

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

**Civil Case No. 190 of 2007**

**BETWEEN: PAKOA NASARA TAIWIA**  
Claimant

**AND: IFIRA SHIPPING AGENCIES LIMITED**  
Defendant

*Coram: Justice N. R. DAWSON*

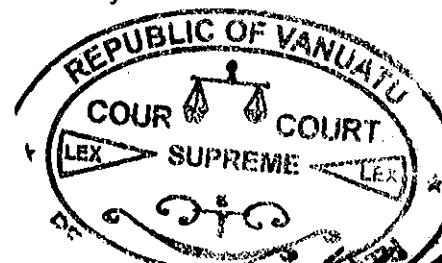
*Date of Hearing: 12<sup>th</sup> October, 2010*

*Date of Decision: 7<sup>th</sup> December, 2010*

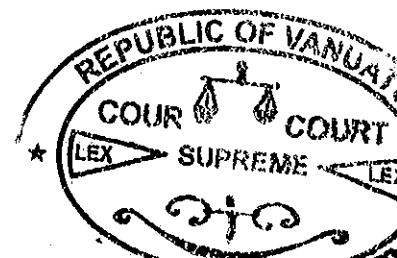
*Counsel: Mr. S. Stephens for the Claimant*  
*Mr. J. Tari for the Defendant*

**JUDGMENT**

1. The Claimant seeks entitlements he says are due to him under the Employment Act [CAP.160] (*"the Act"*) pursuant to his claim that he was unfairly terminated in his employment by the Defendant contrary to Section 50 (4) of the Act. His Supreme Court Claim also seeks VT 5,000,000 for defamation of character and VT 3,000,000 for exemplary damages.
2. The chronology of undisputed facts are:
  - (i) In a letter dated 24<sup>th</sup> October, 2003 the Defendant advised the Claimant of his appointment of the Captain and First Officer of the "Sarafenua" vessel commencing on 1<sup>st</sup> November, 2003.
  - (ii) During the time the Claimant was captain of the "Sarafenua", there were incidents, including an occasion on 24<sup>th</sup> August, 2005 when the vessel ran aground at Lolowai Bay.



- (iii) On the 6<sup>th</sup> June, 2006, the Defendant wrote to the Claimant suspending him from his employment.
  - (iv) A report dated 21<sup>st</sup> June, 2006 from Captain Terry Ngwele addressed to the Defendant was critical of the Claimant's actions as a captain of the "Sarafenua".
  - (v) A report dated 22<sup>nd</sup> June, 2006 and signed by the Chief Officer, Chief Engineer and four other officers and crew of the "Sarafenua" was also critical of the actions of the Claimant as captain of the "Sarafenua".
  - (vi) In a letter dated 10<sup>th</sup> August, 2006 counsel for the Claimant said that the Claimant *"was shocked and surprised to receive a letter dated 06<sup>th</sup> June, 2006 from yourselves that he was suspended from duties"*.
  - (vii) In a letter dated 23<sup>rd</sup> August, 2006 to the Claimant's counsel, counsel for the Defendant said the Defendant *"maintains its suspension against your client"* and went on to say *"the matter is to be submitted to the Boards next meeting and at which stage your client will be provided the opportunity to attend to answer serious allegations made against him for which preliminary investigations have concluded he is clearly liable"*.
  - (viii) On the 29<sup>th</sup> August, 2006 the Claimant wrote to the Defendant submitting his resignation.
  - (ix) On the 15<sup>th</sup> November, 2006 the Claimant wrote a letter of apology to the Defendant.
3. At trial, the Claimant clarified that his claim was based only upon Section 50 (4) of the Act, which says:-



*"(4) No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in contravention of this subsection shall be deemed to be an unjustified dismissal".*

4. The Claimant submits that the letter dated 6<sup>th</sup> June, 2006 advising him that he was suspended amounts to a termination of his employment. That letter says:

**"Re: Suspension without pay Till Further Notice**

*Following our recent discussion regarding continues breakdown of Sarafenua's main engine due to reckless conduct on your part, we hereby suspend you today from your duties without pay till further notice.*

*Please leave all keys and other company properties that you hold before you leave.*

*Thank you for you attention.*

*Yours sincerely*

*Executive Directors."*

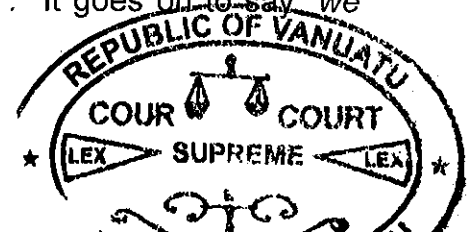
5. The Claimant also submits that the letter dated 23<sup>rd</sup> August, 2006 from the then counsel for the Defendant show that the Defendant has concluded from the preliminary investigation that the Claimant is liable. The letter says:

*"Please be advised we act for Ifira Shipping Agencies Ltd and are instructed in relation to your letter of 10<sup>th</sup> August 2006 to them.*

*Our client maintains it has done no wrong and maintains its suspension against your client.*

*The matter is to be submitted to the Boards next meeting and at which stage your client will be provided the opportunity to attend to answer serious allegations made against him for which preliminary investigations have concluded he is clearly liable."*

6. The Defendant denies that it terminated the employment of the Claimant. It says the letter of 6<sup>th</sup> June 2006 was a letter of suspension and was clearly headed "Suspension without pay Till Further Notice". It goes on to say "we



hereby suspend you today from your duties.” The Defendant also referred to s. 49 (1) of the Act which provides:

**“49. 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.”*

The Defendant argues that no such notice has been given by it or can be implied.

7. The Defendant submits that the Claimant resigned from his employment in his letter to the Defendant dated 29<sup>th</sup> August, 2006. That letter says:

*“ Dear Sir,*

**RE: SUBMISSION OF RESIGNATION**

*I am writing to submit my resignation on Landing Craft Sarafenua as of today Tuesday, 29<sup>th</sup> August, 2006.*

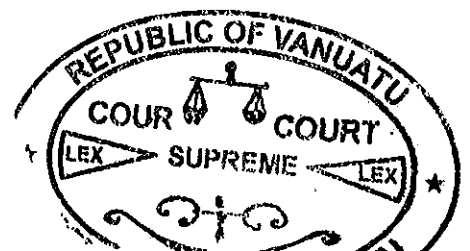
*The reason behind my resignation is as follow:*

- I am filing the case to the court because you have caused damage to my general reputation and professional reputation.*
- I am aligning with my suspension without pay till further notice while I am away from my work for almost three (3) months and have never heard anything from you.*

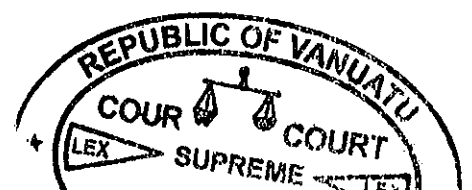
*I personally felt that I have the responsibility and obliged not t destroy our long term relationship. For the last 3 years and 7 months your management, Sarafenua crews, captains and respective leaders of Ifira Shipping Agencies has created and provided a very satisfactory working environment which I compared to valuable to none.*

*Although I am leaving, should you need my services particularly in the Wheel Room department, I would be mostly willing to offer myself.*

*Thank you.”*



8. The first issue is, did the Defendant terminate the employment of the Claimant? Twice in the Defendant's letter dated 6<sup>th</sup> June, 2006 it refers to the Claimant being suspended. No where does it say that his employment was terminated. Counsel for the Claimant in his letter dated 10<sup>th</sup> August, 2006 accepts that the Claimant has been suspended and does not raise any allegation of termination at that time. The Court does not read that letter as a termination notice pursuant to s. 49 (1) of the Act as it does not contain any reference to a termination or ending of the Claimant's employment.
9. Neither can the letter from Defendant's counsel dated 23<sup>rd</sup> August, 2006 be read as a termination notice pursuant to s. 49 (1) of the Act. It says that the Defendants "*maintains its suspension against your client*" and goes on to say that the Claimant "*will be provided with the opportunity to attend and answer serious allegations made against him*" at the next board meeting. An adequate opportunity to answer allegations is a requirement of s. 50(4) of the Act which must be taken prior to any dismissal for serious misconduct. This letter indicates that the Defendant was following the proper processes pursuant to the Act before deciding upon possible dismissal of the Claimant. The Defendant submits that the words in that letter which say "*preliminary investigations have concluded he is clearly liable*" do not amount to a notice of termination. It could have been worded better, but those words could be taken to mean that the Claimant was being put on notice that the allegations against him were serious in nature. This Court finds that the Defendant has not terminated the employment of the Claimant in that letter.
10. The sequence of events show that the Defendant became aware of concerns about the Claimant's work performance, which included placing in peril the lives of crew and passengers upon the vessel captained by him when it ran aground. It was not unreasonable to suspend him from his duties while an investigation took place. The preliminary investigation added to the Defendant's concern, and the suspension remained in place. In response to the Claimant's counsel's letter, the Defendant's counsel clarified the suspension of the Claimant remained in place, and also advised that he would be given the opportunity to answer the serious allegations made



against him. There is no basis for finding that the Defendant has acted in breach of the Act, or that it terminated the employment of the Claimant.

11. The second issue then is, did the Claimant resign his employment with the Defendant in his letter dated 29<sup>th</sup> August, 2006?
12. The letter from the Claimant clearly states that he is resigning his employment with the Defendant. It goes on to express dissatisfaction with what has occurred, but it then ends by offering himself for other employment with the Defendant. It was entirely reasonable and proper for the Defendant to conclude that the Claimant has resigned and to act accordingly. The resignation cannot be reversed by any later change of mind or regrets the Claimant may have had. His resignation was a final step taken by him that he cannot resile from at a later date.
13. It follows therefore that the Claimant cannot be entitled to payments due to unfair dismissal as there was no dismissal. His employment came to an end due to his own resignation, and therefore this claim is dismissed.
14. No evidence was presented to this Court or submissions made to support the claims of defamation and exemplary damages. The claims for defamation and exemplary damages are therefore dismissed.
15. As the claims have been unsuccessful, costs are awarded against the Claimant on a standard basis at an amount agreed on by the parties, or failing agreement, as taxed by the Court.

**Dated at Port Vila, this 7<sup>th</sup> day of December, 2010**

**BY THE COURT**

