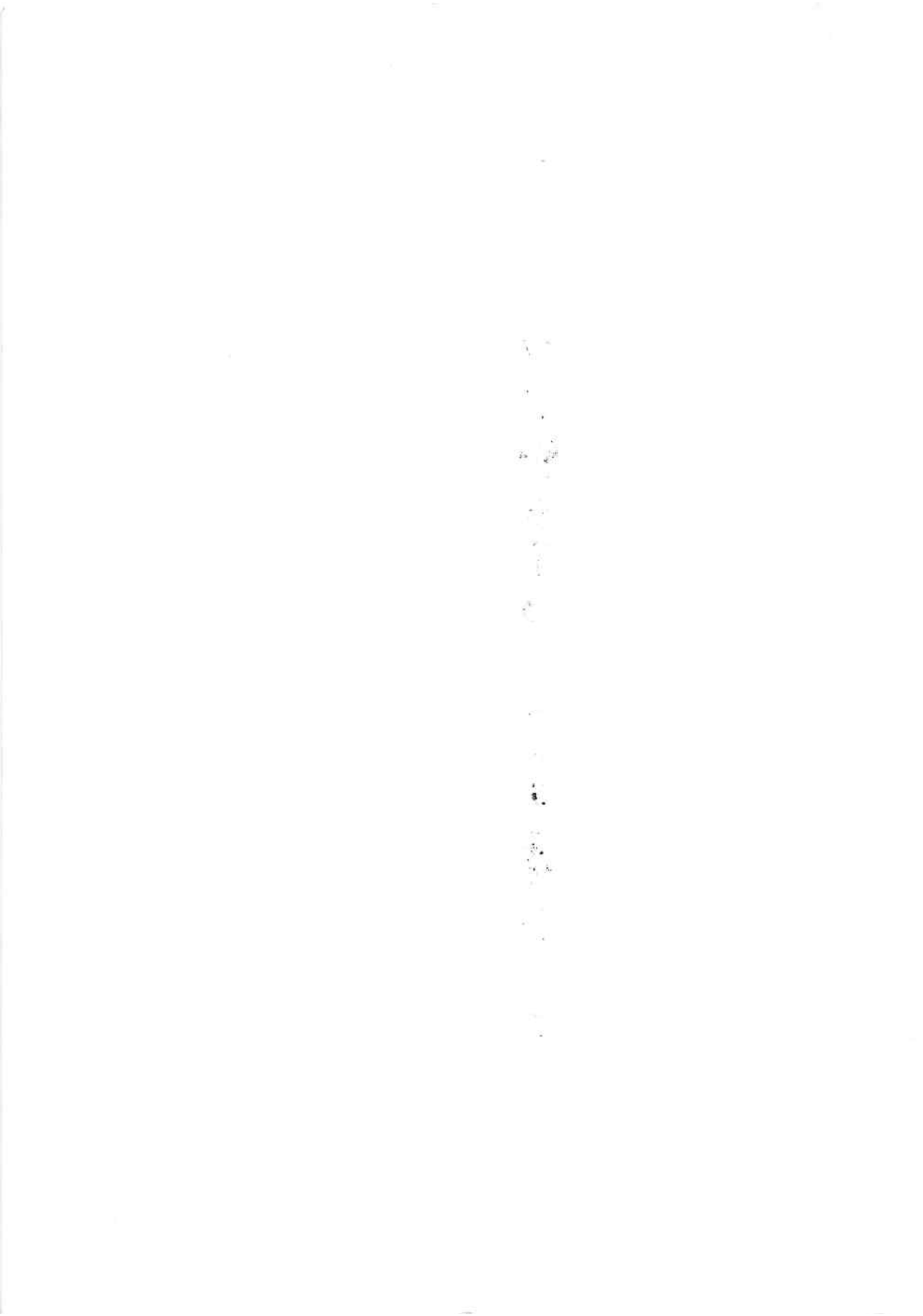
May you respond within the next fourteen
(14) days and if it is possible for Mr.
Worahesi's suspension to be lifted and he
be reinstated immediately with all arrears
salaries backdated to the time when he was
first suspended in 1997.

Yours faithfully,

T. T. G.

T. T. G.
Legal Officer

: : : : : here



Annexure E

GOVERNMENT OF THE REPUBLIC OF VANUATU



P.O. BOX 294
PORT VILA
VANUATU
SOUTH WEST PACIFIC

Cable: PUBSOL
Telex: 0000 VANGOV
Tel: 2140
Fax: 21431

OFFICE OF THE PUBLIC SOLICITOR

Our Ref:

Your Ref:

Date: 21st August, 2002

The Commissioner
Cl-Luganville Municipality
Santo.

Dear Sir,

RE: GEORGE WORAKESE SALARIES

Further to our letter to you dated 5th July, 2002, we have not received a response from you.

Now you respond within the next seven (7) days to our previous letter and what your position is concerning these claims.

Yours Faithfully,

Terry Todd
Legal Officer

cc: George Worakese

MUNICIPALITÉ

DE

LUGANVILLE

Boîte Postale 232

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Annexure F



MUNICIPALITY

OF

LUGANVILLE

P.O. Box 232

Tel: 36646 / 36840

Facsimile: 36648

Republic of Vanuatu

Our Ref : PH/443/4:9/02/jt

26th August 2002

Mr Hilary Toa
Legal Officer
Public Solicitor Office
P O BOX 799
PORT VILA

Dear Sir,

RE :George Worahese's suspension and termination

In response to your letters dated 5/07/02 and 21/08/02 respectively with respect to the above matter, we wish to advise that Mr George Worahese's employment with the Luganville Municipality had been terminated by the Luganville Municipal Commission then based on a monthly accounts report of the Luganville Municipality from May to September 1997 carried out by Mr Keith Wilson Garae, Senior Finance Officer of the Department of Provincial Affairs and findings from an interview between 2 Commission members then (Mr Andrew Ala & Mr Martin Tete) and Mr George Worahese on 7/10/97.

The decision to terminate Mr Worahese was made at a Municipal Commission meeting held on 7/97. (minute attached).

Yours faithfully,

Paul Hakwa
Commissioner



**MUNICIPALITÉ
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Annexure G - 1 of 2



**MUNICIPALITY
OF
LUGANVILLE**

P.O. Box 232
Tel: 36646 / 36840
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Republic of Vanuatu

Our Ref: ABA/327/20.9/03/as

17th July 2003

Mr Hannington Alatoa
Ombudsman
Office of the Ombudsman
PMB 9081
Port Vila



Rec Santo 28.7.03

Dear Sir,

**RE: WORKING PAPER ON UNREASONABLE DELAY BY LUGANVILLE
MUNICIPAL COUNCIL**

I refer to your letter dated 8th July 2003 directed to me regarding the above matter and wish to make the following correction.

4. Outline of Events

Sub head 4.8 to read as follows:

"During an interview with officer of the Ombudsman staff on 30th April 2003, Mr Andrew Ala, a member of the committee which interviewed Mr Vora on 07th October 1997 said Mr Vora was supposed to have received a termination letter after a decision was reached by the Luganville Municipal Commission to terminate his employment on grounds of breaching the Municipal Councils Financial Regulations, at a meeting held on 7th November, 1997 (minute attached).

The Town Clerk then Mr Karl Batick was supposed to have issued him a termination letter following that meeting. "

Yours Sincerely,

Andrew B Ala
Environmental Health Officer





MINUTE.

LUGANVILLE MUNICIPALITY COMMISSION MEETING. WEI SITDOWN LONG NO. 7/10/97
TIME 3.30 PM LONG LMC CONFERENCE ROOM.

MEMBERS PRESENT : Mr Havo Moli
Mr Martin Tete
Mr Andrew Ala
Mr Batick Karl
Mr Oscar Buleuru

- Commissioner
- Acting Director Prov. Affairs
- EHO
- Town Clerk
- Treasurer

ABSENT : Mr Buletara Prosper.

AGENDA 1. Mr George Wora's case.
2. Other business.

Chairman : After long special comiti miting wetem Mr George Wora bae tufala members i givimaot ripot long miting wetem Mr George Wora.

Acting Director : Igo through long ripot mo question we tufala members ibin asken mo Mr George i stap traem blong clarifyen hem long ol question ia.

Afta we Commission members i harem ripot tufala members blong special comiti ia Commission i luk se ino nid blong kipim ol man olsem long Council.

Commission i luk se Mr George i well train mo gat trust but from hemi brekem finis financial regulation.

Acting Director : Mi move blong terminatem Mr George Wora.

EHO : Mi secondem motion.

Vote : All in favour.

Acting Director : Any outstanding leave payment i should pem igo long Mr George Wora mo any advance blong Mr George bae deduction ikam long any leave pay blong hem.

Chairman : Thank yu long this tufala members blong special comiti long wok we yutufala i mekem.

Miting i close long 4.30 pm.

MR HAVO MOLI
LMC COMMISSIONER

MR BATICK KARL
TOWN CLERK

**MUNICIPALITÉ
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**MUNICIPALITY
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Republic of Vanuatu

Our Ref: PH/335/20.9/03/as

22/07/03 D

18th July 2003

Ofis blong ombudman
Luganville
Santo
Sanma Province

Dear Sir,

**RE: WORKING PAPER ON UNREASONABLE DELAY BY THE LUGANVILLE
MUNICIPALITY**

Mi wandem putum record blong case ia istret about name blong mi Paul Hakwa, Commissioner.

Long 1997, Municipality istap under long suspension so man we i headem Commission blong Luganville Municipality long taem ia hemi Mr Havo Moli, mo Town Clerk hemi Karl Batick.

Eni enquiry folem case blong suspension blong Mr George Vora former Municipal Staffs, office blong Ombudsman ishould askem Mr Havo Moli mo Mr Karl Batick.

Mi no bin holem position blong Commissioner blong Luganville Municipality long 1997.

Thank you.


Paul Hakwa
LORD MAYOR



R22/07/03D

Mr: George Vora.
 c/- Lydia Jacquier
 PO Box 81
 Luganville
 SANTO.

22. 07. 2003.

Dear Sir,

RE: WORKING PAPER ON UNREASONABLE DELAY BY LUGANVILLE MUNICIPAL COUNCIL.

Refer to your Correspondence. Ref 4610/3048/L04/gv i want to make few comments.

1. I am totally disagree with ^{Annexure} ~~Appendix~~ F. Letter dated 26.08.02 from Mr: Paul HAKUA to Mr. Hilary Toa, because I've never received any Termination letter from the Luganville Municipality. Concerning the monthly account report from May to September 1997, I never received any monthly account report from the Municipality to satisfy any shortage of Fund. I've been asking the Municipality several times to see the monthly account report, but the Municipality never make any effort to show me,

Therefore the letter Annexure F is Totally Misleading.

2. LEGALITY FOR MY SUSPENSION

On the 14th August 1997 minister of Home Affairs Honourable Robert Kariac David wrote a letter to the Commissioner Mr. Hava Moli to carry out the instruction. SUSPEN Mr: GEORGE VORA.

On the 23 August 1997 Town Clerk Mr: Patrick Kal Carry out the Instruction. SUSPEN Mr: GEORGE VORA.

On the 31st October 1997 at 10.30 AM on Friday i made an appointment and talk with Town Clerk Mr: Patrick Kal about my Suspension. The Town Clerk told me he was instructed by HONOURABLE Minister to SUSPEN me and he (Mr: Patrick Kal) know nothing about my Suspension.

To my best knowledge the Law provided the Minister has NO "RIGHT" to Suspen me.
therefore my Suspension is an LawFUL.

I am looking forward for a Preliminary findings on the above inquire.

Yours faithfully.

George Vora

GEORGE VORA

1850

1850

Appendix J

MUNICIPALITIES STAFF REGULATION ORDER

CHAPTER 6 - DISCIPLINE

- 6.3 Where the Clerk receives a report that an officer employee has committed a disciplinary offence and such disciplinary offence warrants his immediate suspension from carrying out his official duties, the Clerk may suspend the Officer on half salary and shall immediately report the suspension to the Council;
- (i) the Council shall either reject or confirm the suspension;
 - (ii) where the Council rejects the suspension the officer or employee shall resume his duties.
 - (iii) where the Council confirms the suspension the Council shall give the officer or employee adequate opportunity to answer any charges made against him.
- 6.4 If the Council finds that the charges do not result in any disciplinary punishment or if the punishment is a warning, the officer or employee shall receive the salary withheld during his suspension.
- 6.5 The Council may impose any one or more of the following punishments as it shall think fit:
- (a) warning;
 - (b) reprimand;
 - (c) suspension of increment;
 - (d) demotion;
 - (e) temporary suspension from employment for a period not exceeding six months with any consequential loss of retirement benefits or a part thereof;
 - (f) dismissal and loss of retirement benefits in whole or in part.