

**IN THE MAGISTRATES' COURT  
OF THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

Civil Case No. 75 of 2015

**BETWEEN:**           **JOANA GARAE**

Claimant

Claimant's Lawyer:

Pauline Kalwatman of PSO  
LAWYERS  
Port Vila, Efate, Republic of  
Vanuatu

**AND:**               **TELSAT PACIFIC LTD**

Defendant

Of Port Vila, Efate  
Republic of Vanuatu

*Appearances: Pauline Kalwatman for Claimant  
Rodney Smith self-representing his defendant company.*

**JUDGMENT**

1. After numerous claims had been filed against the defendant, the claimant finally agreed to an amended claim filed on 10<sup>th</sup> March 2016 against the defendant in respect of outstanding entitlements owing to her.
2. The defendant company employed the claimant on 19<sup>th</sup> November 2002 as a finance officer until 30<sup>th</sup> October 2009 when she voluntarily resigned and is now claiming her severance entitlement at VT 316,047.
3. Both parties factually accept it that:



- o The claimant is paid a fortnight wages of VT 22,816
- o She had worked in the defendant company for 6 years and 11 months.
- o On 26<sup>th</sup> October 2009 before the claimant resigned, the Parliament amended the provisions of the Employment Act giving right to employees who have served an employer for 6 years and who resigned in good faith to an entitlement of severance payments. The amended term is 10 years of service.
- o The amendment also reduces allowance payable to employees from 2 months to 1-month remuneration for every 12 months continuous employment.
- o The claimant claimed one month for each year of service as per the amendment.
- o The defendant company only paid claimant 2 weeks salary for each year of service commencing from the date of the amendment of the Employment Act in 2009 and not the date upon which the claimant commenced employment.
- o The claimant in her letter of resignation gave defendant 2 days' notice.

#### 4. Issue

*Whether claimant is entitled to severance allowance based on one-month remuneration for each year of service and from the commencement of her employment?*

#### 5. Law

##### Section 49 of the Employment Act

###### *Notice of termination of contract*

*(1) A contract of employment for an unspecified period of time shall terminate on the expiry of notice given by either party to the other of his intention to terminate the contract.*

*(2) Notice may be verbal or written, and, subject to subsection (3), may be given at any time.*

*(3) The length of notice to be given under subsection (1) –*

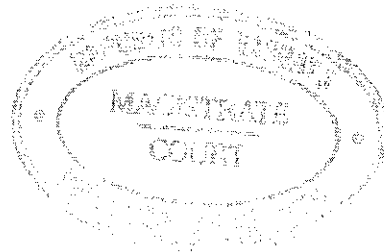
*(a) where the employee has been in continuous employment with the same employer for not less than 3 years, shall be not less than 3 months;*

##### *Employment (Amendment) Act No. 31 of 2008*

*Section 49 (5) If an employee fails to give to the employer appropriate notice under this section, the employer may deduct from the employee's entitlements the sum required for the period of notice."*

##### *Employment (Amendment) Act No. 33 of 2009*

#### 7. Paragraph 54 (1)(d)



Repeal the Paragraph, substitute

"(d) Where the employee has been in continuous employment with the same employer for a continuous period of not less than 6 consecutive years and the employee resigns in good faith; or"

## 6. Discussion

7. Defendant Company employs the claimant for more than 6 years. She resigned from her work just after the amendment of the Employment Act. The amendment gives right to an employee who continued on his or her employment for 6 years an entitlement for severance payment if s/he resigns in good faith. The defendant is devastated by the amendment in that the claimant took advantage of the amendment and puts his company in an awkward financial situation. He said the amendment should not be applied retrospectively therefore; he had paid the claimant her entitlements from the date of the amendment and not from when she commenced employment.
8. In the case of *Attorney General v ANZ Bank (Vanuatu) Ltd* [2012] VUSC 241, the Learned Judge held at Paragraph 38 & 39 that:

*"In my view, it is the law at the time of an entitled employee's termination or resignation that is relevant and not at any other time. Furthermore, if Defence counsel's submissions were to prevail, then, there would be two (2) effective rates for calculating severance allowance applicable to the same employee and for the one period of "continuous employment" which in turn, would have to be broken up. That would not be consistent with the intention of Parliament in repealing the old rate and substituting a new rate in its place. In my view, the adoption of the pre-October 2009 rate even for the limited purpose of calculating severance allowance up to the date of its repeal, tantamounts to reviving the repealed rate after its repeal. That cannot be right and I reject the submission.*

*For the foregoing reasons, I uphold the claim and declare that severance allowance payable under Section 56 of the Employment Act is to be calculated at the rate of "1 months remuneration" for every preceding 12 months of continuous employment. "*

9. When the claimant resigns on 30<sup>th</sup> October 2009 she is entitled to a month remuneration for every year of her continuous employment with the defendant company. The amendment commences on 26<sup>th</sup> October 2009.
10. Section 11 of the Interpretation Act relevantly provides:

### "11. Effect of repeal

(1) Where any Act of Parliament repeals any Act, the repeal shall not –

- (a) Revive anything not in force or existing at the time at which the repeal takes effect; or



- (b) Affect the previous operation of the enactment so repealed or anything duly done or suffered under it; or
- (c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or ...."

11. As it seemed unfair on the defendant given that the claimant resigned 4 days after the amendment there is no other option available. The provisions of section 11 of the Interpretation Act permits all obligations, privileges or liabilities accrued or incurred in the act so repealed not to be affected by the repealed Act.
12. I therefore find the claimant's submission lawful in respect of severance calculation at the rate of 1-month remuneration for every 12 months of continuous employment.
13. However, I am also satisfied that the claimant failed to give the required notice of 3 months as stipulated in section 49 (3) (a) of the Employment Act. She wrote her letter of resignation on 28<sup>th</sup> October 2009 giving 2 days' notice to be effective as from 30<sup>th</sup> October 2009.
14. Section 49 (5) of the Employment (Amendment) Act No.31 of 2008 permits employer to deduct entitlements if employee fails to give appropriate notice to terminate her employment.
15. Therefore, VT 136,896 shall be deducted from the severance payment of VT316, 047 leaving a balance of VT 179,151.
16. I am satisfied the defendant had paid VT 21,474 to the claimant. This will be deducted from the balance of VT 179,151.
17. The amount owing to the claimant for her severance entitlement is 157,677.
18. I therefore order that:
  1. Defendant must pay claimant VT 157,677 for her outstanding severance entitlement in 30 days from the date of this judgment.
  2. Cost of VT 8,000 is awarded to claimant.

Dated at Port Vila this 25<sup>th</sup> day of July 2018

BY THE COURT

MOSES PETER  
Senior Magistrate

