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

Civil Case No. 82 of 2010

BETWEEN: KREM PITA & 47 OTHERS
Claimants

AND: SOUTH WEST PACIFIC INVESTMENT LIMITED trading as LE MERIDIEN PORT VILA RESORT & CASINO
Defendant

Coram: ***Justice D. V. Fatiaki***

Counsel: *Mr. B. Bani for the claimants*
Ms. C. Thyna for the defendant

Date of Judgment: *22 October 2013*

JUDGMENT

1. This case was commenced on behalf of 48 named claimants in June 2010 as a civil claim seeking payment(s) in lieu of a notice of termination as provided for in terms of **section 49** of the **Employment Act**.

   "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.

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

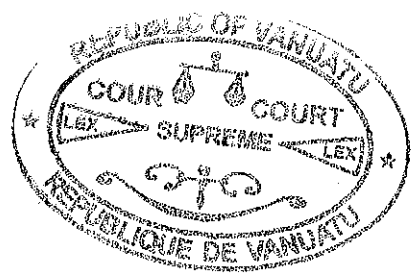
   (3) The length of notice to be given under subsection (1) –

   (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;

   (b) in every other case –

   (i) where the employee is remunerated at intervals of not less than 14 days, shall be not less than 14 days before the end of the month in which the notice is given;

   (ii) where the employee is remunerated at intervals of less than 14 days, shall be at least equal to the interval.



(4) Notice of termination need not be given if the employer pays the employee the full remuneration for the appropriate period of notice specified in subsection (3)."

2. In particular, the claimants say that they were all employees of "*... not less than 3 years ...*" duration at the defendant hotel receiving monthly wages and that they were <u>all</u> terminated from employment on 22 October 2009 pursuant to a standardized termination letter served on each of them on 21 October 2009. The claimants <u>all</u> accept they were re-employed by the defendant hotel on 23 October 2009 on new employment contracts. Nevertheless, the claimants claim they received <u>no</u> payment in lieu of notice of termination as was their statutory entitlement.

3. The contents of the "*standardized*" termination letter dated **21st October 2009** reads as follows (depersonalized):

"Dear ...,

<u>RE: TERMINATION OF EMPLOYMENT</u>

Further to out meeting of 21st October 2009, I confirm that your previous employment at Le Meridien Port Vila Resort & Casino has been terminated with effect from Thursday 22nd October 2009 and your new contract of employment has been entered into with effect from Friday 23rd October 2009.

As stated at our meeting on 21st October 2009, the termination of the previous contract arose because of changes to the Employment Act [CAP. 160]. The new contract of employment is attached hereto and we ask that you sign and return that contract. We will provide you with a copy of that contract after it has been executed by us.

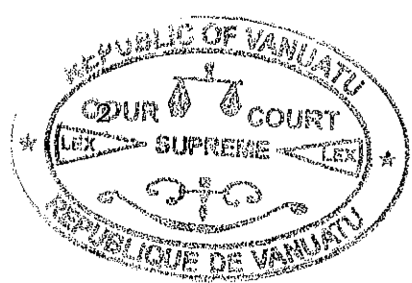
As a result of the termination of the old contract the following payments will be made to you.

1. *Final salary for days worked for period commencing 19th October to 22nd October 2009.*
2. *All Annual Leave accrued and not yet taken.*
3. *Severance Allowance for 10.4 years of service.*

All these payments are of course subject to any deductions for any outstanding amounts you may still have with the company. A schedule of payments is attached for your signature and acceptance. Once you have signed payroll is instructed to release to total sum of VT... into you ANZ Bank Account.

Please sign, date and return this letter as confirmation of receipt of this letter and any attachments/enclosures.

Yours faithfully,



Arjun A Channa
General Manager.

Encls."

4. Certain notable features are immediately apparent from the "*standardized*" letter as follows:

    (1) Each employees' employment with the defendant hotel was terminated by the defendant hotel "*with effect from Thursday 22 October 2009*";

    (2) The terminated employees' unemployment lasted for a day namely, 22 October 2009;

    (3) Each terminated employee was re-employed on a "*… new contract of employment … with effect from Friday 23rd October 2009*";

    (4) The sole "*reason*" given for the employee's termination is:
    "*… because of* (unspecified) *changes to the Employment Act [CAP. 160]."*

5. In addition without any sworn evidence from the defendant hotel, defence counsel writes (depersonalized):

    "*3.3 The sworn statement … read together with attachment "A"* (the employee's termination letter) *to the Statement, the following facts emerge:*

    (a) *On 21 October 2009, there was a meeting between …* (the employee) *… and a representative of the defendant. At that meeting, there was a discussion about the defendant's desire to rearrange its affairs before certain amendments to the act came into operation.*

    (b) *There was an agreement reached between …* (the employee) *… and the defendant that would enable the defendant to achieve its desire while preserving and continuing, in fact though not in law, …* (the employee's) *… employment, in the same position and at the same salary.*

    (c) *The important terms of that agreement were:*

    (1) *The defendant would give* (the employee) *written notice terminating his employment on the following day, 22 October 2009.*

    (2) (the employee) *would accept that notice as sufficient to terminate such employment on 22 October 2009.*

    (3) *Upon such termination,* (the employee) *would receive, in addition to his salary for the period 19 to 22 October, immediately payment*

of ... accrued annual leave and ... severance allowance, ... paid into his bank pursuant to the letter dated 21 October 2009, ...

(4) *Without any interruption whatsoever, in fact though not in law, to his employment, ... would continue, in fact though not in law, in ...* (the employee) *... the same position, at a higher salary, from 23 October 2009, upon the terms of a new agreement, which contained a full range of entitlements (annexures "B" to sworn statement).*

(d) *In reality – both factual and legal – ...* (the employee's) *... employment continued, in fact though not in law, unabated but, what is quite clear is that the terms of the agreement that he reached with the defendant on 21 October 2009, and that was put into effect over the following 2 days, provided ...* (the employee) *... with "conditions" that were "more favourable" to "those provided for in* (the) *Act."*

6. Each employee's new employment contract besides the usual terms and conditions of employment was to be "*reviewed yearly*". Each contract had a commencement date of "*Friday 23rd day October 2009*" and each contained the following **Clause 10**:

"*EMPLOYMENT ACT APPLICATION*

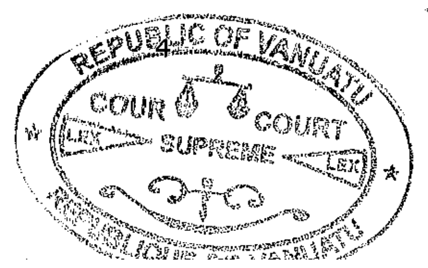
10.1 For the avoidance of doubt where no provision is made under a particular heading of this Employment Agreement, the Employment Act [CAP. 160] (as amended from time to time) shall apply. The parties acknowledge that any such entitlements arising under the said Act shall be calculated as from the commencement date of the present Employment Agreement. The parties acknowledge that the employee has been paid out all pre-existing entitlements that may have arisen from prior to the commencement of this Agreement.

10.2 The Employee and the Company recognize the amount of VT...(including a severance allowance) *was due to the Employee as at the date of the commencement under the previous Employee's Employment contract and that such sum has been paid to the Employee prior to commencement of this new Employment Agreement.*"

(my underlining)

7. The court file was originally assigned to another judge and after several uneventful adjournments was referred back to the Chief Registrar in October 2010 and reassigned to me in March 2011.

8. At the first conference before me on **17 March 2011** defence counsel complained that: "*...* (it was) *not feasible to run separate defences against each defendant and all individual claims are within the Magistrate's Court jurisdiction* (being less than VT1 million) *and should be filed there separately rather than* (as) *a quasi class action*" (whatever that may mean).



9. Claimants' counsel was equally adamant that the claims "*... arise out of same factual situations and reflects properly the circumstances of the terminations* ie. *'**en masse**' and offered new contracts. Defendant should file defence and plead as it sees fit ...*" A defence was ordered to be filed by 1 April 2011 and a timetable was set for the filing of sworn statements by 1 May 2011.

10. A defence was eventually filed on 16 May 2011. It admits inter alia "*... that the claimants' employment was terminated on 22 October 2009 and says that the claimants agreed to a re-arrangement of their employment*". In this latter regard the defence avers: "*... the claimants were offered the alternative of re-employment and that the claimants accepted such re-employment*". The defence then denies that the claimants are entitled to any payment in lieu of notice of termination.

11. On 23 June 2011 sworn statements were again ordered from both parties and only the claimants filed sworn statements in July 2011. None was forthcoming from the defendant. Thereafter, in August 2011, defence counsel advised that the management of the defendant hotel had changed and counsel sought further time to take fresh instructions and redraft its sworn statement(s) which had not been filed despite the Court's earlier orders. Despite numerous adjournments and court orders in **August** and **October 2011** and early **2012** for the defendant to file and serve its sworn statements, no sworn statements were ever filed by the defendant hotel.

12. With a view to advancing matters further, counsels were ordered in October 2011 to agree facts and issues and a pre-trial conference was fixed for **7 March 2012**, on which date, claimants' counsel produced a brief chronology of five (5) relevant events and a document outlining the following issue(s):

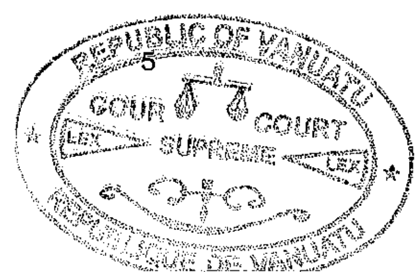
    "*(1) Are the claimants entitled to payment in lieu of notices as provided under the Employment Act (if the answer is yes) (2) How much?*"

13. On 7 March 2012 after lengthy discussions, it became apparent that there were no factual issues or disputes, and the Court with the agreement of both counsels, ordered:

    "By agreement after discussions:

    (1) Claimant to file and serve written submissions on the basis of the agreed chronology/facts and agreed issues by 21 March 2012;

    (2) Defendant to file and serve written response submissions by 4 April 2012;



(3) Claimant to reply by 11 April 2012;

(4) Matter adjourned for review on 16 April 2012 at 9.15 a.m.

(5) Costs reserved."

14. On 3 July 2012 claimants' counsel filed his submissions. Sadly defence counsel passed away in the interim and the claimants' submission was ordered to be personally served on the General Manager of the defendant hotel to allow the defendant to instruct a replacement counsel.

15. On 15 October 2012 a fresh Notice of Beginning to Act was filed by replacement defence counsel together with a written submission that was earlier ordered on the 7th March 2012 [see: **order (2)** above].

16. The submission is contained within 7 closely-typed pages and raises numerous arguments under various sub-headings summarized as follows:

    (1) Procedurally Misconceived

    Wherein reference is made to **Rule 3.3** of the **Civil Procedure Rules** and the absence of a court order permitting the joinder of the claims.

    (2) Legally misconceived

    Wherein reference is made to **sections 6** (not pleaded in the defence) and section **49** of the **Employment Act**.

    (3) Factually Misconceived

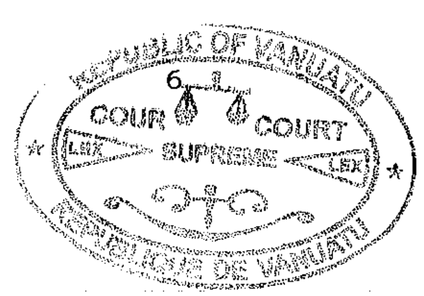
    In this regard the submission states:

    "*... it is inevitable that the Court will hold that the facts* [**on which the defendant filed no sworn statement(s)**] *... establish unequivocally that the claimants have no legal entitlement to the amounts they respectively claim. Each of the claimants entered into a plain and simple agreement that related to the continuation of their employment, not to its "termination".*

    These proceedings have all the hallmarks of a "try-on"".

    (4) The Way Forward

    "*If ... the claimants still wish to continue with these proceedings, the defendant will seeks (sic) directions relating to the filing of an Amended Defence and sworn statements ... within a short period of time.*



The defendant also will have to consider whether or not to make an application under the Court's inherent power to have the proceedings dismissed as frivolous or vexatious or disclosing no cause of action."

(my insertion in brackets)

17. On 22 October 2012 claimants' counsel filed a brief reply to the defence submission. In it counsel writes inter alia:

    "Fair opportunity was given to the defence to file its defence as well as evidence in rebuttal – the opportunity was spurned despite numerous conferences and direction orders for the defendant to act.

    With respect we say the defendant's submissions on procedural anomalies is misconceived. Prior to engaging in a convoluted path of procedural matters, this one point must remain the beacon: ***<u>Did the defendant pay the claimants notice of termination or not?</u>****"*

18. It is unfortunate that replacement defence counsel does not seem to be aware that since 7 March 2012 this case has been treated and managed in accordance with **Rules 12.4** and **12.8** of the **Civil Procedure Rules** with the agreement of counsels and on the understanding that the facts are agreed and that the defendant hotel was not filing any sworn statements. Furthermore, <u>no</u> interlocutory applications have been filed to amend the defence <u>or</u> to strike out the claim as an "*abuse of process*" <u>or</u> for want of a "*cause of action*".

19. I turn then to consider the competing legal submissions in the case more particularly raised by defence counsel and adopting the same sub-headings.

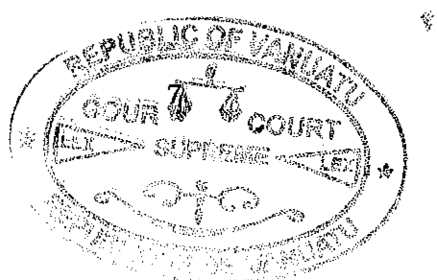
    (1) <u>Procedurally Misconceived</u>

    The relevant Court rule dealing with joining and separating claims in the one proceeding is **Rule 3.3** of the **Civil Procedure Rules** which provides:

    "3.3 Joining and separating claims

    (1) The court may order that several claims against the one person be included in the one proceeding if:

    (a) a common question of law or fact is involved in all the claims; or



> (b) *the claims arise out of the same transaction or event; or*
>
> (c) *for any other reason the court considers the claims should be included in the proceeding.*
>
> *(2) The court may order that several claims against the one person be treated and heard as separate proceedings if:*
>
> (a) *the claims can be more effectively dealt with separately; or*
>
> (b) *for any other reason the court considers the claims should be heard as separate proceedings.*
>
> *(3) A party may apply to the court for an order that:*
>
> (a) *several claims against the one person (including the party applying) be included in the one proceeding; or*
>
> (b) *several claims that are included in the one proceeding be treated and heard as separate proceedings."*

20. It is accepted that no court order was sought by <u>either</u> party under **Rule 3.3 (3)** to join or separate the claimants or claims in this case <u>nor</u> has a court order been made under **Rule 3.3 (1)**.

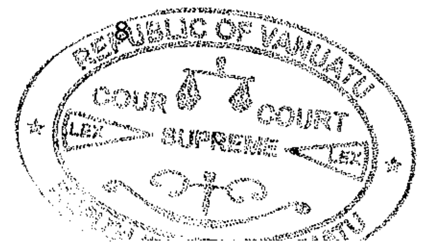
21. Having said that however, defence counsel accepts, relative to the first disjunctive ground set out in **Rule 3.3 (1) (a)**:

> "... *<u>it is true that a common question of law arises in respect of each claim</u> but given the disparate nature of the individual claims nothing would be achieved, in practical terms, in having all the claims joined in one proceeding."*

22. As for the second ground in **Rule 3.3 (1) (b)** defence counsel writes:

> "... *on the face of the sworn statements of each claimant* (the ground) *cannot be satisfied: each of them arises out of a discrete transaction between the particular claim and the defendant*".

23. Even accepting, for the sake of argument, that the claims do <u>not</u> originate out of the same "*transaction*" or employment contract, there can be <u>no</u> doubting in the court's mind that the termination of each claimants' employment contract arose out of the same "*event*", namely, the handing over to each claimant of his termination letter on 21 October 2009 and his/her termination the next day.



24. In the court's view the evidential and legal basis clearly existed for the court to make an order under **Rule 3.3 (1)** had it been sought by either party and the absence of a court order does not *per se* mean that the claim as filed was "*procedurally misconceived*". It was not, and, it was always open to the defendant to seek a separation or striking out if it was seriously prejudiced by the form of the claim.

25. Accordingly, the Court accepts the submission of counsel for the claimants that once one of the "*grounds*" of **Rule 3.3 (1)** is established, there is no need for an order for joinder "*... as the claim was already packaged in accordance with Rule 3.3 (1) (a) (b)*". The arguments under this first sub-heading are therefore dismissed.

26. It is convenient to deal with **sub-headings (2)** and **(3)** together. Legally and

    Factually Misconceived

    In this regard defence counsel submits:

    "The claimants claim ignores entirely the provisions of Section 6 of the Employment Act which provides relevantly:

    'Nothing in this Act shall affect the operation of any ... agreement which ensures more favourable conditions in respect of the employees concerned than those provided for in the Act'.

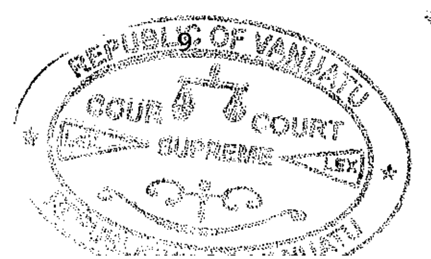
    There is no warrant for the word 'agreement' to be given any other meaning then its ordinary meaning.

    It is plain that the case of each of the claimants, on the face of the claim and of each of their sworn statements, is the same and, ... they reveal sufficient to establish that, as a matter of law, the statutory provisions relied upon (by) the claimants in their respective claims for 'payment in lieu of notice' have no operation by virtue of Section 6 of the Act".

    And later:

    "*... Section 49 is directed towards the serious matter of the non-consensual termination of a person's employment where, in reality, he or she is "sacked" or dismissed or retrenched or whatever other term is appropriate ... It was no part of the statutory purpose to give adventitious advantages to employees who happily agree to accept one 90th of the notice to which they might have been entitled had they been in fact really, genuinely dismissed, but who, in truth, continue, in fact though not in law, in the same employment with similar or the same salary and with the benefit of an immediate cash payment to which they would not otherwise had (sic) been entitled*".

27. The claimants' counsel in his submissions in reply does not directly address defence submissions on **Section 6** of the **Employment Act** other than to



say "*... the law on the point is in favour of the claimants and not otherwise*". The claimants' original submission however does rely on **Section 18** of the **Employment Act** which provides:

> *(1) No statement such as "received in full settlement of all claims" made by the employee, whether during the period of his contract or after its termination, shall have the effect of waiving any rights he may have under the said contract.*
>
> *(2) The acceptance without protest or reservation by an employee of a pay document shall not be held to imply renunciation on his part of the claim for all or any part of remuneration which may be due to him and such acceptance shall not be held to imply the settlement of all claims."*

28. On the face of it, the section is clearly protective of an employee's rights under his employment contract and extends, in my view, to his rights and entitlements under the Employment Act unless the employee has agreed to a "*more favourable condition*" than his statutory entitlement.

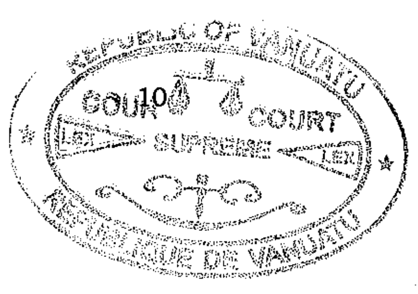
29. In the context of the present case each claimant had a statutory entitlement to receive a "*3 month*" notice of termination of his employment from the defendant hotel. Each received, instead, a single days notice. If I may say so it is difficult in such circumstances to conclude that in so far as that particular entitlement is concerned the claimants can be said to have waived his/her right by agreeing to a "*more favourable*" notice of termination.

30. In the absence of any sworn evidence from the defendant as to what was discussed and agreed with the claimants at the meeting on 21 October 2009 the court is constrained by the claimants' sworn statements and the annexures.

31. No-where in the claimants' sworn statements is there any mention that each claimant agreed to forego the requirements of **Section 49** of the **Employment Act** or his/her entitlements under the provision. Equally, no-where in the defendant hotel's "*standardized*" termination letter or in its new **Employment Agreement** is there to be found any reference to **Section 49** or mention of an "*agreement*" by the employee concerned to forgo the requirements of **Section 49** either, as to the length of the notice to be given by the defendant hotel or to the payment in lieu thereof.

32. Indeed both annexures are singularly silent on the topic and the existence of the present proceedings is some indication that no such "*agreement*" was ever reached between the parties. In addition, each claimant uniformly deposed:

"*My employment was suddenly terminated one day and the next day I was re-hired but I was not given any notice.*"



Accordingly, I accept and find on the undisputed evidence, that no "*agreement*" was ever concluded with each claimant.

33. Significantly, defence counsel makes no mention of **Section 18** in his submissions which sought to rely on **Section 6** based on the increased salary offered to most of the claimants in their new Employment Agreement.

34. In my considered view the submission is misconceived and without merit. Firstly, **Section 6** is directed at the "*operation*" of any agreement and the new Employment Agreement of each claimant commenced on 23 October 2009. It has no retrospective effect or "*operation*" and certainly no possible effect on the applicability of Section 49 to the events of 21/22 October 2009.

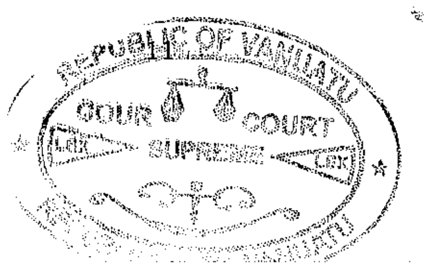
35. Secondly, the new Employment Agreement makes no mention in the "*recitals*" of any "*agreement*" by the employee concerned either to accept a day's notice of termination, or alternatively, to forgo his/her entitlements under **Section 49** of the **Employment Act**. Indeed, the new Agreements specifically incorporates the provisions of the Employment Act "*... where no provision is made under a particular heading*" and clause 5 under the heading "*DISMISSAL*" recognizes termination by either party "*... in accordance with the provisions of the Employment Act*";

36. Thirdly, given the absence of any reference in the defendant hotel's "*standardized*" termination letter and new Employment Agreement to **Section 49** or to an "*agreement*" affecting its applicability to each employee, I am not satisfied in the words of **Section 6** that the defendant hotel's new Employment Agreement "*... ensures more favourable conditions ... to the employees concerned than those provided for in this Act*".

37. Fourthly, in my view, defence counsel's submission on **Section 6** blithely ignores or glosses over the last seven (7) words of the section (underlined above) which requires a comparison to be made between a condition in the "*agreement*" and the equivalent provision in the Employment Act. In colloquial terms, the section envisages comparing similar conditions of employment such as remuneration and salary and allowances rather than, dissimilar conditions such as "*salary*" and "*notice of termination*".

38. In **Air Vanuatu (Operations) Ltd. v. Molloy** [2004] VUCA 17 the Court of Appeal in considering **Section 6** of the **Employment Act** relevantly observed (in the context of an employee's entitlement to a severance allowance):

> *"Part XI of the Employment Act creates a specific regime with regard to a severance allowance. Section 54 identifies the qualifying circumstances. Section 55 indicates circumstances which vary or remove the general entitlement.*
>
> *The method of calculation of the allowance is set out in detail in section 56. Section 57 identifies the deductions, which can be made.*



Section 6 of the Employment Act provides that nothing in the Act shall affect the operation of any law, custom, award or agreement which ensures more favourable conditions in any respect to the employees concerned than those provided for in this Act.

We are accordingly of the view that there is no barrier in law or in principle which restricts the ability of an employer and an employee to make their own private arrangement with regard to a severance entitlement providing it does not in any way undercut or minimize the employee's entitlements under Part XI.

We hold that position notwithstanding the provisions of section 56 (5) which provides that a severance allowance payable under the Act is to be paid on the termination of the employment. A proper and adequate allowance paid earlier than that date could be more favourable from the point of view of an employee and therefore it might be permissible under the Act.

(my underlining)

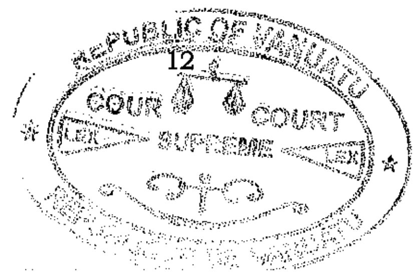
39. Plainly **Section 6** is, for want of a better description, statutory provision or employment condition–specific when it comes to an assessment of the advantage of an employment "*agreement*" over the comparable provisions of the Employment Act.

40. Finally, defence counsel's frequent use of the expression "*in fact though not in law ...*" in his submissions under this sub-heading is a clear indication of a misconception about the meaning and effect of Section 49 which provides a non-exclusive minimum statutory regime for either party to a contract of employment to terminate it by giving notice of termination in accordance with the requirements of the section and for the prescribed duration or payment in lieu.

41. On the undisputed evidence in the case concerning the length of employment of each claimant, the prescribed minimum duration for any notice of termination "*... shall not be less than 3 months*". In the face of that mandatory statutory prescription can the parties nevertheless, agree to a lesser length of notice? With all due regard to defence counsel's submissions the only available answer is a loud and emphatic "*NO*".

42. In so far as the **Employment Act** is concerned the only circumstance where notice of termination is not required to be given by an employer is "*... in the case of serious misconduct*" (see: **Section 50**) which is inapplicable in this case.

43. Section 49 does however provide an employer with an alternative to giving 3 months notice in subsection (4) namely, by paying the terminated employee "*... the full remuneration for the appropriate period of notice*". In this regard it is common ground that the defendant hotel did not give each claimant 3 months notice of termination or 3 months remuneration in lieu and



accordingly, I find the defendant hotel's "*standardized*" termination letter in breach of section 49 of the Employment Act.

44. In my view the reason or motivation of the defendant hotel in terminating each claimant's employment cannot and does not have any bearing on the fact and legal consequence of the employee's termination <u>or</u> on the mandatory length of notice required under Section 49. In this regard too, the provisions of the **Employment (Amendment) Act No. 33 of 2009** which came into effect on **26 October 2009** and the judgment of the Court of Appeal in **Wilco Hardware Holdings Ltd. v. Attorney General** [2013] VUCA 12 as to the effect of the amendments on an employee's entitlement to a severance allowance cannot be ignored.

45. In effect, by the defendant hotel terminating the claimants on 22 October 2009, it paid each of the claimants <u>half</u> the severance allowance it would have had to pay each claimant if termination had occurred <u>after</u> 26 October 2009.

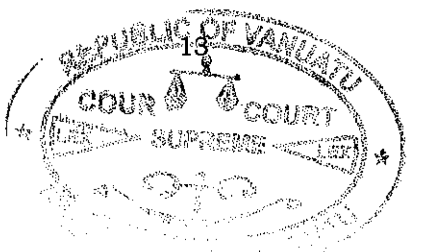
46. Finally, I reject any suggestion that an employer's statutory obligation to pay a terminated employee, earned wages **[Section 16 (8)]** <u>or</u> compensation for earned leave [**Section 32]** <u>or</u> a severance allowance [*<u>see:</u>* **Sections 54 (1) (a)** and **56 (5)**] somehow constitutes, valuable consideration on the part of the employer.

47. If I may say so there is an air of sophistry and unreality in the idea that Section 49 is only concerned with "*non-consensual*" termination <u>or</u> that there can be a termination "*in fact though not in law*" or vica versa.

48. In my view the submission that on the facts, "*... each of the claimants entered into a plain and simple agreement that related to the continuation of their employment, not to its termination*" is circular and self-contradictory in the sense that the only possible reason why each claimant entered into a new (not continuing) Employment Agreement with the defendant hotel was because his/her earlier or existing employment agreement had been terminated by the defendant hotel. The defence submissions under the two above-mentioned remaining sub-heading is also dismissed.

49. In light of the foregoing and mindful of claimants' counsel's written concession regarding **Ken Amkori**; **Catherine Taga** and **Catherine May Toa** (all of whom filed no sworn statements in support of their respective claims), judgment is entered on the claim as framed and in respect of each of the named claimants in the following sums:

		VT			VT
1.	Krem Pita	371,595	**24.**	Vane Brown	90,000
2.	LitiaTaravaki	186,465	**25.**	Leitap Willie	107,301
3.	David Meriaki	160,161	**26.**	Christina Malas	132,567
4.	Liline Napangu Sope	102,960	**27.**	Rehap James	78,000



5.	Elsina Manse	103,482	**28.**	Sisi Taravaki	81,000
6.	Frank Wilfred	252,507	**29.**	Charles Kiel	98,658
7.	Peter Kalmak	175,032	**30.**	Anna Toara	78,000
8.	Pathison Avock	78,000	**31.**	Wilson Aru	887,781
9.	Hungai Gideon	162,507	**32.**	George Stephens	375,153
10.	Jacky Philip	275,823	**33.**	Frank Garae	199,497
11.	Kenny Erickson	162,507	**34.**	Tari Huri Urae	97,830
12.	Tumaira Kaltapau	78,000	**35.**	Runa Rocky	158,427
13.	Morris Tom	81,567	**36.**	Joshua Mala	96,000
14.	John Avock	171,600	**37.**	Simeon James	107,136
15.	James Tether	75,963	**38.**	Simeon Bani	99,729
16.	Jimmy Pam	81,576	**39.**	Jimmy Albert	198,861
17.	Jill Dick	94,839	**40.**	John Albert	94,044
18.	Johnson Bong	240,960	**41.**	Walter Kerson	90,255
19.	Lucy Jack	117,396	**42.**	Toara Willie	108,561
20.	Agnes Solomon	78,000	**43.**	John Jerry	94,968
21.	David Edward	78,000	**44.**	Smith Karl	116,133
22.	William Pakoa	807,000	**45.**	Tom Charlie	95,307
23.	Jack Iavilu	84,480			
				TOTAL	7,505,628

50. Each claimant is also awarded interest of **4% per annum** on the sum awarded to him or her with effect from 22 October 2009 together with costs on a standard basis to be taxed if not agreed.

DATED at Port Vila, this 22nd day of October, 2013.

BY THE COURT

D. V. FATIAKI
Judge.