



**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 31<sup>st</sup> 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 7<sup>th</sup> of August 2020, Yannick Rory and Charley Mandava lodged a complaint to the Labour Department concerning Mr Evans' work permit status.
15. On 10<sup>th</sup> 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 Arnapat 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 1<sup>st</sup> 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 rational 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 –

*"1.1 Employees, on all modes of employment, will be terminated where;  
a) Performance levels does not meet the specified standards; or  
b) Behaviour is not aligned with VIT objectives or policy.*

*1.2 Once the Principal has endorsed termination the Deputy Principal Corporate Services will advise the employee of termination details- such as payments receivable, equipment to be returned, date of termination, details for exit interviews ..."*

35. Chapter 7 clause 6.1 (b) of the VIT Staff Manual states as follows –  
*"The following misconducts are categorized as serious misconduct under this Manual -  
(a) ...  
(b) making malicious and false allegations."*

Apparently, their letter dated 10 August 2020 to the Minister of Education, Honourable Seule Simeon, expressing their disappointment about the serious irregularities in the VIT Council appointments and the misconduct of Wade Evans as the Acting Principal was seen by Acting Principal Evans as a serious misconduct.

36. However, other staff members did not see it that way. Jack Takalo, Deputy Principal Academic confirmed in his statement that –

*"Mi nao mi signem suspension blong tufla from hem (Wade Evans) I talem long mi se mi signem. Mi stap confirm long utufla se main motive blong suspension blong tufla hemi wan wrong motive from hemi (Wade Evans) no care blong fixim, hemi ol wokman blong umi ia. Hemi wan act of ignorance nomo. Mi signem letter blong investigation nomo. Mi bin signem blong tufla I kam justifyem. Be I gat wan disciplinary committee I stap, Be mi stap aotsaet long disciplinary committee ia. Olgeta nao oli mekem investigation ia".*

37. Chapter 7, section 6.2 of the VIT Staff Manual sets out the procedures to be followed when allegations of serious misconduct are made. It states that –

*"When allegations of serious misconduct have been brought forward, the following process will be observed;*

*a) The Deputy Principals must conduct initial investigations. It is crucial that a fair investigative approach is taken by checking the sources of this allegation and ensuring that preliminary investigations do not disprove the allegations before presenting the allegations to the employees.*

- b) *Once the allegations have been substantiated, the Deputy Principals will present them to the employee and at the same time notify the employee that that case will be passed on to the disciplinary board. The employee will be given one week to respond to the allegations in person or writing. With additional statements and comprehensive investigations to secure an admission or sufficient evidence/proof.*
  - c) *The Deputy Principals will undertake further investigations and prepare evidence for the Principal who will present the case to the VIT School Council.*
  - d) *The VIT School Council will meet and consider the allegations by reviewing all the evidence presented. The VIT School Council will make a decision and where at least three of the four members specify one verdict it shall be accepted.*
  - e) *If termination is considered appropriate it must be done in accordance with the Termination section in this manual.”*
38. The above statement by the Deputy Principal Takalo clearly shows that, as a Deputy Principal, he did not conduct any investigation. There is complete silence on whether the process referred to above when allegations of serious misconduct was raised had been complied with in this matter. Therefore, the process outlined above, in my view, was not followed as a matter of law and procedural fairness to Mr Mandava and Mr Garae.
39. On 27 November 2020, Teaching Service Commission made a decision in its meeting NO.15 of 2020 to suspend Charley Mandva and Johnny Garae on full salary until the Police Fraud Investigation Unit completes its investigation.
40. They highlighted serious misconduct- under VIT Staff Manual chapter 7 section 6.1 as (I) failure/disobeying lawful instructions from a supervisor.
41. Misconduct under the TSC Act is defined as follows;
- “52 Meaning of misconduct**
- (1) For the purposes of paragraph 51(a), an employee is guilty of misconduct if he or she:
- (a) has any sexual contact or a sexual relationship of any kind with a student at any school; or
  - (b) physically assaults a child, including administering corporal punishment of any kind to a student; or
  - (c) wilfully disobeys or disregards a lawful direction given by a person in authority; or

- (d) uses illegal drugs including but not limited to cannabis, cocaine and heroine; or
  - (e) uses kava or alcohol to excess or in a manner that adversely affects the performance of his or her duties; or
  - (f) misappropriates funds or goods and gains an improper personal benefit or procures an improper benefit for someone else; or
  - (g) is guilty of any disgraceful or improper conduct which is likely to have a detrimental effect on the reputation of the Teaching Service."
42. The TSC purportedly adopted the misconduct under the VIT Staff Manual but suspended the duo under section 52 the TSC Act. TSC as a good employer should have conducted its own investigation before penalising the duo if the investigation proved that their actions complained of amounted to serious misconduct.
43. TSC quoted Chapter 7 section 6.1 (l) failure to fulfil/disobeying lawful instructions from a superior. It did mention that their suspension was pending investigation with the Police Fraud Unit.

Set out below is the process under TSC Act that must be followed when allegations of serious misconduct are brought forward:

#### **"46 Disciplinary investigation**

(1) If a breach of discipline is alleged or suspected and is not minor, the Commission must arrange for an investigation to be undertaken. The investigation must be conducted by a senior employee or other suitably qualified person with no previous involvement in the matter and a written report must be prepared by the investigator for the Commission's consideration.

(2) The employee who is subject to the investigation must be advised of the details of the alleged misconduct, failure to comply, inefficiency, and incompetence, lack of fitness or inability and be given a reasonable opportunity to respond. Any such response must be included in the written report provided to the Commission and must be considered in determining whether there has been a breach of discipline.

#### **(3) 56 Disciplinary determination**

(4) (1) If the Commission determines that an employee has committed a breach of discipline or an employee has been convicted of a criminal offence which has a penalty of 12 months imprisonment or more, the employee concerned must be given a reasonable opportunity to make a

submission in relation to the penalty being imposed on him or her by the Commission

(5) (2) Any submission on penalty received from the employee must be considered by the Commission in determining what penalty, if any, to impose

**(6) 57 Suspension**

(7) (1) If an investigation is being conducted under section 54 or an employee has been charged with a criminal offence which has a penalty of 12 months imprisonment or more, the Commission may suspend the employee concerned from duty. The Commission may lift the suspension at any time.

(8) (2) The Commission may determine that all or part of a suspension is on half pay or without pay. While suspended without pay an employee is entitled to undertake paid employment or other work or operate a business outside the Teaching Service.

(9) (3) Where an employee is suspended under this section and the Commission, a Disciplinary Appeal Board or the Supreme Court ultimately does not find there has been a breach of discipline or the employee is not convicted of an offence which has a penalty of 12 months imprisonment or more, the suspension must be immediately lifted. If all or part of the suspension was without pay or was on half pay, the employee must be paid his or her usual salary for the relevant period."

TSC has failed to adhere to the process set out above in the TSC Act before suspending Charley Mandava and Johnny Garae

44. TSC Chairman, Moulin Tabouti confirmed in his statement on 24 November 2021.

*"time case I kam kasem Commission, Commission I suspend long tingting se I tekem I go long fraud unit blong I deal wetem from mifla I luk se issue I big wan tumas. Mi bin putum case I go long fraud mo mi stap follow up long hem, be oli talem se oli deal wetem ol nara case we I priority afta oli leko hemia I stap. mifla no putum wan time frame from mifla I stap rely long fraud unit blong oli report I kambak long mifla. Be mifla I mekem decision vinis blong reinstate tufala mo mifla I kivim I go bak long council blong olgeta, tertiary wetem chairman. Mifla I rely long olgeta blong sendem ol documents I kam from olgeta oli reportem blong support wetem fraud unit blong mekem final decision blong olgeta, be inogat, I tekem too long so mifla I reinstate tufala last week".*

*In the statement quoted above, the current Chairman of the TSC said that because the process was taking too long "so mifala i reinstate tufala last week". However, on 27 January 2023 Charley*



*Manadava mandava made the following statement to the Ombudsman –*

*“... mitufala ino reinstated kasem tetei Friday namba 27 January 2023. Mitufala ino risivim any letter from TSC blong reinstate blong go back work long VIT. ... salary blong mitufala I flow kasem tete.”*

*Johny Garae also made the following statement to the Ombudsman on 27 January 2023 -*

*“...Bae mi confirm se since mi risivim letter blong TSC from suspension, mi nomo risivim any letter bagegen blong reinstate back mi iko long service... kasem tete ino gat any letter bagegen blong talem se oli reinstate back mi. ... salary hemi still flow kasem tete we hemi over long 2 years nao we mi... stap long suspension”.*

*Further the Executive Secretary of VIT, Brigit Stanisla, also informed the Ombudsman on 27 January 2023 as follows –*

*“Yes tufala i stap long suspension yet”. In answering the question “TSC I talem any samting lo tufala?” she replied “Nogat”. She went on to say that “Council I bin discusse be oli recommend se bae tufala ino mo save kam bak lo plesia.”*

*There are two things that stand out from the statements quoted above. First, Charley Mandava and Johny Garae rebutted the statement by Mr Moulin Tabouti, Chairman of the TSC that they had been reinstated. Further, the Executive Secretary to VIT also confirmed that both men are still on suspension.*

*I am persuaded to believe the evidence of Charly Mandava, Johny Garae and Brigit Stanisla that the men are still on suspension and have not been reinstated as stated by the TSC Chairman, Mr Tabouti.*

*The two men were suspended on 27 November 2022. It is now about two years and 3 months and they are still on suspension. This is of great concern in the following areas –*

*Why has the suspension been allowed to continue for this long period? During the investigation in to this matter, it became clear that the Deputy Principals has not complied with their obligations under the Staff Manual Chapter.*

45. On 30<sup>th</sup> of November 2020, Charley Mandava wrote an appeal letter to the TSC pertaining to their suspension pursuant to section 58 of TSC Act.

The appeal letter was basically on the unfairness of their suspension on full salary. Section 59 (1) and (2) states as follows;

“(1) Appeals must be made in writing and must be received by the secretary of the Appeal Board within 28 days of the date on which the determination being appealed against was made. The Appeal Board may accept a late appeal in exceptional circumstances such as delay due to the employee concerned being in an isolated location.

(2)The Appeal Board must as soon as possible convene a meeting to hear the appeal.”

46. Because the process set out in section 54, 56 and 57 has not been met, TSC cannot convene a meeting as set out in section 59 to hear their appeal due to the fact that they did not carry out their investigation to establish their findings on the misconduct of the two teachers.

47. Sergeant Josiah Enrel confirmed to the Ombudsman on the 13<sup>th</sup> of February 2023 that they have no record of the complaint from the Teaching Service Commission against Charley Mandva and Johnny Garae. They only received a complaint against Wade Evans, the Principal of VIT.

Until today, there is no decision from the Appeal Board concerning their suspension and the findings about their investigation that will help the TSC to make further decisions based on Section 53 (a-h) on possible penalties.

48. Charley Mandava and Johnny Garae are still on suspension and on full salary. The TSC, through its Chairman has again breached Section 33 of TSC Act for failing its duty to consider the duration of their suspension and take actions in compliance with the law. TSC also breached Section 18 of TSC Act for not treating its employees fairly.

49. *Another issue that arises and needs to be asked and answered is whether the Teaching Service Act No. 38 of 2013 supersedes the VIT Act in dealing with Mr Mandeva and Mr Garae for allegation of serious misconduct. In other words, which Act should prevail.*

50. *The Teaching Service Act No. 38 of 2013 (Act 38) has as its purpose the following –*

*“An Act to provide for the Teaching Service and Teaching Service Commission and for related matters.”*

*49. Section 3 of the Act 38 set out the Guiding Principles of the Teaching Service and the Teaching Service Commission. They include the following –*



- “(a) to be independent and perform their functions in a fair, impartial and professional manner without undue influence; and*
- (d) to have the highest ethical standards; and*
- (e) to be accountable for their actions; and*
- (g) to provide leadership of the highest quality; and*
- (j) to observe the law; and...”*

*49. Section 18 of Act 38 require the Teaching Service Commission to be a good employer. Subsection 18 (1) and (2) (a) states as follows*

*“18 Duty to act as a good employer*

- (1) It is the duty of each member of the Commission to ensure the Commission is a good employer.*
- (2) The Commission must, as a good employer:*
  - (a) ensure the fair and proper treatment of its employees in all aspects of their employment; and...”*

*Act 38 is an Act that makes provision specially for the Teaching Service and the Teaching Service Commission. It is the general law in this regard.*

*Vanuatu Institute of Technology Act (VIT Act) provides specifically for the Vanuatu Institute of Technology. In its purpose it states that it is an “Act to establish the Vanuatu Institute of Technology”. The whole legislation is focused on different aspects of the Institute, including linkages with the TSC in areas of certain appointments of staff and cessation of such employment of such staff.*

*Chapter 7 of the Institute’s Staff Manual alluded to earlier in this Report sets out very clearly the process that must be followed when allegations of serious misconduct are raised.*

*I have found no provision in the Act 38 that states that in matters of alleged serious misconduct, the provisions of the Act 38 will apply but not the VIT Act.*

51. Below are the provisions under the leadership code Act that clearly highlighted the functions of a leader

*Section 13 (1) of the leadership Code Act talks about duties of leaders as follows:*

“(1) A leader must:

- (a) comply with and observe the law (VIT Act, TSC Act, the Leadership code Act & Constitution); and
- (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution.”

Article 66 (1) of the Constitution provides for conduct of leaders as follows:

“(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –

- (a) ...;
- (c) demean his office or position;
- (d) allow his integrity to be called into question; or...”

Section 14 of the Leadership Code Act requires appointments to be made on merit. It states as follows:

“A leader must:

- (a) act fairly in appointing people to offices and positions for which he or she has responsibility, so that people are appointed impartially and on merit; and
- (b) do his or her best to encourage participation in government by men and women according to their abilities; and...”

Members of the Teaching Service Commission are categorized as leaders pursuant to section 5 of the Leadership code Act.

52. On the second issue, it is my opinion that the suspensions of Mr Mandava and Mr Garae is unlawful because the process of suspension as outlined in Chapter 7, Clause 6.2 of the VIT Staff Manual had not been followed through.

## **7. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM**

53. Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Therefore, a working paper report has been provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.

The Ombudsman notified the responsible people from TSC, VIT Principal and other present and past VIT Council members including the current Minister for Education and current Speaker of Parliament who was also a former Minister of Education when the issue was raised.

54. Firstly, I say thank you to the Principal of VIT, Wade Evans, for his response to the working paper.
55. Secondly, in relation to the background of the working paper on subsection 4, Wade Evans stated that Joseph Molkis, then deputy Principal Corporate was not

a VIT Council member. According to section 10 of the VIT Act, it stated that the composition of the Council member is as follows;

(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 appointed by the Council.

After late Kalpeao passed on, these are the names of the remaining Council members;

- a) Victor Rory (Chairman)
- b) Alice Willie (Deputy Chairlady)
- c) Edmond Jonas.

Above members were appointed by the Minister Charlot Salwai pursuant to section 10 (3) of VIT Act.

- d) Jack Graham Takalo (Deputy Principal Academic)
- e) Joseph Molkis (Deputy Principal Corporate)
- f) Sergio Busai (staff rep); and
- g) Charley Mandava (Ancillary staff rep)

Wade Evans fail to provide evidence to prove that Joseph Molkis was not a Council member at that time. As the Deputy Principal Corporate, he is automatically a council member pursuant to section 10 (2) (c) of VIT Act.

Wade Evans further claimed that all VIT Council members term, including those appointed had lapsed in 2019 and were not renewed because of the dispute between the Minister of Education and Jack Graham Takalo as Acting Principal.

One would say that if that was the case, there would not be any appointment made by the Council because the law (VIT Act section 16 (3) states 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.*

The Council had meet and appointed Jack Graham Takalo to oversee the whole administration of VIT. Mr Evans fail to provide the evidence of the dispute between the then Minister of Education and Jack Graham Takalo, that resulted in the cessation of the council.

Wade Evans further responded to the procedures under VIT staff manual that needs to be followed when allegations of serious misconduct were brought forward. Mr Evans stated that the procedure contained in the VIT

staff manual is outdated and has been superseded by the VIT serious misconduct procedure and disciplinary procedure, approved by VIT Council in its meeting of 25 September 2020.

The process he referred to is mentioned in paragraph 37 of this report. The process under chapter 7, section 6.2 of the staff manual, Mr Evans provided to the Ombudsman claiming to be the evidence, the copy of the council meeting, dated 25<sup>th</sup> of September 2020. It was not listed as an agenda for the meeting, instead listed as other business which Mr Wade brought forward for discussion. It reads *"the council was briefed by the principal of the new disciplinary process which was subsequently endorsed. The principal emphasised that the objectives of the process is to ensure that staff being disciplined is treated fairly"*.

They also nominated three (3) members of the disciplinary committee under other business as the new process he referred to. In that minute, it stated that disciplinary board appointed by VIT Council Chairman in consultation with TSC and Director Tertiary. The three (names) nominated were, Jerold Arnambath, Sam Samuel and Marie Laure Kalronga.

On 31 August 2020, Jack Graham Takalo dispatched a memo to Johnny Garae and Charley Mandava. The memo reads, *"Allegation of serious misconduct"*. The process undertaken for discipline began three (weeks) before VIT Council sat to discuss the new process brought forward by the Principal. During that time, the Chairman of the disciplinary committee was Joses Seth and not the new appointed ones. The disciplinary committee led by Joses Seth submitted the report to the Council for deliberation to TSC. The new procedures stated by Wade Evans were never used in this matter. They were deemed to be in breached of the procedures under Chapter 7, section 6.2 of the VIT staff manual.

During the investigation into this matter, the Deputy Principal Academic, Graham Takalo was called in for an interview. Mr Takalo confirmed during that time that, *Mi nao mi signem suspension blong tufla from hem (Wade Evans) I talem long mi se mi signem. Mi stap confirm long utufla se main motive blong suspension blong tufla hemi wan wrong motive from hemi (Wade Evans) no care blong fixim, hemi ol wokman blong umi ia. Hemi wan act of ignorance nomo. Mi signem letter blong investigation nomo. Mi bin signem blong tufla I kam justifyem. Be I gat wan disciplinary committee I stap, Be mi stap aotsaet long disciplinary committee ia. Olgeta nao oli mekem investigation ia"*.

Mr Evans argue that the statement made by Mr Takalo was frivolous and that he did conduct an investigation. There was no evidence to proof that Mr Takalo's statement is frivolous. In my view, Mr Evans has blatantly lie and ignore the process under

chapter 7 of the staff manual to ensure that teachers were treated fairly during the process of discipline.

Mr Evans stated that the findings of the VIT disciplinary Board was that Johnny Garae and Charley Mandava were guilty of gross misconduct and recommended summary dismissal of the two staffs. According to Joses Seth, chairman of disciplinary committee, “ *mifla I mekem referral I go bak long Council blong council I mekem final decision before oli sendem I go long TSC, mifla ino rekomendem any samting from power blong mekem decision I stap wetem Council*”. The Council has the power stated under Section 8 of the VIT Act. The two teachers are employed by TSC and not VIT. Any disciplinary matter must be brought to TSC after completing the process stated under VIT staff manual.

Mr Evans lastly stated that TSC is no longer the employer of VIT staff. This decision comes after the issue of appointment of Mr Evans and suspension of the two staffs. VIT staffs are now placed under tertiary Education under the Ministry of Education.

## **7. FINDINGS**

**Finding 1: Appointment of Wade Evans by the Teaching Service Commission was not made in accordance with the VIT Act.**

By not following the proper legal process, the appointment of Wade Evans as Acting Principal was improper and unlawful. The Teaching Service Commission failed to comply with the legal process.

**Finding 2: The Teaching Service Commission has not acted fairly as a good employer when making Wade Evans appointment outside of VIT Act.**

Because the TSC had failed to give regard to appoint Wade Evans on merit according to Section 21 & 24 (1) of VIT Act, the actions of the Commission members are contrary to that of a good employer.

**Finding 3: Teaching Service Commission Members are in breach of section 13 and 14 of the Leadership Code Act**

By disregarding the proper legal processes, the members had placed themselves in a questionable position and thus, their actions were in breach of sections 13 & 14 of the Leadership Code Act.

**Finding 4: The suspension of Charley Mandava and Johnny Garae was not made in accordance with Section 32 (1) (b) of the**



**Teaching Service Act nor the VIT Act and Chapter 7,  
section 6.2 of the VIT Staff Manual.**

By not following the legal process, the suspension of Charley  
Mandava and Johnny Garae is  
unlawful.

**8. RECOMMENDATIONS**

I make the following recommendations:

1. The members of the TSC Council implicated in the appointment of Wade Evans should be held accountable for their decision and step aside from performing roles in the Public Service for three (3) years
2. Members of the VIT Council and VIT disciplinary Board to be replaced for failure in carrying out an investigation to determine the veracity of the allegations of serious misconduct against Charley Mandava and Johnny Garae and making recommendations accordingly.
3. Relevant authorities responsible for the appointment and termination of Members of VIT Council & disciplinary committee to impose appropriate disciplinary measures on them for failure to carry out their functions and make recommendations to the Teaching Service Commission.
4. Charley Mandava and Johnny Garae are to be reinstated to their positions at the VIT immediately.
5. The new members of the Council and Disciplinary Committee must be persons who are suitable and have experience to enable them to perform their functions under the VIT Act.
6. Wade Evans to be removed from his position as the Acting Principal due to the unlawful process in his appointment in 2021.
7. VIT to re-advertise the position of Principal and allow for Ni- Vanuatu qualified citizens to apply for the Positions based on the Localization policy of the Government.
8. TSC to change the employment status of Wade Evans to a consultant or advisor for VIT, if his services are still required.

Dated 12 June 2023

  
**Hamlison BULU**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**