



OFFICE OF THE OMBUDSMAN

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**OMBUDSMAN'S FINAL REPORT ON
THE COMPLAINT BY
MUIMUI QETAKI
CASE NO. CPR15/51**

**Whether the decision of the Ministry of
Infrastructure and Tourism in 2015 regarding
the management contract of Queen Salote
Memorial Hall was reasonable and fair**

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EXCECUTIVE SUMMARY

1. Mrs. Muimui Qetaki (the complainant) is the Secretary of the Equippers Church. The Church rents the Queen Salote Memorial Hall (“the Hall”) for its weekly services on Sundays. It has been doing so since 2009.
2. In 2008 the Government of Tonga approved a recommendation from the Ministry of Tourism (“the Ministry”) that the management of the Hall be outsourced due to financial considerations (note that Tourism was later brought within the umbrella of the Ministry of Commerce and Labour and a reference to the Ministry includes this transition).
3. In 2009 the management of the Hall was awarded to Yummie Treats Quality Hospitality Services (“Yummie Treats”), a business that was utilising the south end of the building for its fast food outlet. The management contract was for 5 years and expired in January 2014.
4. In March 2015, the complainant, on behalf of the Equippers Church, inquired with the Ministry as to the availability of the Hall for management tenders and she was informed that the Ministry was reviewing the current management contract.
5. In May 2015, the Ministry renewed the management contract with Yummie Treats for another 4 years and the complainant was informed in June 2015 of this decision.
6. The complainant complained to this Office in September 2015 claiming an abuse of process and a lack of transparency.
7. I am recommending four things in this Report pursuant to section 18(3) of the *Ombudsman Act 2001* -
 - 1 The Ministry ensures that it carefully monitors the contracts it enters into and complies with the terms and conditions stipulated.
 - 2 The Ministry issues the complainant an official apology letter indicating the Ministry’s shortfall in dealing with the matter.
 - 3 The Ministry ensure that when the management contract for the Hall is due to expire, that it follows due process and invites tenders for the Hall’s management

contract in a timely and transparent manner including the consideration of the tender applications.

- 4 That the Ministry report back to me within **two months** of the date this report is finalised to provide a follow up report on the recommendations.

BACKGROUND

8. The complaint was received on the 3rd September 2015.
9. I assigned the investigation to my Investigation Team who undertook the investigation and interviewed the complainant.
10. The team requested and received information from the complainant and from the Ministry.

THE OMBUDSMAN'S ROLE

11. 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 organisation in his capacity as an officer of that Department or organisation. This applies to the Department which is a Government Ministry under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
12. My investigation is not an appeal process nor is it a judicial hearing. 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. I then form an opinion as to whether the act or decision was one the Ministry could reasonably make or that the procedures followed by Ministry was properly followed.
13. My role is to consider the administrative conduct and decisions of Ministry and to form an independent opinion on whether that conduct was fair and reasonable.

THE YUMMIE TREATS MANAGEMENT CONTRACT 2009

14. In 2008 the Government of Tonga recognises that something needed to be done regarding the management of the Queen Salote Memorial Hall in Nuku'alofa. The maintenance was becoming costly for Government so it was agreed that the Hall's management should be

put out for tender on a contractual basis. This was done and on the 22nd January 2009¹, the Minister on behalf of the Government of Tonga awarded the management contract to Simote Po'uliva'ati, Manager of Yummie Treats Quality Hospitality Services for a period of 5 years. This management contract expired in 2014. Yummie Treats was and is a business operating a fast food outlet on the south side of the Hall.

EXPIRY OF THE 2009 MANAGEMENT CONTRACT

15. The management contract between the Government and Yummie Treats expired in January 2014. There was a renewal provision in the contract but needed to be activated within 3 months before the expiration of the contract. This was not done, but Yummie Treats continued to manage the Hall and pay the monthly rent to the Government of \$3,000.
16. On 16th March 2015, more than a year after the lapse of the contract, the complainant as Secretary of the Equippers Church inquired with the Ministry's Chief Executive Officer, Mrs. Vaimoana Taukolo regarding the management contract of QSMH². The CEO of the Ministry responded³ that they were currently reviewing the current contract and "will keep you (the complainant) posted on future plans". It is highly probable that it was only when the complainant inquired about the management of the Hall that the Ministry became aware that the contract had lapsed.
17. The complainant again wrote to the CEO on March 16th advising her that "am glad to "flag" interest on the QSMH" and asking how soon the review will take. This was clear indication of the avid interest the Equippers Church had to be considered as a possible manager of the Hall.

THE NEW MANAGEMENT CONTRACT 2015

18. Obviously, as of March 2015, the extension of the current management was out of time. Clause 3 sub-clause (4) of the 2009 contract stated: "*the contract may be renewed for a further period agreed to by the Parties, on the terms and conditions of the renewal at least three months prior to the expiration of the Contract*".

¹ Management Contract between the Government of Tonga and Simote Po'ulivaati dated 22 January 2009

² Email from Mume Qetaki (mume007@gmail.com) to Moana Taukolo (moanat@mctl.gov.to) March 9, 2015

³ Email from Moana Taukolo to Mume Qetaki March 14, 2015

19. The Ministry CEO sought legal advice from the Solicitor General⁴ attaching a new draft contract with Yummie Treats and noting discussions with the Yummie Treats Manager to discuss terms on the 31st March 2015. Included in the correspondence was a query whether there was any legal impediment to the lapse of the first contract. There was no mention of the option of advertising the management of the hall so clearly the Ministry had at this point decided it's preference to continue with the Yummie Treats management of the Hall. The Solicitor General replied on the 28th of April 2015⁵ that there was no legal impediment to the extension of the management contract with Yummie Treats and that the Contract provide was in order.
20. On 27th May 2015, the Minister for the Ministry extended the current management contract for another 4-year period with Yummie Treats⁶.
21. On June 16th 2015, the complainant having not heard from the CEO wrote another email inquiring about any updates⁷. The Ministry's CEO informed the complainant⁸ of the Minister's decision in May 2015 saying "after the review the contract was extended with current management". This was 3 months after the complainant expressed interest in the management of the Hall.

ISSUES WITH THE USAGE OF THE HALL

22. After the complainant was advised in June 2015 that the contract had been extended, she continued to correspond with the Ministry relaying issues regarding the Equipper Church's use of the Hall, including their experience of the maintenance of the Hall and that they felt decisions not to allow them to use the Hall on Sunday's for their services were not reasonable.

OPINIONS

23. That the Ministry failed to monitor its 2009 management contract with Yummie Treats and let it lapse for over 1 year.
24. That had the complainant not queried the possibility of tendering for the management contract, the lapse would not have been discovered at that time and acted upon.

⁴ Savingram from the CEO for Commerce, Tourism & Labour to the Solicitor General dated 21 April 2015

⁵ Savingram from the Solicitor General to the CEO for Commerce, Tourism & Labour dated 28 April 2015

⁶ Contract between the Government of Tonga and Simote Po'ulivaati dated 27 May 2015

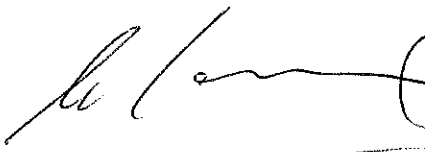
⁷ Email from Mume Qetaki to Moana Taukolo dated June 16, 2015

⁸ Email from Moana Taukolo to Mume Qetaki dated June 16, 2015

25. That the Ministry should have been more transparent with its processes regarding the Hall's management contract especially as it had received a query from a legitimate interested party and the Ministry CEO had specifically advised the complainant that she would be informed of future plans regarding the Hall.

RECOMMENDATIONS

26. **1** The Ministry ensures that it carefully monitors the contracts it enters into and complies with the terms and conditions stipulated.
- 2** The Ministry issues the complainant an official apology letter indicating the Ministry's shortfall in dealing with the matter;
- 3** The Ministry ensure that when the management contract for the Hall is due to expire that it follows due process and invites tenders for the Hall's management contract in a timely and transparent manner including the consideration of the tender applications.
- 4** That the Ministry report back to me within **two months** of the date this report is finalised to provide a follow up report on the recommendations.



'Aisea H. Taumoepeau SC
Ombudsman of Tonga

