

BETWEEN: JIMMY GARAE & NICHOLAS KOLLAN

Claimants

AND: THE REPUBLIC OF VANUATU

Defendant

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mrs. Marisan P. Vire for the Claimants*
Mr. Fredrick Gilu for the Defendant

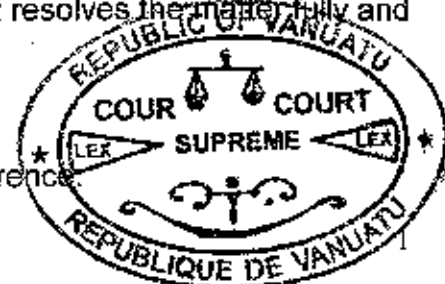
Date: *12th September 2013*

DECISION

1. This decision is issued pursuant to rule 17.8 of the Civil Procedure Rules No. 49 of the 2002 which requires that the Court must be satisfied of the Claimants case. It states as follows:-

- *(1) As soon as possible after the defence has been filed and served, the judge must call a conference.
- (2) At the conference, the judge must consider the matters in subrule (3).
- (3) The judge will not hear the claim unless he or she is satisfied that:
 - (a) the claimant has an arguable case; and
 - (b) the Claimant is directly affected by the anaciment or decision; and
 - (c) there has been undue delay in making the claim; and
 - (d) there is no other remedy that resolves the matter fully and directly.

(4) To be satisfied the judge may at the conference

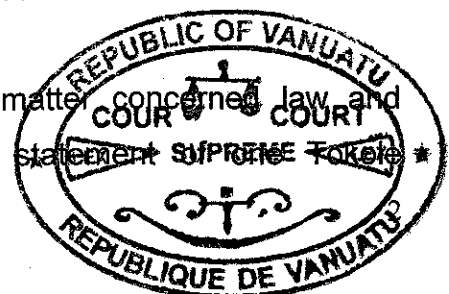


- (a) consider the papers filed in the proceeding; and
 - (b) hear argument from the parties.
- (5) If the judge is not satisfied about the matters in subrule (3); the judge must decline to hear the claim and strike it out.”
2. The state filed a defence at 4.45pm on 11th September 2013.
3. Mrs. Vire indicated she received service of the defence just this morning. She therefore sought an adjournment in order to prepare argument and submissions.
4. Mr. Gilu when asked about the gist of the defence told the Court that Section 56 of the Employment Act [Cap 160] as amended by Act No. 33 of 2009 was clear and unambiguous about the amount of severance being 1 month salary per year of continuous service. Mr. Gilu relied on the case of Wilco Hardware Holdings Ltd v. Attorney General Civil Appeal Case No. 54 of 2012 in support of that submission.
5. In paragraph 10 of the defence the State pleads –
- (a) that as a judicial review the claimants have failed to identify what decision is under challenge;
 - (b) that the claim is misconceived for reasons the claimants seek mandatory orders which would purport to direct the defendant to act unlawfully;
 - (c) the claimants are not entitled to the reliefs sought.

Mr. Gilu maintained the claimants have no arguable case and as such the Court should use its discretion under Rule 17.8 to strike out the claim.

6. I declined Mrs. Vire’s request for adjournment. I considered Counsel was capable of making verbal arguments in response to the defence. This was not a matter that an adjournment was necessary as that would prolong the matter further and put the parties to further unnecessary costs.

7. In her brief response, Mrs. Vire argued the matter concerned law and practice. She made reference to the sworn statement



Vurobaravu filed in support of the claim which showed that on 14th August 2013 when he was retired, he was paid 2 months salaries for every year of service worked.

8. Be that as it may, Section 56 of the Act and the Case of Wilco Hardware Holdings Ltd v. Attorney General reflect the unambiguous intention of Parliament and to have to depart from Section 56 would be to act unlawfully and contrary to the intention of Parliament. That being so, it may be that those payments made on the basis of 2 months salaries for every 12 months continuous service are illegal payments, but that is not the issue before the Court at this stage.
9. In the claims the claimants have not identified what decision they are challenging and who made that decision. Further, the allegation made under grounds 10 of the claims appear to be constitutional complaints. The appropriate cause would have been to file a constitutional case and not to proceed by way of a judicial review.
10. For the foregoing reasons, the Court was of the clear view and was satisfied that the claimants have no arguable case and further that they are not directly affected by the decision since they have not identified that decision clearly.
11. Accordingly, the Court declined to hear the matter further but ordered that the claim be struck out without any further delay, so as to avoid further unnecessary costs to the Parties. The Court acted pursuant to the overriding objectives of the Rules specified in Rule 1.2.
12. Under the circumstances of the case, the Court was of the clear view there was no need to award any costs and therefore made no order as to costs.

DATED at Luganville this 12th day of September 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

