

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

CIVIL CASE NO 251 OF 2014

IN THE MATTER OF: **THE CONSTITUTION OF THE REPUBLIC OF VANUATU** (hereinafter referred to as “**the Constitution**”)

AND IN THE MATTER OF: **THE PUBLIC SERVICE ACT NO 11 OF 1998** as amended (hereinafter referred to as “**the Public Service Act**”)

AND IN THE MATTER OF: **THE EMPLOYMENT ACT [CAP.161]** as amended (hereinafter referred to as “**the Employment Act**”)

BETWEEN: **LEN TARIVONDA**
FIRST CLAIMANT

AND: **RUSSEL TAVIRI TAMATA**
SECOND CLAIMANT

AND: **THE REPUBLIC OF VANUATU**
DEFENDANT

Coram: Justice Mary Sey

Counsel: Mr. Silas Hakwa for the Claimant

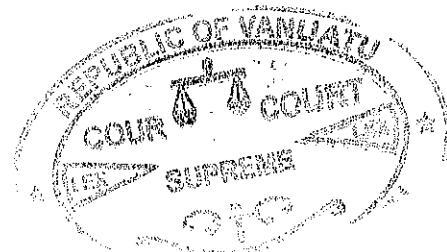
Mr. Lennon Huri for the Defendant

Date of Judgment: 19 October 2016

RESERVED JUDGMENT

Introduction

1. This judgment relates to Mr. Russel Taviri Tamata only as Mr. Len Tarivonda negotiated settlement of his claim with the Defendant following the conclusion of the trial.

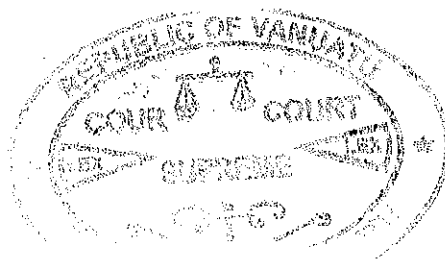


Background

2. On 30 August 2013, Mr. Tamata along with Dr. Hensley Garae and Mr. Len Tarivonda were suspended by the Acting Director General in the Ministry of Health for a period of three (3) months. The reason given for their suspension was that they were not qualified and not capable of carrying out their duties. On 26 November 2013, their suspension was extended until further notice. On 11 October 2013, Mr. Tamata along with Dr. Garae and Mr. Tarivonda filed judicial review case no. 24 of 2013 challenging their suspension.
3. On 2 May 2014, the Court made a declaration that the decision to suspend the Claimants was illegal, null and void ab initio. On 7 August 2014, the Court published the reasons for its decision.
4. On 9 June 2014, the Public Service Commission (PSC) wrote a letter to Mr. Tamata advising him that he had been re-instated to the position of Executive Officer post No. 8002 within Shefa Province at his current salary level effective from 5 June 2014.
5. However, Mr. Tamata refused to accept the PSC's offer.

The Claim

6. In his Amended Supreme Court Claim dated 12 May 2015, Mr. Tamata claims the sum of **VT33,719,989** plus interest at the rate of 5% per annum for:
 - (a) wrongful termination of his employment contract with the Defendant;
 - (b) wrongful or constructive dismissal by the Defendant from his respective employment with the Defendant;
 - (c) all lawful entitlements afforded to him by the law following such wrongful termination of his employment contract and/or dismissal from work; and
 - (d) damages or loss arising as a direct result of such wrongful termination of his employment contract and/or dismissal from work.

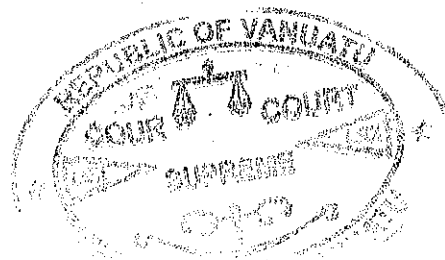


The Defence

7. The Defendant says that on 2 May 2013, the Council of Ministers (COM) at its 7th ordinary meeting held at Sola, Vanua Lava, Torba Province had approved a new organizational structure for the Ministry of Health. This new MOH 2013 structure had erased the positions of Directors of Departments in the MOH 2012 structure and transferred the power of the Directors to the Chief Medical Officers responsible for health services in the six provinces.
8. The Defendant says that Mr. Tamata's suspension was uplifted by the PSC on 5 June 2014 pursuant to the Court's decision in JR case No. 24 of 2013 and that he was reinstated to the managerial position of Executive Officer post No. 8002 within Shefa Province at his same salary level as a Director.
9. The Defendant contends that Mr. Tamata failed to attend work and/or perform his official duties after he was reinstated. Furthermore, the Defendant says that even though Mr. Tamata had refused to work, his salary as a Director was paid to him until 21 November 2014 when it ceased due to his absences from work.
10. The Defendant further submits that in 2015, Mr. Tamata found employment in another organization where he is presently employed despite the fact that the Defendant has not yet terminated his previous employment with the MOH.

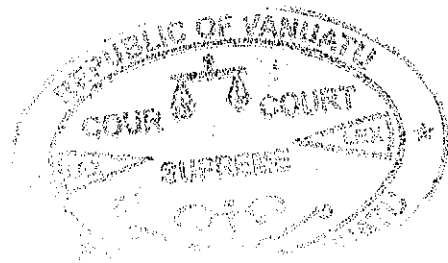
The Evidence

11. Mr. Tamata's evidence was essentially contained in a sworn statement dated 17 June 2015 which was admitted in evidence as "EXHIBIT C2" with annexures "RTT1" - "RTT6". He gave evidence on 19th June 2015 and was cross examined on his evidence during the trial. He said that he was employed as a public servant by the PSC on a continuous basis for over 21 years commencing on or about 18 November 1992. During his employment, he was assigned to the Ministry and Department of Health (MOH) where he occupied various positions. On 26 June 2013, the PSC appointed him to the position of Director, Planning, Policy and Corporate Services, Department of Health within the MOH with effect from 1 July 2013. He said he had provided services in such capacity on a



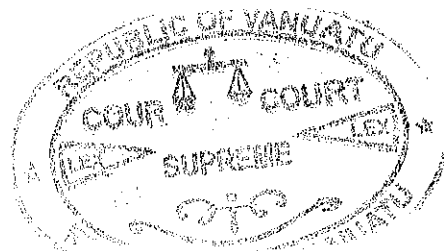
continuous basis and without any interruption until his suspension on 30 August 2013.

12. Mr. Tamata went on to say that at no time did any one consult him or notify him before COM made the decision about abolishing his post within the MOH. He said that during the course of the proceeding in JR case No. 24, Mr. Laurent Rep, Secretary to the PSC, had made a sworn statement dated 23 January 2014 to which he had annexed a letter dated 1 October 2013 and addressed to the Chairman of the Commission.
13. In support of the Defendant's Amended Defence, the Defendant relied on the sworn statements of Ms. Judith Melsul and Mr. George Taleo dated 15th June 2015 which were admitted in evidence as "EXHIBIT D1" with annexures "JM1 – JM9" and "EXHIBIT D9" with annexures "GT1 – GT3" respectively.
14. Ms. Melsul gave evidence during the trial which took place on 19th June 2015 and again on 9th June 2016 and during the course of her cross-examination she told the Court that there was no agreement made with Mr. Tamata for him to be transferred but that a transfer letter had been given to him. She confirmed that the transfer was done during the transition period whereby the MOH implemented the PSC's approved structure. She went on to explain that the new position was created under the MOH 2013 Structure with the same salary and benefits which existed under the MOH 2012 Structure and that after it was approved Mr. Tamata was transferred by the DG.
15. In answer to further questions under cross-examination, Ms. Melsul referred to annexure JM9 of "EXHIBIT D1" which was a letter she had written to the Acting DG of the MOH informing him that at its meeting of 18th December 2014, the PSC confirmed its decision to revoke the approval of the MOH 2013 structure and to "re-endorse approval of the 2012 MOH structure." She went on to state that this decision followed the COM's decision of 5th June 2014 when COM had decided to freeze the implementation of the new MOH structure including all spending related to it.
16. Ms. Melsul drew the Court's attention to paragraph 3 of annexure JM9 which states that *"the Ministry of Health is hereby advised that the Public Service*



Commission recognizes and approved the MOH 2012 as legal structure for the Ministry. The 2012 MOH structure becomes effective as of 18th December 2014." She then went on to say that the PSC had met on Tuesday 16th June 2015 and had agreed to re-instate Mr. Len Tarivonda to his former position as the Director of Public Health and Mr. Russel Tamata as Director of Planning Policy and Corporate Services. She stated that it was never the intention of the Defendant to terminate Mr. Tamata from his employment in the MOH.

17. It was apparent at that stage that the PSC had in its possession documents which were relevant but not disclosed and that this was the first time that Mr. Tamata was made aware of his re-instatement by PSC to his former position as the Director of Planning, Policy and Corporate Services in the Ministry.
18. The Court then directed that Ms. Melsul disclose and provide to the Court such further documents as identified during the cross-examination. The trial in this matter was adjourned for some time for parties to negotiate.
19. By way of letter dated 22 June 2015, the PSC reinstated Mr. Tamata to his position as the Director of Planning, Policy and Corporate Services. It is significant that he was not aware of this reinstatement until the date of trial on 19 June 2015.
20. The trial resumed on 9th June 2016 and Ms. Melsul was recalled as a witness and cross-examined after she had produced and tendered the following documents:
 - (a) Copy of Decisions/Minutes of the Public Service Commission Meeting No. 10 of 2015 held at the Public Service Commission Conference Room Tuesday 16 June 2015 at 9.00am - as "**EXHIBIT D2**"
 - (b) Copy of Decisions/Minutes of the Public Service Commission Meeting No. 25 of 2014 held at the Public Service Commission Conference Room Thursday 18 December 2014 at 9.00am - "**EXHIBIT D3**";
 - (c) Copy of Decisions/Minutes of the Public Service Commission Meeting No.3 of 2014 held at the Public Service Commission Conference Room Thursday 6th February 2014 at 9.00am - "**EXHIBIT D4**";
 - (d) Copy of Ministry of Health 2012 Structure approved on 18 January 2012 - "**EXHIBIT D5**";

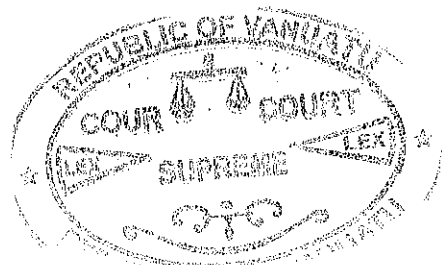


- (e) Copy of Ministry of Health 2013 Structure - "EXHIBIT D6";
- (f) Copy of Laurent Rep's letter dated 09 June 2014 to Russel Tamata - "EXHIBIT D7(A);
- (g) Copy of Laurent Rep's letter dated 09 June 2014 to Len Tarivonda - "EXHIBIT D7(B);
- (h) Copy of Judith Melsul's letter dated 22 June 2015 to Len Tarivonda - "EXHIBIT D8(A);
- (i) Copy of Judith Melsul's letter dated 22 June 2015 to Russel Tamata - "EXHIBIT D8(B)".

21. The next defence witness was Mr. George Taleo who is the Acting Director General in the MOH. He confirmed that on 5 June 2014 Mr. Tamata was reinstated to the position of Executive Officer within Shefa Province at his salary level as a Director. He also confirmed that Mr. Tamata refused to work and/or perform his official duties. He said that on 21 November 2014, Mr. Tamata's salary ceased due to his absences from work but that it was never the intention of the MOH to terminate Mr. Tamata's employment. He said that after 2013, the PSC re-endorsed the 2012 structure and that the managerial positions no longer exist and the Director's position as of now exists. During cross-examination Mr. Taleo agreed that the transfer was a demotion and he went on to state that any claim made by Mr. Tamata would be based on loss of status and not on salaries because his salary as a Director remained the same throughout the period.

Discussion and Decision

22. It will be noted that in *Garae v Attorney General* [2014] VUSC 41; JR 24 of 2013 (7 May 2014) Fatiaki J. made a declaration that "the decision to suspend the claimants on 30 August 2013 was illegal, null and void ab initio". Pursuant to the Court's decision, Mr. Tamata's suspension was uplifted by the PSC on 5 June 2014 and he was reinstated to the managerial position of Executive Officer post No. 8002 within Shefa Province at his same salary level as a Director.
23. However, Mr. Tamata refused to accept the Commission's offer on the basis that:
- (a) he had not applied for any such post;

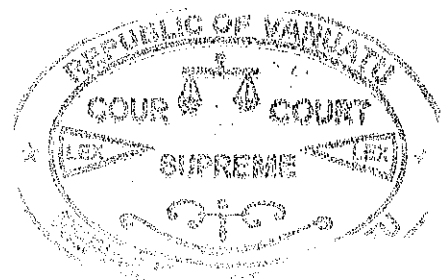


- (b) in its ordinary or simple meaning, “re-instatement of the Claimant” means “re-instating the Claimant” to the post which he lawfully occupied immediately before his “unlawful suspension” which is not the same thing as contemplated by the Commission;
 - (c) the so-called “re-instatement” was to a new low ranking post and that clearly amounts to a demotion without his consent as “the status, esteem or reputation attaching to the low ranking post is not the same as that attaching to his post of Director;” and
 - (d) the Defendant had terminated his employment and was therefore obliged to pay him all his lawful benefits and entitlements before he would consider any other offer of any further employment with the MOH.
24. The evidence before Court is that Mr. Tamata stopped work and he refused to perform his duties in the MOH. The Defendant submits that even though Mr. Tamata did not attend work during the time in which he was reinstated to the managerial position within the Ministry, his salary at the level of a Director was paid to him until 21 November 2014 when his salary was stopped due to his absences from work. On 26 June 2015, Mr. Tamata received a letter dated 22 June 2015 from the Commission advising him of its decision to “re-instate” him to his former post of Director within the MOH.
25. It is noticeable that no explanation is given by the Commission why it did not notify Mr. Tamata of its decisions made on 3 November 2014 and 18 December 2014 respectively to abolish the MOH 2013 Structure and to re-endorse the MOH 2012 Structure. Of equal significance is the fact that no explanation is given by the Commission why it did not offer Mr. Tamata his former post immediately following its decisions as aforementioned or why it was necessary for the Commission to wait until 16 June 2015 (approximately 8 months) to make a decision to “re-instate” him to his former post.
26. Accordingly I take the view that some courtesy should have been accorded to Mr. Tamata by way of notification to him, at least, about the COM’s decision regarding his re-instatement. This was particularly necessary considering that the abolition of the post of Directors emanated not from the COM but from the request of the then Minister of Health. The letter which was written by Mr. Rialuth Serge Vohor is exhibited to Mr. Tamata’s sworn statement as “annexure RTT3”. In this letter, the Minister stated that the Council had approved the new



structure for the MOH in May 2013 at its meeting in Torba Province; that the new structure did not have the positions of Directors of Health which included also the position of Director of policy and planning and that *"the exclusion of the position of Directors meant that the same positions have now become redundant."* The Minister went on to state that *"Russel has a multiple character and leaves a trail of a person hard to control as well as to work with."* He advised the Commission to terminate Mr. Tamata's employment on the basis that he had *"assaulted Ms. Rose Bahor in December 2010"* and that *"Mr. Russel while on study leave in Australia used Government Imprest to travel with dated in 2010 which amounted to misappropriate (sic) of State Funds."*

27. Mr. Hakwa submits that whilst they concede that the Defendant as employer or master in this relationship has (subject to the Constitution and/or other relevant statutes and laws of Vanuatu) unfettered discretion or ability to decide how its business in the MOH should be structured, on the other hand the Claimant has a legitimate and reasonable expectation that the Defendant, as his employer, would not act in breach of his implied duty of care in relation to the Claimant. Counsel further submits that the evidence clearly shows that the Defendant after committing a repudiatory breach of the contract at common law then stands back and tells everyone that the Claimant is still in its employment.
28. It appears to me that if more caution had been applied in implementing the COM's decision it would have saved the Commission the embarrassment it undoubtedly faced when it had no other option but to abolish the MOH 2013 structure and to re-endorse the earlier MOH 2012 structure. It is therefore conceivable that Mr. Tamata decided to decline the offer of reinstatement.
29. It remained open to him to feel that he had no choice and was being forced to walk out/resign and claim constructive dismissal. This may happen if an employee feels a serious incident has happened at work and he has been treated sufficiently badly and he is unable to continue working for his employer, so he terminates his employment in response to his employer's treatment of him. For example:
 - a breach of the contract, such as the employer not paying the employee or suddenly demoting him for no reason;



- the employer forces the employee to accept unreasonable changes to his conditions of employment without his agreement;
- where the employer's behaviour has breached the term of mutual trust and confidence that is implied in all contracts of employment – employers and employees cannot conduct themselves in a manner that is likely to destroy or seriously damage the relationship between the 2 parties – humiliation, bullying, harassment or violence against the employee by a work colleague;
- making the employee work in dangerous conditions.

Although there is no actual dismissal, the employer's treatment of the employee is sufficiently bad that he is entitled to regard himself as having been dismissed.

30. Indeed, under the Vanuatu **Employment Act, section 53(1)**, the Defendant's conduct constituted a breach of contract entitling the Claimant to sue for damages.

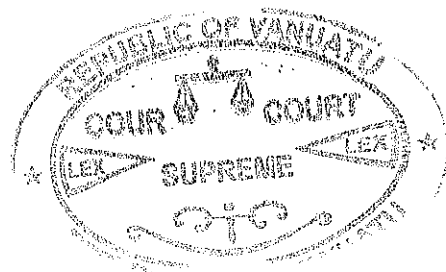
Section 53 (1) of the **Employment Act** provides as follows:

"53. Breach of contract by employer

(1) If an employer ill-treats an employee or commits some other serious breach of the terms and conditions of the contract of employment, the employee may terminate the contract forthwith and shall be entitled to his full remuneration for the appropriate period of notice in accordance with section 49 without prejudice to any claim he may have for damages for breach of contract.

(2) An employee shall be deemed to have waived his right under subsection (1) if he does not claim it within a reasonable time after he has become aware of his being entitled thereto."

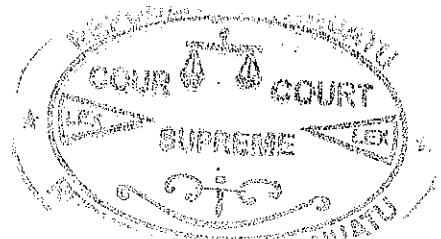
31. In *Ferrieux v Banque Indosuez Vanuatu Ltd* [1990] VUSC 1, Chief Justice Cooke remarked that this provision in section 53 (1) of the **Employment Act** is a general restatement of the position at common law, save that it is more favourable to an employee in that he may terminate the contract for "ill treatment " or "...some other serious breach of contract of employment...", which may not amount to a repudiatory breach at common law.



32. In this present case, it is common ground that Mr. Tamata was suspended by the Defendant. Even though by reason of suspension he does not lose his office, he ceases to exercise the powers and to discharge the duties of the office of Director, Planning, Policy and Corporate Services for the time being. His suspension may nevertheless provide him with the basis of taking his employer's actions as having ended the contract. As was stated in **John v. Rees** [1970] Ch.D 345 at 397) per Megarry J.:

"A suspension can have very severe effects on an employee's reputation. In essence suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of his enjoyments of membership or office. Accordingly, in my judgment the rules of natural justice prima facie apply to any process of suspension in the same way they apply to expulsion. In my view therefore, it is clear that the suspension of the Applicant is justiciable."

33. The irony of course is that the Defendant now contends that it was never the intention of the MOH to terminate Mr. Tamata's employment.
34. Mr. Hakwa submits that there is an implied term in the Claimant's employment contract that the Defendant, as his employer, would not without reasonable cause conduct itself in a manner calculated or likely to damage or destroy the relationship and trust between the contracting parties. Counsel further submits that this breach of the implied term of the contract on the part of the Defendant goes to the root of the contract and is or constitutes a repudiation of the contract. I agree.
35. I find that the Defendant has committed a breach of this implied term of the contract by adopting the MOH 2013 structure thereby abolishing the Claimant's post in the MOH 2012 structure in the manner it did. I accept that the breach amounts to repudiation of the contract at common law and that such repudiation automatically terminates the contract.
36. The next question to determine is whether or not the Claimant has accepted the repudiation of the contract made by the Defendant as the repudiation alone does not end the contract. At common law the usual rule of contract applies to a contract of employment. It is not ended by the repudiation of one



party. It is only ended when the other party accepts that repudiation. In practice an employee who cannot go back is forced to take some step (such as not returning to work, or taking another job) from which a Court will readily infer that he has accepted the employer's repudiation. In my view, it can be inferred from the established facts and evidence before this Court, that the Claimant has accepted the repudiation of the contract. In particular, I have taken into account the fact that at no time did he seek specific performance of the contract.

37. In his final submissions filed on 29th August 2016, Mr. Hakwa invites the Court to award the following to the Claimant:

(a)	Payment in lieu of notice	VT 643,860
(b)	Severance Allowance:	4,507,020
(c)	Damages for unjustified dismissal under Section 56(4) of CAP.160	
	Severance Allowance VT4,507,020 x 6:	27,042,120
(d)	Outstanding annual leave earned but not taken 161.33 days x VT9,465 per day:	<u>1,526,987</u>
	Total:	<u>VT33,719,98</u>

38. Is Mr Tamata entitled to be paid 3 months' notice under section 28 of the *Public Service Act [CAP28]* and section 49 of the *Employment Act [CAP49]*?

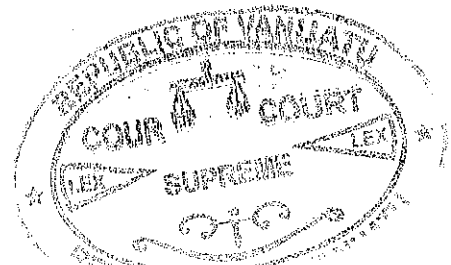
Section 49 of the Employment Act provides:

"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.

(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) –

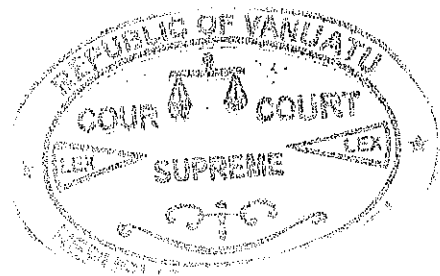


- (a) where the employee has been in continuous employment with the same employer for not less than 3 years, shall be not less than 3 months;
 - (b) in every other case –
 - (i) where the employee is remunerated at intervals of not less than 14 days, shall be not less than 14 days before the end of the 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).
- (5) If an employee fails to give to the employer appropriate notice under this section, the employer may deduct from the employee's entitlements the sum required for the period of notice."

Section 28 of the Public Service Act provides:

"28. Notice of termination of employment and resignation

- (1) Subject to the express provisions of any written contract of employment, every employee who is not a temporary salaried employee, probationer, or daily rated worker, shall be deemed to be a permanent employee and his or her employment must be terminated in the following manner:
- (a) in respect of an employee who has served less than 12 months continuous employment, he or she shall be given 2 weeks' notice;
 - (b) in respect of an employee who has served not less than 12 months continuous employment, but not more than 2 years continuous employment, he or she shall be given 1 month's notice;



(c) in respect of an employee who has served continuously for not less than 2 years but not more than 3 years, he or she shall be given 2 months' notice;

(d) in respect of an employee who has served continuously for 3 years or more, he or she shall be given 3 months' notice.

(2) This section shall not derogate in any manner from any other provision of this Act conferring a power to dismiss employees.

(3) An employee may resign his or her employment at any time, and when that occurs the notice period shall be the period specified in the Employment Act [Cap. 160] (and any subsequent amendments thereto).

39. To succeed in his claim for payment in lieu of notice (under the aforementioned sections) all that the Claimant is obliged to establish as a matter of fact is:

- (a) that he has been in continuous employment with the Defendant for over three (3) years; and
- (b) that he has not received any notice of any kind of the termination of his employment.

I am satisfied that the Claimant has provided sufficient evidence confirming these pre-conditions and he is therefore entitled to receive from the Defendant **the sum of VT643,860 as 3 months payment in lieu of notice .**

The Claimant is also entitled to **VT1,526,987 in respect of outstanding annual leave earned but not taken.**

40. Is the Claimant entitled to be paid his severance allowance?

Sections **54(1) (d) and 56(1) and (2) of the Employment Act** provide:

"54. Severance allowance

(1) Subject to section 55, where an employee has been in the continuous employment of an employer for a period of not less than 12 months commencing before, on or after the date of commencement of this Act, and –



(d) Where the employee has been in continuous employment with the same employer for a continuous period of not less than 6 consecutive years and the employee resigns in good faith;

the employer shall pay severance allowance to the employee under section 56 of this Act.

56. Amount of severance allowance

(1) Subject to the provisions of this Part, the amount of severance allowance payable to an employee shall be calculated in accordance with subsection (2).

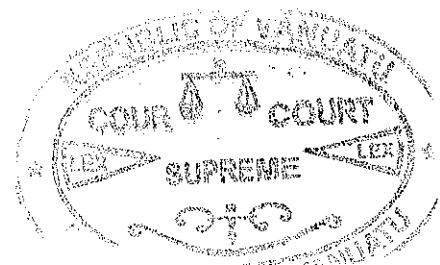
(2) Subject to subsection (4) the amount of severance allowance payable to an employee shall be –

(a) for every period of 12 months – 1 month's remuneration;

(b) for every period less than 12 months, a sum equal to one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the employee was in continuous employment."

41. The evidence before me is that the Claimant was previously employed as a public servant by the PSC on a continuous basis for over 21 years commencing on or about 18 November 1992 and ending on 2 May 2013. He was appointed as Director, Planning, Policy and Corporate Services on 26 June 2013 with effect from 1 July 2013 at a salary level of DEL 17.3 of the Public Service Salary Scale equivalent to an annual salary of VT2,575,440. He was suspended on 30 August 2013 and he was re-instated on 22 June 2015.

42. Mr. Huri (SLO) submits that the Claimant is only entitled to severance for the period beginning on the date his employment commenced with the Defendant until the date he was suspended. This is because he was no longer carrying out his official duties even after June 2014 when he was reinstated. I agree. Moreover, I am further satisfied that in a contract of employment it is the service that earns the remuneration. In the case of *Robertson v Luganville Municipal Council [2001] VUCA 14*, in which the Appellant argued that his termination was unlawful, the Court of Appeal relied on the case of *Automatic*



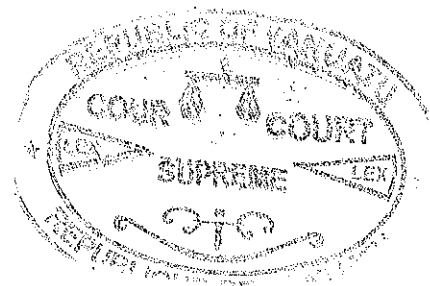
Fire Sprinklers v. Watson [1946] HCA 25 where Dixon J. stated that a contract of employment:

"is commonly understood as involving no liability for wages or salary unless earned by service, even though the failure to serve is a consequence of the master's wrongful act. It is, of course, possible for the parties to make a contract for the payment of periodical sums by the master to the servant independently of his service... But, to say the least, it is not usual. The common understanding of a contract of employment at wages or salary periodically payable is that it is the service that earns the remuneration and even a wrongful discharge from the service means that wages or salary cannot be earned however ready and willing the employee may be to serve and however much he stand by his contract and decline to treat it as discharged by breach."

43. I find that pursuant to section 54(1)(d) of the Employment Act, severance allowance is to be paid to the Claimant as he was in continuous employment with the MOH for a continuous period of not less than 6 consecutive years. The remuneration which shall be taken into account in calculating the severance allowance shall be the remuneration payable to the Claimant at the time of his suspension. Accordingly, I award the sum of **VT4,507,020**.
44. Apart from the claims for his statutory benefits or entitlements, Mr. Tamata says the termination of his employment is unjustified. Consequently, he claims damages in the sum of **VT27, 042,120** using a multiplier of 6 pursuant to **section 56(4) of CAP.160**. The section provides that:

"The Court shall, where it finds that the termination of the employment of an employee was unjustified, order that he be paid a sum up to 6 times the amount of severance allowance specified in subsection (2)."

45. In considering this particular head of damages sought by Mr. Tamata, I must say that I am mindful of the Court of Appeal's decision in *Banque Indosuez Vanuatu Ltd v Ferrieux* [1990] VUCA 3; [1980-1994] Van LR 490 (23 October 1990) as follows:



“Section 56(4) does not give the Court power to award a sum akin to aggravated or punitive damages, or for loss of career prospects. It merely enables the Court to compensate an employee for any special damage which he has suffered by reason of an unjustified dismissal, if the basic severance allowance is insufficient for that purpose.”

The Court of Appeal went on to say:

“The Chief Justice appears to have awarded damages under this head by reason of the manner of the dismissal. In our view that is not permissible and only the basic severance allowance should be paid.”

46. After considering all the evidence before me in this case, I take the view that Mr. Tamata is not entitled to any multiplier of damages pursuant to **section 56(4) of the Employment Act**.
47. Accordingly, judgment is entered for the Claimant in the sum of **VT6,677,867** with interest of 5% per annum calculated from 30 August 2013 and continuing until the judgment sum is fully paid up. The Claimant is also awarded costs to be taxed if not agreed.

DATED at Port Vila, this 19th day of October, 2016.

BY THE COURT


M. M. SEY
Judge.

