



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE APPOINTMENT OF WADE EVANS
TO THE POSITION OF ACTING
PRINCIPAL OF VANUATU INSTITUTE OF
TECHNOLOGY AND THE SUSPENSION
OF CHALREY MANDAVA AND JOHNNY
GARAE.**

Date: 12 June 2023



REPUBLIC OF VANUATU

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1. PURPOSE

The purpose of the investigation is to determine whether the appointment of Mr Wade Evans, a Fijian National, to the position of Acting Principal of Vanuatu Institute of Technology (VIT) was done lawfully and whether the suspensions of Charley Mandava and Johnny Garae were done lawfully as well

2. SCOPE

The scope of the investigation is;

- a. To determine whether the appointment of Wade Evans by the Teaching Service Commission (TSC) was lawful.
- b. To determine whether the suspensions of Charley Mandava and Johnny Garae by the TSC were lawful;
- c. To establish the facts on the question of;
 - (i) *Whether the VIT Council recommended the appointment of Mr Wade Evans to the Teaching Service Commission (TSC) to the position of Acting Principal of VIT;*
 - (ii) Whether the VIT Council existed at the time the appointment of Wade Evans was made by TSC;
 - (iii) Whether the suspension of Charley Mandava and Johnny Garae was for serious misconduct; *and*
 - (iv) Whether the duration of their suspension was specified and fair?

3. ISSUES

The following issues arise in this matter:

- (a) whether the appointment of Wade Evans by the TSC was lawful?; and
- (b) Whether the suspensions of Charley Mandava & Johnny Garae were lawful as well?

4. BACKGROUND

1. The Vanuatu Institute of Technology (VIT) was established by section 2 of the Vanuatu Institute of Technology Act No. 24 of 2001, which commenced on 25 February 2002. Section 3 of the Act sets out the purpose of the Institute as follows –

“the purpose of the Institute is to be the national centre of excellence for technical, vocational and continuing education in Vanuatu, and in so doing to contribute to the economic and social development of Vanuatu.”

2. The VIT is governed by a Council established under section 6. Amongst other roles provided under section 7, the functions of the

Council include overseeing the efficient and effective management of the Institute and determining -

“the terms and conditions of appointment (including dismissal and suspension) of the Principal, the Deputy Principals and the other staff of the Institute in consultation with the Teaching Service Commission.”

3. In 2016, the VIT was headed by Kalpat Kalpeao, who was then the Principal. He passed away in the same year.
4. Members of the VIT Council who served along with him were –
 - (a) Victory Rory (Chairman), Alice Willie (Deputy Chair Lady), and Edmond Jonas. These members were appointed by then Minister of Education, Hon, Chalot Salwai;
 - (b) Jack Graham Takalo, (Deputy Principal Accademic);
 - (c) Joseph Molkis, (Deputy Principal Corporate);
 - (d) Sergio Busai (Staff representative); and
 - (e) Charley Mandava (Ancillary staff representative).
5. After Late Kalpeao passed on, the Council nominated Jack Graham Takalo to oversee the whole administration of VIT, since he already occupied the post of Deputy Principal. The other Council members served with him until 2019 when the Supreme Court convicted Victor Rory (Chairman). Alice Willie remained as the Deputy Chair Lady.
6. Between 2017 and 2018, VIT did not advertise the position of the Principal.
7. In 2019, the TSC advertised the position of the Principal of VIT.
8. Around January 2020, Jack Graham Takalo resigned and contested for the General Elections on March that same year.
9. On 4 August 2020, Georgy Kalo, Yannick Rory and Charlie Mandava received their formal appointment letters from the Acting Principal as Council members. After their appointment, they noticed some irregularities within the school Council appointments and the misconduct of the new Acting Principal, Wade Evans.

5. OUTLINE OF EVENTS

10. On 17 August 2019, the advertisement for the position of the Principal of VIT was published in the Daily Post newspaper, issue number 5796. The closing date was 31st of September 2019.

11. On 9 September 2019, Mr Wade Evans submitted his application letter and other relevant documents to the Office of the TSC.
12. On 15 December 2019, the Office of the Secretary General of the TSC issued an instruction, said to be based on the Teaching Services Commission meeting of 4 December 2019, that the two (2) school Councils (Vanuatu Institute of Teacher Education (VITE) & VIT) assess Mr Wade Evans application received by TSC Office.
13. On 09 March 2020, the TSC appointed Mr Wade Evans to the position of the Principal of VIT in an Acting capacity.
14. On 7th of August 2020, Yannick Rory and Charley Mandava lodged a complaint to the Labour Department concerning Mr Evans' work permit status.
15. On 10th of August 2020 Mr Kalo, Rory and Mandava wrote a letter to the Minister of Education, Honourable Seule Simeon, expressing their disappointment about the serious irregularities in *the appointment of the Acting Principal of VIT* and his misconduct as the Acting Principal. The allegations included -
 - I. *Having the Executive Officer, Mr Fremden Arapat and the Director Tertiary, Ann Rose Tjioban in the council is a conflict of interest.*
 - II. *The Acting Principal, Wade Evans instructed a payment beyond VT4million without management or school council's approval.*
 - III. *That the Acting Principal travelled to Tanna with the Chairman of the VIT council.*
 - IV. *That the Acting Principal acted corruptly, implying that VIT funds were abused in travelling to Tanna and sending a training officer to Paama Island.*
 - V. *That the Acting Principal's appointment has not been done correctly*
16. On that same date, 10 August 2020, Hon. Minister of Education, Seule Simeon wrote to the Commissioner of Police, Robson Iavro requesting an investigation *in to* the allegations raised above on the VIT management of accounts. The matter was then referred to the Fraud investigation Unit under the supervision of Sergeant Orlando Wamedjo.
17. On 21 August 2020, the Department of Labour issued an inspection report notifying Mr Evans that his work permit was never renewed after its expiry in 2017. Given that Wade Evans was appointed under a special category visa, to work in a government agency, he is exempted from the work permit.
18. On 31 August 2020, Jack Graham Takalo, Deputy Principal, dispatched a memo to the 3 Council members including Johnny Garae.

The Memo was titled, "Allegations of serious misconduct." The memo highlighted that, the signed letter to the Minister was in breach of the VIT Staff Manual Chapter 7. Section 6.1 (b), that makes "malicious and false allegations" a serious misconduct.

19. On 27 November 2020, the Chairman of TSC, Moulin Tabouti issued a notice of suspension with full salary from the Teaching Service Commission to Charley Mandava and Johnny Garae.
20. On 30 November 2020, Charley Mandava, on behalf of the suspended members, lodged an appeal to the TSC against their suspensions.
21. On 10 March 2021, the TSC approved the extension of Mr Evans contract of employment.
22. On 30 November 2021, Mr Wade Evans contract with the TSC as Acting Principal of VIT lapsed.

6 DISCUSSIONS

23. The first issue arising in this matter is whether the appointment of Wade Evans to the position of the Acting Principal of the VIT was done in accordance with the requirements of the VIT Act.

24. The process to be followed when appointing the Principal for VIT is set out in Section 21(1) of the VIT Act as follows –

"Principal of the Institute is to be appointed by the Teaching Service Commission on the recommendation of the Council. The Council must conduct the selection process for the Principal in accordance with the requirements of section 24."

Council is defined in section 1 as follows-

"Council" means the Vanuatu Institute of Technology Council established by section 6."

25. *I have had a good look at the VIT Act and nowhere does it provide for or create a position of "Acting Principal" for the VIT. As a consequence, there is no provision either on the role or functions of an "Acting Principal" anywhere in the Act.*

26. Section 22 (1) of the VIT Act however, provides for "Deputy Principals". It states as follows –

"There may be 2 Deputy Principals of the Institute who are to be appointed by the Teaching Service Commission on the recommendation of the Council. The Council must conduct the selection process for the Deputy Principals in accordance with the requirements of section 24."

27. **Section 24(1) and (2) provides as follows –**

(1) Subject to subsection (3), all appointments under sections 21, 22 and 23 must be made on merit following a fair and transparent selection process.

(2) All vacancies must be advertised in such a way that informs and seeks applications from all people in Vanuatu.”

28. *On 17 August 2019 the TSC advertised for the position of Principal of VIT in the Daily Post News Paper, Issue Number 5796. Not for an Acting Principal for the Institution. Extracts from the position advertised in the Paper referred to above is set out below –*

“Position: Principal Vanuatu Institute of Technology

An attractive salary will be paid to the appointed candidate.

Qualification: Bachelor or higher Qualification in Management or any related field from any recognize Tertiary Institution.

Special Business: Bachelor or higher Qualification in Education Majoring in Trades and Industries or equivalent

Experience: At least five (5) years’ experience in a senior management position

Special Skills:

Good leadership and management skills

Good Communication skills

Good School management

Good Moral and good behaviour

Good analytical skills

Can lead by example to be a role model for others ...”

The Advertisement was signed off by “Derick Alexander, Chairman, Teaching Service Commission”.

The advertisement was for the post of the “Principal Vanuatu Institute of Technology” – not “Acting Principal” of Vanuatu Institute of Technology. The advertisement was not done by the Council as required by section 21 (1).

Mr Wade was appointed to be the "Acting Principal" Vanuatu Institute of Technology. That position was not advertised in the Paper in accordance with sections 21 and 24 of the VIT Act. No one was appointed to the position advertised in the Paper.

In doing so, it raises the question whether the process was fair pursuant to section 24 of the VIT Act and in particular subsection (1) which states that –

"Subject to subsection (3), all appointments under sections 21, 22 and 23 must be made on merit following a fair and transparent selection process."

What does this mean when setting out an advertisement for a vacant position calling for interested parties to apply for it. First and foremost, in my view, it requires that the position being advertised must be accurately mentioned in the advertisement. This allows the applicants to properly determine their suitability for the position. And this is of course then articulated in their written applications for the position. Finally, that the person is appointed to the position as advertised.

In my view for reasons stated above, the process adopted by the TSC in appointing Mr Wade to a position that was not advertised was not a fair process and in breach of section 21 (1). There is no evidence forth coming from the TSC that the Acting Appointment was advertised in the papers as well.

Section 22 as referred to above provides for the appointment of Deputy Principals. From an administrative and management functions point of view, these positions appear to me to be positions which are created to assist the Principal in carrying out his or her functions under section 21 (2). Section 22 (2), in my view, confirms this interpretation as it provides for the Principal to "assign such duties and responsibilities" to Deputy Principals.

Can an acting Principal for the Institute be appointed in the absence of any provision in the Act requiring the appointment to be done?

The structure of the Act and more specifically the functions of the Principal and the functions of the Council is such that, in my view, does not prohibit such an appointment to be made. However, if ever it is done, it must be for a short time to allow

for the Council to appoint a new Principal. Such an Acting Principal must be appointed from amongst the two Deputy Principals.

In doing so the Council, in my view, will be exercising its administrative and management functions to ensure that an Acting Principal is appointed to lead, administer and manage the affairs of the Institute in a competent and professional manner. That there continues to be a head of the Institution to ensure that it functions effectively in line with the requirements of the VIT Act.

Another issue that arises in the way the Post of the Principal was advertised in the Daily News Paper is whether the TSC intentionally mislead the applicants – in that the TSC wanted an Acting Principal but not the Principal?

The statement of Alice Willi goes to the heart of this issue where she said –

“between long manis blong February mo March 2020, Mr Moulin Tabouti olsem Chairman blong TSC I bin callem mi long phone number 7116311 mo talem long mi se bai mi callem wan urgent meeting blong VIT School Council blong tok baot issue blong Principal blong VIT. Taem mi stap wantem callem miting ia, Mr Moulin Tabouti I call bakeken mo talem long mi se bai mi nomo callem miting ia. TSC nomo bae lukluk blong nominate man from nomination we bai oli mekem hemi temporary.”

I have found no other evidence from the TSC rebutting this statement from Alice willie.

In my view the TSC intentionally mislead applicants for the position of Principal of VIT contrary to section 21 (1) of the VIT Act. If they had really wanted someone to be appointed in an acting capacity the scheme of the Act allows for that to be done as an administration and management matter. Whilst an Acting Principal is in Office the process to appoint the Principal can start under section 21 (1).

The next issue that arises in this matter is whether TSC appointed Mr Wade as Principal of the Vanuatu Institute of Technology on the recommendation of the Vanuatu Institute of Technology Council in accordance with section 21(1) of the VIT Act.

Section 21 (1) provides that the “Principal of the Institute is to be appointed by the Teaching Service Commission on the recommendation of the Council.

Further, that the Council must conduct the selection process for the principal in accordance with the requirements of section 24”. Section 24 makes further provision to ensure that any appointment is done on merit, including that of the principal, under section 21 of the VIT Act. Such a merit approach process for the appointment of the principal includes the following –

(a) the vacancy is advertised in such a way that informs and seeks applications from people throughout Vanuatu;

(b) the Vanuatu Institute of Technology Council must conduct the selection process; and

(c) the Vanuatu Institute of Technology Council on completion of the recruitment process must provide its recommendation to the TSC as to which applicant is the most suitable person to be appointed the Principal by the TSC.

Charley Mandava in his statement to the Ombudsman on 20 March 2021 said –

“Taem mifala i joinem Council long 4 August 2020,... mifala finem out se appointment blong Acting Principal ino bin folem Act blong VIT. Act i talem se bai i kat Principal nomo wetem two Deputy Principals. Council nao blong recomendem best applicant blong vacancy blong Principal through long recommendation blong school Council. Process ia oli no bin follem nomo”.

Victor Rory, former chairman of VIT Council, in his statement to the Ombudsman dated 1st September 2020 said –

“...Folem latest appointment blong Acting Principal blong Vit long yia March 2020 we TSC i bin appointem Mr Wade Evans i kam Acting Principal ino stret. Follem Act blong VIT, bai TSC ino save recommend mo appoint wan candidate blong kam wan Acting Principal or Principal...”

TSC Chairman, Mr Moulin Tabouti, confirmed in his statement to the Ombudsman that they had referred the applications to the VIT Council to conduct the selection, however, the Acting

Principal, Mr Jack Takalo resigned and so the process was not followed through by the VIT Council. He said –

“Taem we mi appointed olsem Chairman blong TSC long November 2019, mi bin harem former SG blong TSC, Jacques Gideon i talem se TSC i mekem advertisement blong position blong Principal blong VIT. Mi mo Jacques Gideon i tok raon long hem se process blong advertisement mo blong selectem best candidate hemi blong Council blong VIT nao bai selectem best candidate mo bae i rekomendem I kam long TSC mo TSC bae mekem appointment folem Act blong VIT. So TSC I bin go mo hand over ol applications i go long Acting Principal blong VIT we hemi Jack Takalo blong Council i luk tru long applications ia mo selectem best candidate mo rekomendem person ia kam long mifla long TSC blong appointem hem. Hemia between December last year 2019 mo January 2020. Long January 2020, Mr Takalo i resign blong contestem General Election. Taem Takalo i resign, TSC i tekem stand blong mas kam in blong appointem wan person temporarily blong lukaotem school.”

He continued as follows -

“... So Commission i go karem back ol application we former Acting Principal ibin holem mo Commission sit daon mo lukluk long ol applicants ia. Out long ol applicants ia, Commission i bin selectem Mr Wade Evans olsem best candidate. So Commission i agree mo appointem hem as Acting Principal effective long 9 March 2020”.

The reasoning advanced by Mr Moulin, Chairman of the TSC, for abandoning the process set out by the VIT Act is twofold. First, because the Acting Principal Mr Takalo had resigned. Second, because the Commission was going to do the appointment on a temporary basis.

I find this reasoning difficult to follow, to say the least. Where does the Chairman and the TSC get their authority from to blatantly disregard sections 21 (1) and 22 of the VIT Act?

Those provisions vest the power in the Council, not the Principal or Acting Principal.

The reason for the decision to abandon the process that began in accordance with section 21 (1) of the VIT Act magically appears to take on prominence only at that time when Mr Takalo, then Acting Principal, resigned to contest the

General Elections. That reasoning is found in the Labour Department Report styled as follows-

“LABOUR DEPARTMENT

INSPECTION REPORT

Allegations Against Mr Evans Wade Bart (Acting Principal of VIT)

Work Permit Act Cap 187

8/21/2020”

At page 2 of the Report the Department found as follows -

“According to the interview we had with all agency listed above, the rationale for appointing Mr Evans is because of the current crisis and challenges that VIT is facing as a result many students have not graduated and many of the courses were not recognized and are not up to the standard required by VQA.

The position should be occupied by a Ni-Vanuatu citizen, however because of the current situation of VIT, it is primordial that TSC appoints some one of caliber to fix the current situation of VIT. As such, TSC chose to appoint Mr Evans because of his qualification and experience in the area of education.”

To this I say, the reasoning is fine. But that does not authorize the TSC to breach the provisions of the VIT Act.

Did the Council exist at the time of making the appointment of Mr Wade to be Acting Principal?

Section 10 (1) and (2) of the VIT Act provides –

“(1) The Council consists of 8 members.

(2) The Members are:

(a) the Principal; and

(b) a member of the academic staff of the Institute elected by them; and

(c) a member of the general staff of the Institute elected by them; and

(d) 3 other persons appointed by the Minister from nominations made by the Principal; and

(e) 2 other persons made by the Council.”

Section 16 of the VIT Act provides for meetings of the Council. Subsection (2) provides that the “Chairperson or Deputy Chairperson must chair meetings of the Council, but if they are absent the members present must choose a member to chair the meeting”.

Subsection (3) state that at a “meeting of the Council a quorum consists of 5 members. The Council may meet despite any vacancies in its membership so long as a quorum is present.”

In 2016 Kalpat Kalpao, then Principal passed away. No replacement was appointed till the appointment of Mr Wade as Acting Principal.

Victor Rory was convicted in 2019 for misappropriation of government funds and sentenced to serve time in prison.

Jack Graham Takalo resigned in January 2020.

If Mr Rory lost his membership of the Council as a consequence of his conviction by the Supreme Court, that will leave the Council with 5 members during the time of the appointment of Mr Wade as Acting Principal of VIT. The Council can continue to function with the five members. The matter should have been left to the Council to carry out its obligation under section 21(1) of the VIT Act.

It is clear that the Council did not recommend the appointment of Mr Wade to be Acting Principal of VIT. It is also clear in my view that the TSC failed to appoint Mr Wade in accordance with the advertisement.

29. The second issue arising in the complaint is whether the suspension of Charley Mandava and Johnny Garae was lawful.

30. Charley Mandava and Johnny Garae were members of the academic staff of the Institute appointed under section 23 (1) of the VIT Act. They were appointed on the 26 October 2015 respectively. On 27 November 2020 they were suspended by the TSC for alleged serious misconduct and to this day continue to be on suspension.

31. Section 1 of the VIT Act defines the following –
- “academic staff” means the teaching staff appointed by the Teaching Service Commission under section 23 (1).*
- “general staff” means administrative and support staff appointed by the Council under section 23 (3).*
- “staff” means:*
- (a) the Principal; or*
 - (b) the Deputy Principals; or*
 - (c) the academic staff of the Institute; or*
 - (d) the general staff of the Institute.”*
32. *The Staff Manual of the Vanuatu Institute of Technology, amongst other matters, provide for terms and conditions of employment, code of conduct and process to be followed when breaches of the code of conduct occurs. That also includes process to be followed when allegations of serious misconduct are raised.*
33. Chapter 7 (4) of the VIT Staff Manual talks about breaches of conduct of a staff member. It states -
- “4.1- if a staff member is observed misbehaving, the Principal and the deputy Principal will promptly go to the employee’s individual personal file and seek any other disciplinary offences from the past*
- 4.2- If it is the first breach of code of conduct, the employee will receive a verbal warning to cease a specific behaviour, followed by consequent written warning*
- 4.3- a copy of the letter will be put in the employee’s personal file*
- 4.4- If the employee’s behaviour is still not accepted, they will be provided with a second warning.*
- 4.5- An interview is arranged where challenges and strategies are discussed*
- 4.6- The strategies are implemented in an attempt to improve behaviour with close monitoring throughout this period*
- 4.7- If misconduct occurs, the employee will be suspended on 1 week for half pay. The employee will receive a final warning letter by the Deputy Principal Corporate Service who will also have it placed in the employee’s personal file*
- 4.8- If the appropriate behaviour occurs for a fourth time termination procedures (refer to the termination section) will commence as warned.”*
34. Chapter 12 paragraph 1.1 and 1.2 of the VIT Staff Manual states –