



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON DAVID SEULE'S CONTINUATION AS
A MEMBER OF THE PUBLIC SERVICE
COMMISSION IN 2023 AFTER HIS TERM
HAD EXPIRED

Date: 10 June 2024



REPUBLIC OF VANUATU

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1. PURPOSE

The purpose of the investigation is to determine whether David Seule's attendance and taking part in the Public Service Commission (PSC) meetings after his contract had expired was due to a reappointment under Article 59 of the Constitution.

2. SCOPE

The scope of the investigation is;

- a. to look into the circumstance giving rise to David Seule continuing to attend PSC's meetings; and
- b. the conduct or involvement of the Chairman of PSC Martin Mahe in the matter.

3. ISSUES

There is only one issue arising in this matter, namely, whether David Seule's continuation to participate in PSC meetings after his contract expired on 29th June 2023 was due to a reappointment under Article 59 of the Constitution.

4. OUTLINE OF EVENTS

1. On the 29th of June 2020, His Excellency Tallis Moses Obed, appointed the following people as members of the PSC;
 - (a) Simil Johnson;
 - (b) Marinette Lucy Abbil;
 - (c) Robin Mulonturala;
 - (d) David Seule;
 - (e) Job Dalesa.
2. On 29 June 2020, Johnson Simil was appointed as the Chairman of the PSC.
3. On the 29th of June 2023, the contracts of the above members lapsed.
4. On the 17th of June 2022, His Excellency Obed Moses Talis appointed Alice Willie as the new member of the PSC.
5. On the 3rd of February 2022, His Excellency, Nikenike Vurobaravu appointed Ephraim kalsakau and Joe Ligo as new members of the PSC.

6. In that same year 2022, Acting Head of State, Seule Simeon appointed Martin Mahe as the Chairman of the PSC.
7. On the 29th of June 2023 David Seule's Contract lapsed as a member of the PSC.
8. On 24 January 2024, His Excellency Nikenike Vurobaravu appointed Koko Jimmy Edward as new member of the PSC.

5 DISCUSSIONS

The issue arising in this matter is whether David Seule's continuation to attend and take part in PSC meetings is based on an appointment made under Article 59 (1) of the Constitution.

David Seule was appointed as a member of the PSC by His Excellency Moses Talis Obed on the 29th of June 2020. On the 29th of June 2023, his contract lapsed as a member of the PSC. The investigation has found no record of him being re-appointed to be a member of the PSC again, after his term expired. The Private Secretary of Head of State confirmed that His Excellency has not appointed David Seule to be a member of the Commission.

Despite the fact that he was not reappointed by the Head of State under Article 59 (1) of the Constitution he continued to attend the PSC meetings and received sitting allowances and Acting allowances on the assurances of the Chairman of the PSC from July to October 2023.

The evidence available comes from a number of sources. First, from James Melteres, the Secretary of the PSC. The relevant part goes as follows –

“Taem mifala I stap lo ofis lo las yia 2023, mi bin infomem jeiman seh kontrak blo David Seule I finis lo 29 June 2023 be hemi talem lo mi se yu no wari bae PM Maukoro bae I rikomendem nem blo hem I go taon lo HOS blo mekem niu apoinmen blo hem stat lo deit we I finis minim lo 29 June 2023. So, mi folem instraksen blo jeiman olsem we I stap lo seksen 13(2) blo PS Act. So afta lo 29 June 2023, David Seule I kontinu blo atendem komisen miting, risivim ol alawens mo givim ol instraksen lo mi mo stap act olsem akting jeiman taem jeiman I travel aot. I no gat wan taem we wan nara komisen a akting taem jeiman I travel aot emi oltaem David Seule nomo lo las yia 2023”.

In his statement cited above, the PSC Secretary mentioned that when he became aware that David Seule's contract had lapsed, he informed the Chairman. However, the Chairman advised him not to worry over it. That he (Chairman) will have Seule reappointed. PSC Secretary went on to say that he followed the instructions of the Chairman in line with section 13 (2) of the PS Act. That provision states as follows –

“(2) The Secretary is subject to the direction of the Chairman of the Commission.”

This provision is fine but, in my view, it applies only to lawful instructions. Applying it otherwise, would lead to breaches of the Public Service Act or the Constitution as in this case.

Another evidence comes from Andrina Tari, Manager Corporate Service Unit of PSC. The relevant part of her statement goes as follows;

“Taem instrument of appointment I kam, mifla I mekem copy afta pasem long Secretary General, James Melteres afta hemi pasem long Chairman wetem ol members. Mi sta confirm se mi nao mi sta prepare sitting allowance blong olgeta, and mi bin talem long SG James Melteres, se bae mifla I no save pem sitting allowances and Acting Allowance blong hem. Chairman hemi save gut se contract blong hem I laps. Be James I talem long mi se umi pem nomo from instruction blong Chairman. So statement blong James se hemi bin talem long Chairman se Contract blong David hemi lapse hemi tru and Chairman hem respond olsem we James I talem mekem se mi mas folem wanem instruction we I kam long Chairman blong continue pem sitting allowances blong hem wetem Acting allowances blong hem taem Chairman hemi travel aot. Mi stap confirm se contract blong David Seule hemi no gat long any agenda from hemi work blong Chairman blong I consult wetem either PM blong hemi mekem recommendation I go long Head of State blong hemi mekem appointment”.

The statement above shows that both the Chairman and the Secretary were aware or should have been aware of the term of David Seule as a member of the PSC.

Another statement comes from Lucien Nirampath, Legal Officer of PSC, disputing the process of monitoring members of PSC contracts; the relevant parts of his statement goes as follows;

“Mifala ino receivim any notice I kam lo Head of State. Mifala ino employem hem, mifala ino gat any authority blo removum hem lo Commission. Mifala ino bin aware se contract I lapse, mifala I raisem between mifala nomo afta wei mifala I faenem out se contract hemi lapse. Lo time ia Frederick Loughman hemi Manager Compliance. Follem Employment Act mifala ino stap lo best position blo kivim notice se contract blo hem I lapse”.

The statement of Lucien contradicts his roles and responsibilities as Legal Officer. His role is to provide advice to the Secretary on matters that arises with regards to disciplinary matters and the terms and conditions of employment. Whether the contract of David Seule is still valid or has lapsed, in my view, falls within his sphere of responsibilities to ensure that the PSC is not working outside the law, in this case, against the Constitution. The Compliance Section should have advised the PSC Secretary when they found out that the appointment/contract had lapsed.

The third evidence comes from Private Secretary of Head of State, Clarence Marae. He confirmed the process that is supposed to be taken when contract of commission members lapsed. The relevant part of his statement goes as follows;

“Hemi responsibility blong SG nao blong hemi inform Chairman mo Chairman hemi inform Prime Minister or President. Long past practice, PM nao hemi recommend I go long Head of State.

Normally, SG blong Commission I sud gat everi instruments of appointment long file blong hem. Hem blong monitor mo inform Chairman long date of each contract. Practice under long Constitution oli never folem. Each Commission, oli gat responsibility blong monitor ol staffs blong olgeta then oli providem report I go bak long Head of state”.

Further to the above statements, Mrs Lolita Sawan who is the Principal Compliance Officer of the Compliance Unit of the Public Service confirmed the following:

CSU nao I kipim long records blong ol appointments, CSU nao hemi mas talem stret umi kam long end blong contract blong wan commission member”.

Now I come to the Law, Article 59 (1) (2) of the Constitution, Section 12 (a) (d) and Section 13 (1) and (2) of the PSC Act and Section 13 of the Leadership Code Act.

“Article 59 of the Constitution

59. Membership of Public Service Commission

- (1) The Public Service Commission shall be composed of five members appointed for 3 (three) years by the President of the Republic after consultation with the Prime Minister.*
- (2) The President of the Republic shall appoint every year, from among the members of the Commission, a chairman who shall be responsible for organising its proceedings.*

Article 59 (1) makes it very clear that a member of the PSC holds office for a period of three years. At the end the third year the appointment lapse. It requires no further action from anyone to terminate the appointment at that time.

The Public Service Commission is the employer of public servants. Members of the Public Service Commission are the most senior public servants conferred with a range of powers and functions under the Public Service Act and the Constitution. The major functions of the Public Service Commission are described in section 8 of the Public Service Act as follows –

“8. Major functions of the Commission

Subject to article 60 of the Constitution and to the provisions of this Act, the major functions of the Commission are:

- (a) to provide policy advice to Government on matters relating to the efficiency and effectiveness of the Public Service and in human resource development; and*
- (b) the appointment and promotion of employees on merit; and*
- (c) the selection or approval of those to undergo training courses overseas and for such purposes may organise competitive examinations; and*
- (d) the resolution of employment disputes and discipline of employees in accordance with this Act; and*
- (e) promoting the codes of conduct in Part 5; and*

- (f) subject to the provisions of any other enactment, to classify and set levels of salary and allowances and other entitlements of employees; and
- (g) to review the efficiency and economy of the Public Service in employment matters; and
- (h) for the purposes of efficient Government in employment matters, to review the establishment and approve the grading of posts; and
- (i) coordinating and providing training programs in Vanuatu for, and assisting with, the training of employees; and
- (j) providing guidelines to directors-general, directors and to the Public Service in managing or developing employees in good employer systems and obligations; and
- (k) ensuring the observance of the rule of law in public affairs;
- (l) to ensure compliance with and be responsible for the administration of this Act;
- (m) to set targets for the delivery of services by the Commission;
- (n) to provide regular reports in writing to the Minister on the performance of the Commission.

In my considered view, the underlying principle underpinning the main functions of the Public Service Commission is good governance. That every decision or action made or taken is fair, based on good and justifiable reasons and in line with the law and due process.

I cannot read anything into Article 59 that allows a member whose term has expired to continue to attend meetings and receive appropriate remuneration for it waiting and hoping that he or she will be reappointed. When an appointment terminates, that's the end of it.

Section 12 of the PSC Act talks about the role of the Chairman as follows:

12. Role of Chairman

In addition to the duties and responsibilities of the Chairman established by this Act the Chairman will be the head of the Public Service Commission and must:

- (a) call regular meetings of the Commission; and*
- (b) preside over and chair meetings of the Commission, and*
- (c) exercise a casting vote at meetings where there is an equality of votes; and*
- (d) be primarily responsible for the effective operation, management and performance of the Commission.*

When I read this section 12 of the PS Act and Article 59 (1) of the Constitution together it brings me to a number of interpretations, but the one that I prefer is this – the Chairman, amongst other things, is responsible to ensure that the Commission is properly constituted before it carries out its work. The Chairman must protect the

decisions of the Commission from being criticized or challenged that the Commission was not duly or properly constituted because someone who is not supposed to attend and make decisions actually did and render the decisions of the PSC invalid.

Section 13 of the PSC Act talks about the role of the Secretary as follows;

13. Secretariat

(1) There shall be appointed by the Commission a Secretary who will provide a secretariat and administrative support services to the Commission and who will be the administrative head of the Office of the Public Service Commission.

(2) The Secretary is subject to the direction of the Chairman of the Commission”

I consider the statement of Andrina Tari, Manager Corporate Service Unit of PSC, which is repeated below giving an indication of the role played by the Corporate Service ;

“Taem instrument of appointment I kam, mifla I mekem copy afta pasem long Secretary General, James Melteres afta hemi pasem long Chairman wetem ol members. Mi sta confirm se mi nao mi sta prepare sitting allowance blong olgeta, and mi bin talem long SG James Melteres, se bae mifla I no save pem sitting allowances and Acting Allowance blong hem. Chairman hemi save gut se contract blong hem I laps. Be James I talem long mi se umi pem nomo from instruction blong Chairman. So statement blong James se hemi bin talem long Chairman se Contract blong David hemi lapse hemi tru and Chairman hem respond olsem we James I talem mekem se mi mas folem wanem instruction we I kam long Chairman blong continue pem sitting allowances blong hem wetem Acting allowances blong hem taem Chairman hemi travel aot. Mi stap confirm se contract blong David Seule hemi no gat long any agenda from hemi work blong Chairman blong I consult wetem either PM blong hemi mekem recommendation I go long Head of State blong hemi mekem appointment.

Her statement goes to the heart of the process under the Constitution, and the chains of reporting under section 12 and 13 of the PSC Act that talks about the role of the Chairman and the Secretary.

It is clear that Manager Corporate and the Secretary did raise the issue of Mr Seule’s contract to the Chairman, Martin Mahe. Martin Mahe, in his position as the Chairman of the PSC failed to consult with the Prime Minister for the recommendation to be made to the Head of State to either re-appoint David Seule or appoint a new member.

“Leadership Code Act

13. Duties of leaders

(1) A leader must:

(a) comply with and observe the law;

(b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;

(c) comply with and observe the duties, obligations and responsibilities established by this Code or any other enactment that affects the leader; and

(d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty”

Martin Mahe, in my view, breached the above provision of the Leadership Code Act for failing to comply section 12 of the Public Service Act and Article 59 (1) of the Constitution

6. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

Before starting this investigation, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this Public Report to give the individuals mentioned in this report another opportunity to respond.

Firstly, I say thank you to David Seule for his response to the Working Paper.

David Seule disputed the monitoring process of Commission members. His response goes as follows

1. *“Olsem mi talem hemi klia se diuti blong hed blong stet hemi blong olketa ofisa blong hem olsem eksekiutif ofisa or praevet sekreteri oli sud kat rikod blong apoenmen we Hed blong stet I stap mekem. Oli mas traem blong mekem gud olgeta faeling system blong olgeta I kam mo efektif”*

My response to this point.

I have found no provision in the Constitution or the Public Service Act that prescribes such a function for the Head of State. As an administrative matter, normally the Office of the Head of State would keep records of such appointments. I fail to see how this answer is relevant to the issue at hand

2. *“Naia Ombudsman I kam blong akusim Jeaman se hemi extendem contract blong mi. Hao nao jeaman I save extendem kontrak blong mi or long wea stret long PSC Akt hemi talem se jeaman I gat pawa ya blong mekem extenswn blong mi.toktok ia ino tru nating mo ino correct.Hem tu no kat pawa blong extendem or blong rekomendem iko long President from hemia hemi role blong Praem Minista blong kantri”.*

My response.

The Chairman certainly does not have such a power. So who authorized or allowed Mr Seule to continue?

3. *"Praevet Sekreteri blong Hed blong Stet I talem se SG nao hemi sud informem jeaman mo jeaman hemi informem Hed blong Stet, hemia hemi no stret nating. Naia bambae umi kwestenem tu se olketa faeling blong stet haus I stret or ino stret. Oli mekem gud faeling blong olgeta or no".*

4. My response.

The issue has nothing to do with the filing system of the Office of the Head of State. Mr Seule when appointed as a member of the Public Service Commission, he became a leader under the Leadership Code Act where paragraph 5 (u) states that "members of the Public Service Commission " are "leaders". As such he has a duty under section 13 of the Leadership Code Act to –

- (a) comply with and observe the law;
- (b) comply with and observe the fundamental principles of leadership contained in article 66 of the Constitution;"

As a member of the Commission before his term expires, the provision cited above, places the duty on Mr Seule to comply with the law. In the context of this matter that means that he has a duty to know what the term of his membership of the Commission is, i.e, the commencement date and the expiry date. So that he protects that position or Office he occupied and the Public Service Commission from bringing disrepute to it.

5. *"Poen namba six, naia Ombudsman I wantem putum wan charge I kam long mi blong talem se mi mi no perform diuti blong mi olsem wan leader then bae oli putum charge blong lidasip code akensem mi afta bambae oli save talem se olketa desisen we mi mi pat long hem hemi no konstitiusonel or ino stret. Be no, wan man ya hem stap traem blong faenem wrong long ples ia blong hemi stanap lem blong blamem nara man"*

My response.

My response to his arguments in paragraph 3 above deals with this.

6. *"Work blong jeaman hemi limited long skop. So wok blem folem constitution jeaman ino blong stap jekem olketa ditel blong kontrack blong mifla. Hemia hemi diuti blong stet haos".*

My response.

The Chairman as a leader has a duty to comply with section 13 of the Leadership Code Act and article 66 of the Constitution. Article 66 (1) of the Constitution states as follows:

" Any person defined as a leader... has a duty to conduct himself in such a way, both in his public and private life, so as not to –

- (a) place himself in a position in which he has or could have a conflict of interest or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish the respect for and confidence in the integrity of the Government of the Republic of Vanuatu."

The Chairman of the PSC has a duty to –

- (a) ensure that he does not place himself in a position where he has or could have a conflict of interest or in which the fair exercise of his public duties might be compromised; and
- (b) demean his office or position; and
- (c) allow his integrity to be called into question.

In my view, Mr Mahe as Chairman of the PSC, has failed to comply with his duties under article 66 (1) of the Constitution in permitting Mr Seule to attend and take part in the PSC meetings without ascertaining first if his membership has not expired.

12. Role of Chairman

In addition to the duties and responsibilities of the Chairman established by this Act the Chairman will be the head of the Public Service Commission and must:

- (a) call regular meetings of the Commission; and*
- (b) preside over and chair meetings of the Commission, and*
- (c) exercise a casting vote at meetings where there is an equality of votes; and*
- (d) be primarily responsible for the effective operation, management and performance of the Commission.*

When I read this section 12 of the PS Act and Article 52 (1) of the Constitution together it brings me to a number of interpretations, but the one that I prefer is this – the Chairman, amongst other things, is responsible to ensure that the PSC is properly constituted before it carries out its work. The Chairman must protect the decisions of the PSC from being criticized or challenged that the PSC was not duly or properly constituted because someone who is not supposed to attend and make decisions actually did and render the decisions of the PSC invalid.

The reasons set out in response to claims by Mr Seule applies as well.

I still maintain my decision that, it is the duty of the Chairman, after being informed by the Secretary General that the term of Mr Seule has lapsed to take appropriate steps to ensure that Mr Seule did not attend any meetings of the Commission.