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## Public Service Tribunal

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PST Appeal No. 3 of 2019

Mr. Claude Tupou **Applicant**

Public Service Commission **Respondent**

### PUBLIC SERVICE TRIBUNAL:

Mr. 'Aisea Taumoepeau, SC **Chairman**

Mr. Timote Katoanga **Member**

Mrs. Lepolo Taunisila **Member**

### REPRESENTATION:

**Applicant** : Mrs. Petunia Tupou Counsel for the Applicant

**Respondent:** Mr. Sione Sisifa Solicitor General  
Ms. Mokaleini Fifita Public Service Commission

**Date of Hearing:** 28 May 2019

**Date of Ruling:** 25 June 2019

## APPLICATION FOR EXTENSION OF TIME TO APPEAL

### BACKGROUND

1. This is an application for an extension of time pursuant to Regulation 21 of the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010, to appeal to the Tribunal against the PSC decision to terminate his employment as Chief Executive Officer of the Ministry of Education and Training.
2. The Applicant's contract was terminated on 21 January 2019. This application was filed on 03 May 2019.

### THE LAW

#### Public Service Act

3. Sections 21 and 22 of the Public Service Act make the following provisions –

#### *“21. Dispute resolution and disciplinary matters*

*(1) The procedure to determine disputes and disciplinary matters under this Act shall be prescribed by Regulations.*

*(2) A person who is dissatisfied with a determination may appeal to the Public Service Tribunal.*

#### *22. Regulations*

*The Prime Minister may with the consent of Cabinet, make Regulations for the proper and efficient administration of this Act.”*

4. The Public Service (Disciplinary Procedures) (Amendment) Regulations, according to its preamble, were made in the exercise of the powers conferred by sections 21 and 22 of the Public Service Act.
5. The Public Service (Disciplinary Procedures) (Amendment) Regulations were specifically designed and intended by the legislators to operate separately with regard to appeals relating to “*disciplinary matters*” as distinct from the provisions enacted under PART VA (PUBLIC SERVICE TRIBUNAL) of the Public Service Act, other than the establishment of the Tribunal (which is specifically referred to in the Regulations).
6. The “*Tribunal*” is defined in the Regulations to be the “*Public Service Tribunal established under the Public Service Act 2002*”. That is the same Tribunal referred to in PART VA (in sections 21A to 21F).

## SECTION 21C (3) PUBLIC SERVICE ACT

7. Section 21C provides inter alia that –
  - (i) Appeals to the Tribunal “*shall be lodged with the Secretariat of the Tribunal within 14 days*” [section 21C(2)(b)];
  - (ii) The “*Tribunal may, upon application in writing before the due date, extend the time for making an appeal*” [section 21C (3)].
8. Clearly, the present application is not being made under this provision. Therefore, the requirements imposed by section 21C (3) are not relevant.
9. The Tribunal believes that the differentiation of requirements for lodging of appeals under the Act are intentional, and is the reason for the apparent discrepancies in the appeal provisions.
10. For example, under section 21C, the time for lodging of an appeal is:
  - (i) 14 days;
  - (ii) An extension may only be given if an application is made **before the due date** i.e. within 14 days;
  - (iii) No other specific procedures are prescribed.
11. Whereas, in the appeals relating to disciplinary matters made under section 21 and 22 of the Public Service Act, and as provided under the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010:
  - (i) The time for lodging an appeal is 30 days;
  - (ii) An extension of time may be given upon such terms as the Tribunal thinks fit, if it considers the justice of the case requires it;
  - (iii) Other procedural requirements are prescribed by the regulations.
12. It may be noted that another set of regulations, the Public Service (Grievance and Dispute procedures) (Amendment) Regulations 2010, which was also made under sections 21 and 22 of the Act, prescribes different procedures for lodging an appeal by an employee, as opposed to an appeal by an Association. It may also be noted that appeals must be lodged within 14 days, and there is no prescribed right of extension of that time.

## INTERPRETATION ACT

13. Section 10(d) of the Interpretation Act provides –

*“10. When in any Act which is now or may hereafter be in force power is given to any authority to make rules or regulations, the following provisions shall, unless in any case*

*the contrary is expressly provided or by necessary implication appears to be intended, have effect with reference to the making and operation of the rules and regulations –*

*(d) no rule or regulation shall be inconsistent with the provisions of any Act;”*

14. The Tribunal believes that section 10(d) above does not apply to the present case. The provision of the Public Service Act [section 21C(3)] which is inconsistent with the Regulations are not relevant, because the Regulations were empowered to be made under different provisions of the Act (namely sections 21 and 22).
15. It is also clear that both the Public Service (Disciplinary Procedures) (Amendment) Regulations and the Public Service (Grievance and Disputes Procedures) (Amendment) Regulations, by necessary implication, appear to have been intended to be applied separately.

#### REGULATION 21 OF THE PUBLIC SERVICE (DISCIPLINARY PROCEDURES) (AMENDMENT) REGULATIONS

16. Regulation 21 of the Public Service (Disciplinary Procedures) (Amendment) Regulations provides –

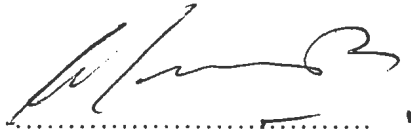
*“21. The tribunal may extend any time specified by these Regulations upon such terms as it thinks fit, if it considers that the justice of the case requires it.”*

#### **GROUNDS OF APPEAL**

17. Having considered the submissions tendered on behalf of both the Applicant and the Respondent, on the grounds upon which the application is based, together with the Affidavits in support thereof, the Tribunal believes that there are arguable grounds for the appeal to be heard.

#### **RESULT**

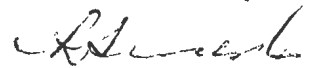
18. The Tribunal considers that the justice of the case requires that an extension of time for the lodging of an appeal by the Applicant be allowed.
19. It is so ordered.



Mr. 'Aisea Taumoepeau SC



Mr. Timote Katoanga



Mrs. Lepolo Taunisila