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**OMBUDSMANS FINAL REPORT ON THE  
COMPLAINT BY**

**'Amelali Vaha'i**

**of Neiafu, Vava'u**

**CASE NO. CPR16/42**

**Whether the extent to which the Ministry of  
Infrastructure cleared the complainant's tax allotment  
during the preparations for the Royal Visit and  
Agricultural Show in July 2015 was fair and  
reasonable**

**15 May 2017**

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## EXCECUTIVE SUMMARY

- 1 The complainant is the owner of a tax allotment located between Mataika and Neiafu in Vava'u. It is located beside the main road between these towns.
- 2 In July 2015 the Ministry of Infrastructure (the "Ministry") cleared bush alongside the main road to keep "road frontages clean and tidy" as part of the Ministry's work to prepare for the Royal Coronation visit and Annual Agricultural Show.
- 3 The Minister for the Ministry at the time was 'Etuave Lavulavu and he was in Vava'u at the said time overseeing the preparations and gave direct instructions to the Ministry staff that the work be done.
- 4 The complainant was not aware of the work and was dismayed to discover the damage done to his tax allotment. He sought advice regarding the size of the affected area and it was estimated to be 33.9 perches.
- 5 The complainant sought compensation from the Ministry and his complaint was tabled in the Legislative Assembly and the resolution was that the matter be deferred to the Ministry to sort out.
- 6 The complainant complained to this Office in August 2016 because of the lack of action and response from the Ministry.
- 7 We investigated the complaint and the Ministry have conceded that the work by the Ministry in July 2015 to keep the roadside clean and tidy was excessive and are willing to discuss a compensatory amount with the complainant.
- 8 I have three (3) recommendations in this Report pursuant to section 18(3) of the Ombudsman Act 2001-

Firstly – that the Ministry is commended for admitting that the road clearing works in July 2015 on the tax allotment of the complainant was excessive and caused unnecessary damage to the complainant's property.

Secondly – that the Ministry as indicated, discuss the matter with the complainant with a view to agreeing on a compensation amount and to settle accordingly.

Lastly – that the Ministry report back to me within 3 months of the date this report is finalised to provide a follow up report on the recommendations.

## **BACKGROUND**

- 9 The complaint was received on the 23<sup>rd</sup> of August 2016.
- 10 I assigned the investigation to my Investigation Team who undertook the investigation which included discussion with senior officers from the Ministry.
- 11 The team requested and received documents from the complainant and the Ministry.

## **THE OMBUDSMAN'S ROLE**

- 12 Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of an organization in his capacity as an officer of that organization. This applies to the Ministry which is an organization under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
- 13 My investigation is not an appeal process nor is it a judicial proceeding. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by the Ministry, and then form an opinion as to whether the act or the decision and the procedures followed by the Ministry, and then form an opinion as to whether the act or the decision was properly arrived at and was one that the Ministry could reasonably make.
- 14 My role is to consider the administrative conduct and decisions of the Ministry and to form an independent opinion on whether that conduct was fair and reasonable.

## **KEEPING THE ROADS CLEAN AND TIDY**

- 15 The complainant is from Vava'u. He is the registered holder of a tax allotment along the main road between Neiafi and Mataika called "Vakaono".
- 16 On or about July 2015 in preparation for the Royal Coronation Visit and the Annual Agricultural Show, work was done to ensure that the road frontages were clean and tidy<sup>1</sup>.  
This work was the responsibility of the Ministry.
- 17 The work to clearing the road frontages was done by the Land Transport Division (LTD) of the Ministry headed by Tevita Lavemai.

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<sup>1</sup> Letter from the Ministry to the Ombudsman dated the 24<sup>th</sup> October 2016

- 18 Following the work by the LTD, the Minister, 'Etuete Lavulavu gave directions directly to officers Ula Kaufusi, Masima Moala, Mo'ale Taumoefolau and Folau Similai to conduct further road clearing works using the Ministry's heavy machinery<sup>2</sup>. This work was not included in the Ministry's approved plan for preparations for the Royal Visit.
- 19 The Ministry concedes that the damage to the complainant's tax allotment may have occurred during these preparations but denies that ploughing and bulldozing was involved<sup>3</sup>.

### THE COMPLAINT

- 20 In July 2015 upon discovering the damage to his tax allotment, the complainant immediately complained to his Parliament Representative, Samiu Vaipulu who raised the complaint in the Legislative Assembly on the 9<sup>th</sup> of September 2015 as Parliamentary Motion No. 4/2015. After rigorous discussion in the Committee of the Whole House of Parliament, it was agreed (by majority vote) that the matter be deferred to the Government to act. This was endorsed and passed by the Legislative General Assembly on the 15<sup>th</sup> of September 2015, again by majority vote (Legislative Assembly Minutes for the 9<sup>th</sup> and 15<sup>th</sup> of September 2015).
- 21 The complainant sent a letter to the Minister on the 23<sup>rd</sup> of October claiming \$50,000 for the damages and the Ministry replied on the 27<sup>th</sup> of October denying the claim and any wrongdoing. The complainant wrote again on the 19<sup>th</sup> of November 2015 attaching photos of his property after the work by the Ministry including a map by Tevita Taufu (Field Surveyor) and A. Pongi (Computer Operator) which showed the alleged affected area was 33.9 perches.
- 22 The complainant was visited in 2016 by Ministry employee Tevita Lavemai to inquire whether the Government had settled his claim. Tevita was advised that there had been no progress in the matter. This was the last contact the complainant had with the Ministry.
- 23 Upon receiving the complainant's complaint in August 2016, we referred the matter to the Ministry on the 20<sup>th</sup> of September 2016 and the Ministry's reply was received on the 24<sup>th</sup> of October 2016. The Ministry admitted that the actions complained about occurred during the Royal Visit and Annual Agricultural Show preparations in July 2015. The Ministry also stated that the road clearance works had been undertaken by the LTD but additional works had been directed by the Minister included the clearing that was done to the complainant's tax allotment. The Ministry did not accept the valuation of \$50,000 given by the complainant but indicated a willingness to "further discuss the complaint with the landowner"<sup>4</sup> as an independent valuation would be required. In a letter from the Ministry on the 28<sup>th</sup> of February 2017, the Ministry again reiterates the willingness to discuss the matter with the complainant.

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<sup>2</sup> Letter from the Ministry to the Ombudsman dated the 24<sup>th</sup> of October 2016)

<sup>3</sup> As above

<sup>4</sup> Letter from the Ministry to the Ombudsman dated the 24<sup>th</sup> of October 2016

## RECOMMENDATIONS

24 Firstly – that the Ministry is commended for admitting that the road clearing works in July 2015 on the tax allotment of the complainant was excessive and caused unnecessary damage to the complainant’s property.

Secondly – that the Ministry as indicated, discuss the matter with the complainant with a view to agreeing on a compensation amount and to settle accordingly.

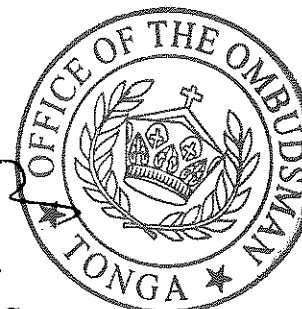
Lastly – that the Ministry report back to me within 3 months of the date this report is finalised to provide a follow up report on the recommendations.

## MINISTRY’S RESPONSE

25 On the 31<sup>st</sup> of March 2017, I delivered my Provisional Report to the Ministry setting out my findings, opinions and recommendations. On the 8<sup>th</sup> of May 2017, I received a letter from the Ministry accepting the recommendations of this Report. A copy of this letter is attached to this Report (section 18(5) of the Ombudsman Act 2001).



**‘Aisea H. Taumoepeau SC**  
**Ombudsman**



**15 May 2017**

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Kingdom of Tonga

5 May 2017

'Aisea Taumoepeau, SC  
Ombudsman Office  
Retirement Fund Building  
Nuku'alofa  
TONGATAPU

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Appt 8/5/2017  
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Information from  
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JLB  
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Dear Mr. Taumoepeau

**Re: Ministry's response to provisional report from the  
Ombudsman regarding complaint from 'Amelali Vaha'i  
against the Ministry – CPR Case No.16/42**

The Ministry acknowledges your letter on the 30<sup>th</sup> of March 2017 regarding the above matter.

The Ministry has thoughtfully considered your provisional report and agreed to the following comments:

- a) *That the ministry was responsible for the road clearing works that caused damages to the complainant's property.*
- b) *The road clearing works were the result of the former minister's personal directions.*
- c) *The Ministry is willing to pay damages to the complainant provided that it is reasonable and based on the findings of an independent valuation.*

In respect of c) above the Ministry would negotiate with the complainant to settle this matter. It would be crucial in our negotiation that both parties' interests are met especially in procuring an independent valuation that both parties agree to.

Respectfully,

Tevita Lavemai  
Acting CEO

