IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU (Civil Jurisdiction)

CIVIL CASE No.123 OF 2002

BETWEEN:

ROGER BANI

Claimant

AND:

AU BON MARCHE

Defendant

Mrs Marie Noelle Ferrieux Patterson for the Claimant Mr John Malcolm for the Defendants

JUDGMENT

On 7 May 2008, 3 applications are pending before the Court. The first application was an application to have the Second Defendant, Jean Marie Duffau struck out as a party to this claim. The Second Defendant has been struck out as a party in this proceedings on 7 May 2008 by the consent of all parties.

On 31 July 2008, the Court dealt with the two (2) outstanding applications. The first application is filed by the First Defendant on 10 April 2007 seeking a Court order to strike out the claim of the Claimant.

The ground for that application is that the Claimant has failed to serve the First Defendant with a copy of his claim filed on 1st July 2002. The Claimant had served the Second Defendant on 15 July 2002 but that claim had never been served on the First Defendant in accordance with the relevant provisions of the Civil Procedure Rules of 2002 (r 5.2). Further there is no Court Order that the claim be served in another way (substituted service).

Finally, the claim was not served on the First Defendant within 3 months of the date on which the claim was filed in accordance with rule 5.3 (1). Therefore, Mr. Malcolm submitted that the claim is no longer of any effect in application of Rule 5.3 (2). There is no factual challenge to that contention. I accept Mr. Malcolm's submission that the claim filed on 1st July 2002 has not been served on the First Defendant. It is no longer of any effect. I make a ruling to that effect.

On 12 March 2007, which was 5 years after the filing of the claim, the Claimant filed an amended Supreme Court claim. Mr. Malcolm submitted that the

Amended Claim constitutes a new claim as the claim filed on 1 July 2002 has no longer any effect. I accept this submission.

Mr. Malcolm, then, submitted that the Amended Supreme Court claim filed on 12 March 2007 is statute barred pursuant to section 20 of the Employment Act which provides:-

"20. Period of Limitation

No proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates".

The Claimant was dismissed by the First Defendant on 14 September 2001. He then filed a claim against the First Defendant on 1 July 2002 but failed to serve the First Defendant. He then filed an Amended Claim on 12 March 2007, seeking relief in the nature of recovery of remuneration.

The issuance of the Amended Claim on 12 March 2007, was outside the statutory permission under section 20 of the Employment Act [CAP. 160].

Finally Mr. Malcolm submitted, in the alternative, that if the Court ruled against his client, his client applied for security for costs on the following rational:-

- · First, the delays are occasioned by the Claimant; and
- Second, the delays generated additional costs for the First Defendant to find witnesses 7 years after the alleged dismissal; and
- Third, the claimant gave evidence through his sworn statement that he is impecunious.

On the basis of the evidence (sworn statements) before the Court, the facts are not disputed. The provision of section 20 of the Employment Act also is clear and straight forward.

I accept the submissions that the Amended Supreme Court Claim filed on 12 March 2007 is statute barred pursuant to section 20 of the Employment Act [CAP. 160].

I do no need to consider the alternative application about the security for costs. The following order is made:-

ORDER

- 1. The Claim is dismissed.
- 2. There is no order as to costs.

DATED at Port-Vila this 31st day of July 2008

BY THE COURT

Vincent LUNABEK
Chief Justice