

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

Civil Case No. 20 of 2015

BETWEEN: SONIA FATU
Claimant

AND: VANUTU NATIONAL PROVIDENT FUND
Defendant

Coram: Justice Chetwynd
Parties: Mr. Kapapa for the Claimant
No appearances for the Defendant

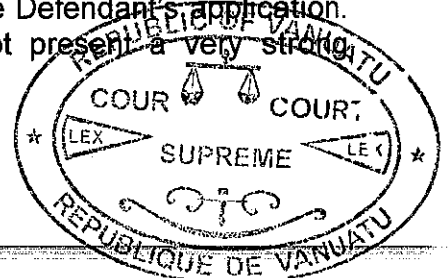
Hearing 17th August 2015

JUDGMENT

1. On the 9th July I published a minute concerning this case. This was in line with previous minutes published by Harrop J. and in brief, it and they were designed to allow the Defendant to pursue its application to set aside the default judgment which had been entered or, if that application failed, to facilitate the assessment of damages consequential upon that judgment.

2. When the matter was called on there was no appearance for the Defendant. Telephone enquiries were made but the legal officer for the Defendant could not be found. Mr Kapapa had also tried to make telephone contact with the legal officer direct but he was not successful either. I am satisfied the Defendant was aware of the hearing today and no reason has been provided for the lack of appearance. The Court has made what efforts it can to contact the Defendant and its legal officer to no avail. No further papers have been by the Defendant in respect of either the application to set aside judgment or the assessment of damages.

3. In my view the application had little merit anyway. It seems to have been premised on a requirement that the Claimant needed to file a sworn statement supporting her claim before the defence was filed. That is not what the rules say. The defendant must have been aware of exactly what was being said by the Claimant by the very nature of the detailed Claim filed on her behalf. In any event the Claimant had filed a sworn statement on 11th February 2015 some 5 or 6 days after the Claim was filed. There is a suggestion the Defendant did not receive a copy of that sworn statement at that time. However, there is evidence to confirm the defendant did have a copy by 17th July at the latest. The only defence to make an appearance in this matter so far is that in draft form attached to the sworn statement in support of the Defendant's application. That draft consists mainly of general denials and does not present a very strong defence or any defence at all.



4. The application to set aside the default judgment is refused.
5. Damages are assessed in the following sums. Severance pay in respect of sections 54 to 56 of the Employment Act calculated thus:

The total period of employment of the Claimant was 4 years and 5 months (from 3rd April 2009 to 20th September 2013) and her salary was (letter 20th march 2012) vt1,500,000 therefore :-

In respect of Section 56 (2)(a) (VT1,500,000 divided by 12)/2 multiplied by 4 = **VT 250,000**

In respect of section 56(2)(b) ((VT 1,500,000/12)/12) multiplied by 5 = **VT 52,083**
Total is VT 302,083.

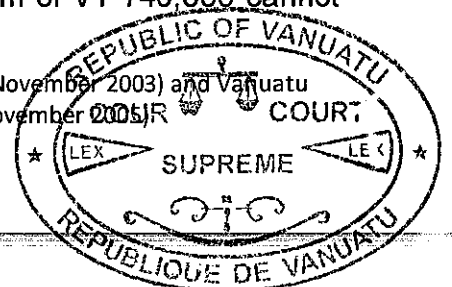
In my view the Claimant's dismissal was unjustified. It came about mainly from a lack of communication between various offices and officers of the defendant and whilst it was not the result of any malicious intent the Claimant is entitled to the penalty provision set out in section 56(4) of the Employment Act. The whole process of the Claimant's dismissal has been dealt with incompetently and as a result she has suffered. This is not the most serious case that has come before the Court but I am of the view the appropriate multiplier is 4 times the award under section 56 (2). The total award is therefore $302,083 \times 4 = \underline{\underline{\text{VT } 1,208,332}}$.

The Claimant is entitled to interest at the rate of 12% on that sum from 20th September 2013 until payment is made.

6. The Claimant also asks for damages in lieu of notice amounting to 3 months salary. That would amount to VT 375,000. There is no reason advanced by the Defendants why that sum should not be paid. Damages are therefore awarded in the sum of **VT375,000** in lieu of notice. The Claimant is entitled to interest on that sum in the usual judgement debt rate of 10 % and from the date of issue namely 5th February 2015.

7. The Claimant also seeks an order that the Defendant be required to pay common law damages of in respect of her dismissal. This is based on her dismissal whilst she was away from work on her maternity leave. She would no doubt have felt even more vulnerable than usual at that time and I don't think there can be any doubt she would have been quite distressed at her sacking. Especially so given the way she was dealt with by the Defendant's HR department. Whilst, I have some doubts about common law damages being paid as that would seem to be the purpose of the multiplier set out in section 56(4) I have been referred to two Court of Appeal ¹ cases in support of the claim and of course I have nothing in opposition to counter the claim. The amount claimed is VT 740,000. That is just under ½ of the Claimant's final annual salary. It is clear from the decisions relied on by the Claimant that the figure must have some basis otherwise only a nominal sum will be paid. The Claimant has relied on the figures originally awarded in the two appeal cases referred to and which were overturned rather than any other justification for the amount. In the circumstances the claim of VT 740,000 cannot

¹ Melcoffee Sawmill Ltd v George [2003] VUCA 24; Civil Appeal Case 18 of 2003 (7 November 2003) and Vanuatu Maritime Authority v Timbacci [2005] VUCA 19; Civil Appeal Case 24 of 2005 (18 November 2005)



be allowed. A nominal sum only should allowed. The figure applied in Timbacci was VT50,000 and that is the amount I will allow in this case.

8. Whilst going through the figures with Mr Kapapa in Chambers today I made a mathematical error which I have only noticed on rendering this decision into writing. The correct total for damages (in lieu of notice and at common law) should total VT425,000. Whilst dealing with interest on those damages I mentioned a much higher figure due to my error of addition. For the avoidance of doubt I am wish to make it clear I am awarding the Claimant 50,000 VT for damages and not the claimed 740,000 VT. The total for damages is VT 425,000 as indicated above and interest at judgment debt rate of 10% is payable on that figure form the date of issue.

9. The Defendant shall pay the Claimant's costs at the standard rate and those costs are to be taxed if they cannot be agreed.

DATED at Port Vila this 17th day of August 2015.

BY THE COURT

