

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

Civil Case No. 61 of 2014

**BETWEEN : RENATA LOLTEN**

Claimant

**AND: CHAIRMAN SCHOOL COMMITTEE**

represented by Fr. Francois Diamalouse

First Defendant

**AND: CATHEDRALE SACRE COEUR**

Second Defendant

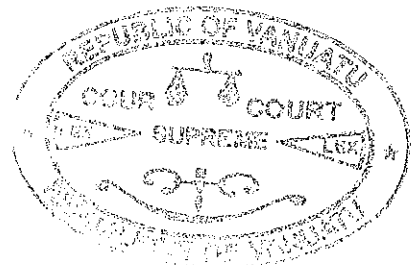
Coram: Justice Aru

Counsel: Mr. G. Takau for the Claimant  
Mr. E. Molbaleh for the Defendants

**JUDGMENT**

**Introduction**

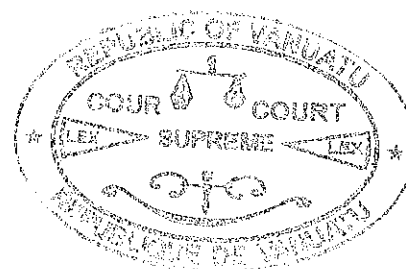
1. The claimant alleges that she was employed by the first and second defendants (the defendants) in 1996 as a preschool teacher. During her employment her salary was VT 50,000 per month. In 2012 she went to Fiji on a two year scholarship to complete a diploma in preschool education. She continued to receive her salary whilst studying and in April 2012 she alleges that her salary was suspended and her employment was later terminated without notice and without being given an opportunity to respond to allegations made against her.
2. The claimant claims the following relief against the defendants:-



- (1). A declaration that the termination of her employment was unjustified;
  - (2). A declaration that the defendants breached the Employment Act [CAP163];  
and
  - (3). An order that the defendants pay her severance , 3 months in lieu of notice entitlements and entitlements for unjustified termination; and
  - (4). Interest at 5%.
3. The defendants on the hand deny any knowledge about the claimant's going to Fiji as they allege they were not informed and the claimant did not obtain their approval before going for further studies therefore she was not entitled to receive any salary whilst on such study leave. The defendants allege that the claimant abandoned her job but was not terminated.
  4. They filed a defence with a counterclaim for VT800,000 being for salaries paid whilst the claimant was on study leave which they did not authorize. They also claim damages including punitive damages.
  5. The claimant did not file a defence to the counterclaim.

#### **Parties**

6. The defendants accept that the first defendant is the chairman of the school committee in charge of Ecole Maternelle Sacre Coeur Annex Annabrou (EMSCAA). As to the second defendant the defendants say that it is a church building or cathedral and should not be a party. They say that because of the way the Catholic Church runs its affairs the proper party should have been the Catholic Sacre Coeur Parish Council (the Parish Council) and I accept that.
7. Despite this glaring errors in naming proper parties, no applications were made by counsel to amend or otherwise.



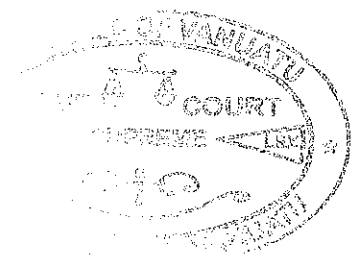
## Issue

8. The central issue is whether the claimant's employment was terminated by the defendants.

## Evidence

### a) Claimant

9. The claimant's evidence in chief is her own sworn statement filed on 23 June 2014. She says that on 12 February 1996 she was employed by the first and second defendants and received a salary of VT 50,000 a month. In 2012 she was awarded a scholarship by AUSAID to complete a diploma in early childhood education at the University of the South Pacific in Fiji. That on 1 November 2011 she informed the first defendant by letter (Annexure "RL1") that she will be undertaking studies in Fiji. During the semester break in 2012 she returned to Vanuatu and continued her employment with the first and second defendants for a period of three months before returning to Fiji. She says that on 23 April 2013 she received a letter (Annexure "RL2") from the first defendant informing her that her salaries will be suspended until November 2013 when she will resume work. On 11 July 2013 she returned to Vanuatu and continued with her employment with the first and second defendants for a period of one month and the first defendant informed her that she will continue with her employment. In August 2013 she returned to Fiji and completed her studies and in November the same year graduated with a diploma in Early Childhood Education (Annexure "RL4").
10. That on 10 December 2013 upon enquiry about her employment, the first defendant told her to return to work. On 13 December 2013 she approached the second defendant and met with Fr. Maurice Tekevu who informed her that she will no longer be employed as a staff of EMSCAA as she has been replaced by another staff member and told her to produce a school financial report which she declined as she was not the treasurer.
11. The claimant was cross examined on her evidence.

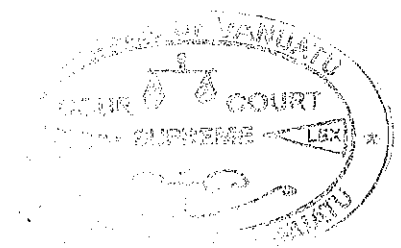


b) Defendants

12. The evidence in chief for the defendants is the sworn statement of Fr. Maurice Tekevu filed on 7 July 2014. He says that he is the Catholic priest in charge of the Cathedral Sacre Coeur Parish in Port Vila since 2009 and that the parish has a council that manages the affairs of the parish and two kindergartens in Port Vila owned by the parish – Maternelle Sacre Coeur Cathedrale and Maternelle Sacre Coeur Anabrou (EMSCAA) where the claimant was working. That the claimant went to Fiji without asking the permission of the Parish Council and without officially informing the council of the reasons for being in Fiji. That the claimant just left her employment and went to Fiji without authorization of the council. That the claimant instructed the treasurer to keep paying for her salaries whilst she was in Fiji. He became aware of the claimant's absence from the school during the Parish Council meeting of 23 June 2013 (Annexure "MT1") when the treasurer of the school informed the council that she could not present a report on the total number of children attending the school as the claimant was not there.
13. He says that the Parish Council made a decision to take her back as headmistress on conditions that she submit a report to justify her absence and also a proper financial report which has the financial impact of the school but she has not done so.
14. Fr. Maurice Tekevu was also cross examined on his evidence.

**Discussion**

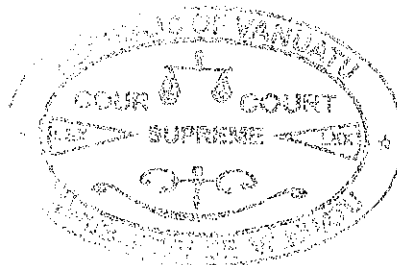
15. The gist of the claimant's submission is that her employment was terminated without notice as she was not informed of any allegations against her and she was not afforded any opportunity to respond to allegations against her before her termination.
16. The defendants on the other hand submit that the claimant left her employment without any authorization from her employers, the first and second defendants. Furthermore it was submitted that the claimant's employment was never terminated.



17. In her pleadings and evidence in chief the claimant accepts that she was employed by the first and second defendants and that she was paid VT 50,000 per month. The claimant alleges that in 2011 she informed the first defendant by letter (Annexure "RL1") that she will be undertaking further studies in Fiji the following year. The letter was addressed to the school committee and allocated responsibilities to different staff members to undertake during her absence.
18. Under cross examination the claimant agreed that the chairman Francois Diamalouse was not the chairman of the school committee in 2011 as he took up the position on 7 July 2012 when she was already in Fiji.
19. There is no evidence that the school committee received the letter or that it gave its approval and there is also no evidence that authorization was sought from the Parish Council or that it gave its approval. The evidence or lack thereof clearly establishes that the claimant left her job to take up further studies without any authorization from the defendants. Upon learning that the claimant was still receiving salaries whilst studying overseas, the first defendant on 23 April 2013 wrote to the claimant (Annexure "RL2") informing her that her salaries would be suspended until November 2013 when she can resume her employment.
20. The Parish Council became aware of the claimant's absence in their meeting of 23 June 2013 almost one and a half years later as reflected in the minutes of their meeting (Annexure "MT1"). The Parish Council then took the following decision:-

*" Decision blong council hemi askem Renata olsem directrice blong school blong mekem wan ful report blong hem long absence blong hem mo financial report blong hem before I kam long post blong hem ."*

21. This is the same decision communicated to the claimant by Fr. Tekevu in his letter of 23 February 2014 (Annexure "MT2"). There is no evidence that she responded to that letter. The decision by the Parish Council is for the claimant to provide a full report on her absence and a financial report before resuming her post. The claimant has not shown any evidence that she was terminated. Whatever Fr. Tekevu said which is not



part of the Parish Council decision could not be relied upon by the claimant as Fr. Tekevu was not the employer.

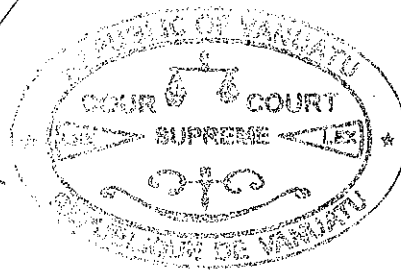
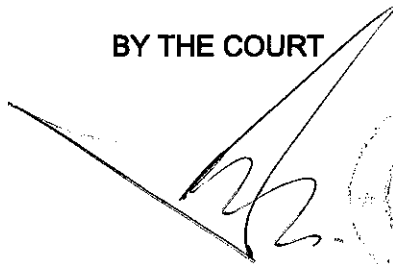
22. The issue must therefore be answered in the negative. As for the counterclaim, the Parish Council minute of 23 June 2013 (Annexure "MT1") shows that the council in that meeting was informed by the treasurer that the claimant was being paid salaries whilst on further study in Fiji. This is despite the fact that her absence was not authorized by the defendants. The defendants also claim damages and punitive damages but this are not particularized in their pleadings and there is no evidence to justify the claim for such damages.

23. I therefore enter judgment as follows:-

- a) The claim is dismissed.
- b) The defendants are entitled to judgment on the counterclaim in the sum of VT800,000 with interest at 5%; and
- c) The claimant shall pay the defendants costs on a standard basis to be agreed or taxed.

DATED at Port Vila this 19 day of February, 2015.

BY THE COURT



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D. ARU  
Judge