

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. 219 of 2015

BETWEEN

: WILLIAM WONG

PLAINTIFF

AND

: FIJI NATIONAL PROVIDENT FUND BOARD

DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr Babu Singh for the Plaintiffs.  
Ms S Sara, Ms L. Bula with her, for the Defendant.

Date of Hearing : 2 August 2018

Date of Judgment : 14 August 2018

**JUDGMENT**

1. The Plaintiff in his Statement of Claim says as follows:

- (1) In May 2009 the Defendant advertised for Senior Management Positions, one of which was Assistant General Manager – Support Services (AGM-SS).
- (2) The Plaintiff applied for this position and was selected to attend the interview.
- (3) By a letter dated 7 October 2009, the Defendant offered the said position to the Plaintiff.
- (4) On 15 October 2009 the Plaintiff accepted the offer and the parties formalised an employment contract (contract) with terms and conditions for a term of 3 years.
- (5) The Plaintiff was to resume (sic, assume) employment with the Defendant upon a date to be nominated by the Defendant.
- (6) The Plaintiff waited from 15 October 2009 to commence work but was notified by the Defendant to wait until further notice.
- (7) The Defendant never sent any formal letter of termination of employment or notice thereof.
- (8) Upon establishing the Defendant's intention of not complying with the contract the Plaintiff mitigated losses by seeking alternative employment. The Plaintiff lost the opportunities of 2 executive positions.
- (9) The Plaintiff finally after 21 months (15 October 2009 to 15 July 2011) commenced a senior executive position.
- (10) As a result the Plaintiff suffered loss and damage and mental stress etc.
- (11) Wherefore the Plaintiff claims specific (sic, special) damages of \$175,822.50 and general damages.

2. The Defendant in its Statement of Defence says as follows:

- (1) Due to reforms and its strategic planning process the position offered to the Plaintiff was no longer required.
- (2) It was communicated to the Plaintiff that the said position offered to him would no longer be available to him.

- (3) The Plaintiff had not performed any work for the Defendant and thus was not entitled to any salary.
  - (4) There was no reason for the Plaintiff to have foregone opportunities of other employment when he was aware of the Defendant's restructure plans.
3. The Plaintiff in his Reply to the Defence says as follows:
- (1) He denies there was any written communication between the Plaintiff and the Defendant on the job.
  - (2) He states he was employed by the Defendant from the day he entered into the contract and is entitled to the salary and benefits stated therein. Further he was never given any termination letter.
4. The Minutes of the Pre-Trial Conference dated 25 April 2017 include the following:

**Agreed Facts**

- (1) The Defendants via a letter dated 7 October 2009 offered the position of AGM-SS to the Plaintiff (offer).
- (2) The offer sets out the remuneration package for the said position.
- (3) On 15 October 2009 the Plaintiff accepted the terms of offer made by the Defendant.
- (4) The Defendant advised the Plaintiff to wait until further notice to commence work with the Defendant.
- (5) The Plaintiff kept on waiting and waiting.

**Issues to be Determined**

- (1) Whether the Defendant (sic, Plaintiff) was notified that the position offered no longer existed on the Defendant's organizational structure?
- (2) There was no formal letter given to the Plaintiff advising of the change in structure?



5. At the commencement of the hearing the Defendant's Counsel confirmed that the documents in the Agreed Bundle of Documents were agreed and admitted.
6. The Plaintiff (PW1) gave his evidence. He said in July 2011 he obtained employment with Fiji Post and retired in 2017. He applied for the position of AGM-SS and was interviewed in July 2009 by the C.E.O. and the Manager Human Resources (MHR). He signed the letter of offer and gave it to the MHR. He communicated with the MHR on the telephone and saw him personally and he told PW1 he would let him know. During the 21 months he was waiting he was unemployed. There was no letter from the Defendant to date stating the job was not available.
7. Under cross-examination PW1 said he was unemployed when he applied to the Defendant. There was a letter of offer only but never a contract. He was aware it was likely reforms were taking place with the Defendant but was not aware that this would make his position no longer available. His e-mail of 29 January 2010 to the Defendant stated he was applying for another job – a lower position. If the other job was not available because of the reforms, he would like to apply for a lower position. He was determined to accept another position as he had been unemployed for some time. The Defendant's offer in its letter of 10 January 2011 of 3 months compensation is not fair as he was confident if given the job he would have performed.
8. With that the Plaintiff closed his case and the Defendant opened it's case.
9. Jonetani (DW1) gave his evidence. He was the MHR at the material time. He confirmed he gave the letter of offer to the Plaintiff after he had interviewed him. He told the Court he never gave the Plaintiff a letter to state the letter of offer was nullified. The Plaintiff was in effect saying if you cannot give me the original position, give me something else. DW1 said the position of AGM-SS was no longer available since the end of 2009.

10. With that the Defendant closed its case and Counsel now made their submissions.
11. The Plaintiff's Counsel said the Plaintiff accepted the offer and was told to wait until the Defendant contacted him. The wait continued for 21 months. The Plaintiff wants compensation of 2/3 of the 3 years contract. The question is, was the contract ever nullified. He said the Plaintiff had proved (1) there was a contract (2) there was a breach of the contract by the Defendant. The Plaintiff's compensation, having taken mitigatory action, should be 21 months earnings.
12. The Counsel for the Defendant then submitted. She said the Plaintiff was advised within 3 months that the employment was no longer available. He is only entitled to 3 months compensation per the letter of offer.
13. Counsel for the Plaintiff in his reply said the restructuring was uncertain and did not conform to the letter of offer.
14. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my decision.
15. The pivotal issue here is whether there was a binding contract between the Plaintiff and the Defendant. I have perused the letter of offer (L.O.) and note the following. In para 1 on page 1, it is stated "you will commence work under the Employment Contract on the commencement date as specified in the Contract". In the final para on page 1, it is stated "You will be required to initial each page of the Employment Contract (to be forwarded over soon, which must be returned to HR to become the original contract)". Then on page 2 at the end it is stated the Plaintiff "accept employment on the terms above and as set out in the Terms and Conditions in the enclose Employment Contract". Below it is the signature of the Plaintiff.



16. I then turn to the Plaintiff's e-mail of 29 January 2010 where in para 2 he states "I would like to request for my application letter for the AGM Support Services position be treated as my application for the above position together with my CV". The above position is that of Manager Administration & Archiving (MAA).
17. All the above leads the Court to the conclusion that there was no contract of employment actually effected between the Plaintiff and the Defendant. Even if there were one, the Plaintiff has effectually negated the original offer and his acceptance of it by his cross offer to be employed as the MAA. Thus I am constrained to hold that there was no contract and consequently no entitlement on the part of the Plaintiff to the 21 months compensation.
18. However this is not the end of the matter. The Defendant has offered 3 months compensation in its letter dated 10 January 2011 which had been affirmed by its Counsel at the hearing. As the amount was not specified I shall have to calculate the same. I am unable to accept the monthly sum of \$8372.50 as claimed in the Statement of Claim. Instead I take the calculation from the L.O. where the total remuneration package comes up to \$94,170 which would make the monthly remuneration \$7,847.50. It is this sum which is the multiplicand and with a multiplier of 3 (months) the quantum is \$23,542.50.
19. In the result I hereby order the Defendant to pay the Plaintiff the sum of \$23,542.50 together with interest thereon at the rate of 4 p.a. from the date of judgment to the date of payment. The Defendant shall also pay the Plaintiff costs summarily assessed at \$1,000.

Delivered at Suva this 14<sup>th</sup> day of August 2018.



David Alfred

**JUDGE**

High Court of Fiji