

BETWEEN: SAM ELKEM LUKAI, JOYCE MAHIT, BILLY JOHN MARK, AGATH ROGER TARI, AMOS MATHIAS, BAIS JEAN MARK, RENE PETER OBED, JOHN KALO, SANDY SAMSON ROBERT TOUGEN, PAKOA BEN, KENCY TASSO JONATHAN, , JEREMIAH DANIEL JAMES, COLLIN TOMAKI, MANDRAY NAMBITH, NATIOIASE J LOUME, SANGUL JACKLYNE, NALISERE JOHN ALICK, FRED TASSO, HANNINTON SERLI

Claimants

AND: PORT VILA MUNICIPAL COUNCIL (PVMC)

Defendant

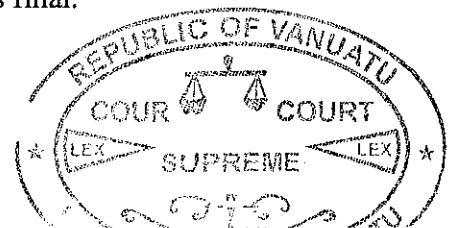
Before: *Justice Oliver A. Saksak*

Counsel: *Leon Malantugun for the Claimants*
Less John Napuati for the Defendant

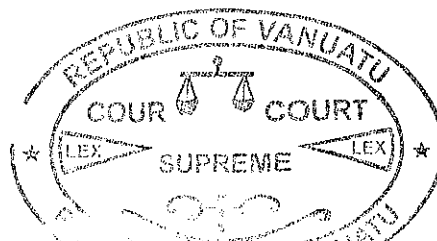
Date of Hearing: *8 December 2017*
29 August 2018

JUDGMENT ON DAMAGES

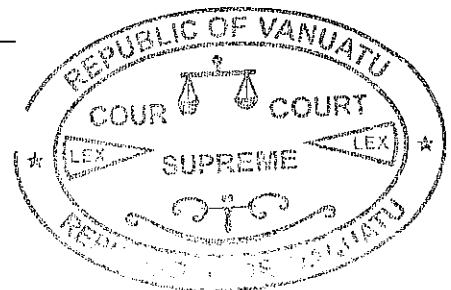
1. This a reserved judgment on quantum of damages claimed for wrongful dismissal by all 19 claimants who were former employees of the Port Vila Municipal Council (PVMC).
2. At the hearing on 8 December 2017 PVMC did not seek to agitate its intention to introduce new evidence in relation to its reliance previously on a staff manual which had never been signed by the Minister. That being the case, the judgment dated 18 August 2017 on liability is final.



3. On 8 December 2017 counsel informed the Court that they had filed written submissions and did not wish or seek to be heard orally in relation to them. Counsel agreed they would simply await the judgment of the Court on a date to be fixed and notified.
4. The claimants filed separate written submissions on the assessment of damages and quantum on 10 November 2017. They filed written submissions on their costs on 24 November 2017 and written submissions in response on 5 December 2017. Those submissions are lengthy submissions.
5. Mr Napuati filed a four-paged written submissions on 8 December 2017.
6. The Court records its appreciation to counsel for their submissions and express its apologies for the delay in formulating its judgment.
7. In deciding whether or not the 19 claimants are entitled to Common law damages, the Court considers the Vanuatu cases of Vanuatu Maritime Authority v. Timbaci [2015] VUCA 19 and Mann v. Air Vanuatu [2010] VUSC 168. As to what the appropriate amount of damages should be awarded it is my view that the amount awarded in Mann's Case would be appropriate in the circumstances of 17 of the claimants. The amount awarded in that case was VT100,000 as common law damages. From the evidence these 17 claimants had not reached retirement age of 55 years. They expected their employment to have continued until their retirement age of 55 years. If it was intended to retire them earlier on the basis of redundancy, it was incumbent on PVMC to carry out the redundancies properly according to law. As this was not done as found and held by this Court in its previous judgment, the redundancies made were unjustified terminations and the claimants are entitled to common law damages.
8. For two of the claimants namely Mandray Nambith and Sandy Samson Robert Tungon, the evidence is that they had reached 55 years and could have responded to their respective letters to agree to redundancy. But having failed it is my view they ought to be treated on the same level as in Timbaci's Case where VT50,000 was awarded.



9. The only other issue is whether the claimants are entitled to severance allowances? Mr Napuati submitted that the claimants are not entitled to severance payments simply for reason that they did not plead severance in their claims.
10. With respect that submission is not correct. In the claimants' amended claims filed on 22 February 2017 they plead severance entitlements under paragraph 21 b.
11. The law granting entitlement to the claimants to severance payments is section 56(4) of the Employment Act [CAP 160] which states:-
- “The Court shall, where it finds that the termination of 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).”*
12. The Court of Appeal in Banque Indosuez Vanuatu Ltd v Ferrieux [1990] VUCA 3 specified what the Court is empowered to award and not to award as compensation in terms of severance pursuant to section 56(4) of the Employment Act. This was applied in Melcoffee Sawmill Ltd v. Jack George [2003] VUCA 24.
13. In Mouton v. Selb Pacific Ltd (No. 3) [1998] VUSCA 8 the Court of Appeal widened the scope of the award to include distress, ill health caused by the manner and circumstances of a dismissal. The Court of Appeal also widened the scope to include loss of earnings for a further one month beyond the duration of the notice period constituting “special damage” allowable under section 56(4).
14. The principles set out in these three cases are trite law in relation to section 56(4) of the Employment Act. This Court is bound by them for application to the award of compensation by way of severance to the 19 claimants.
15. Accordingly each of the 19 claimants is entitled to –



- (a) Severance of half a month, multiplied by the number of years worked.
- (b) A multiplier of 2 times pursuant to section 56(4) of the Employment Act to compensate them for ill health, pain and suffering, and loss of employment.
- (c) Common law damages.

16. From the evidence before the Court the claimants have been paid –

- (a) 3 months in lieu of notice;
- (b) Some termination payments; and
- (c) Outstanding leave entitlements.

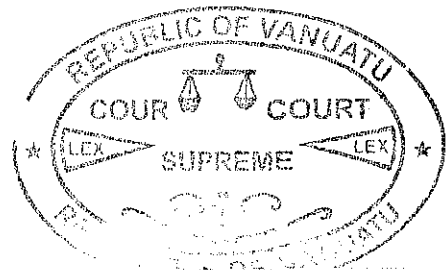
In my view those payments mean that (a) no special damage of one month beyond duration of notice is allowed and the amounts already paid to each of them will be deducted from their total entitlements. Those amounts have not been specified in the evidence of the Claimants except for perhaps Roger Tari Agath.

17. From the evidence the claimants were paid fortnightly. Their amount of severance payments is to be calculated under section 56(2)(a)(ii). They are entitled to 15 days remuneration multiplied by the number of years each claimant worked with and for PVMC.

18. I have seen the calculations done by Mr Malantugun in relation to each of the claimant's claims which are categorised under 5-6 heads such as

- (a) Loss of salaries from September 2015 to December 2017.
- (b) Manner of unlawful dismissal.
- (c) Personal circumstances
- (d) Pain, suffering, distress, humiliation etc.
- (e) Recognition of the wide aspect of section 56(4) of the Employment Act.
- (f) Recognition of Seniority.

19. I note the amounts claimed under each head for the 19 claimants are exaggerated. All claims are substantially reduced by the Court and will basically fall under only three heads namely:



- (a) Common Law Damages;
 (b) ~~Severance; and~~
 (c) A Multiplier of 2 times the amount of severance.

20. I have assessed and now award damages to the claimants as follows –

(a) Roger Agath Tari –

- (i) Common Law Damages – VT100,000
 (ii) Severance – $VT136,708 \div 2 = VT68,354 \times 16 = VT1,093,664 \times 2 =$
 $VT2,287,328$. (Multiplier)
 (iii) Interest of 5% per annum from September 2015 to Judgment –
 $VT114,366 \times 4 = VT457,464$.

Total = VT2,844,792.

Less the amount already paid on termination (if any).

(b) Amos Mathias –

- (i) Common Law Damages – VT100,000
 (ii) Severance – $VT89,208 \div 2 = VT44,604 \times 28 = VT1,248,912 \times 2 =$
 $2,497,824$ (Multiplier)
 (iii) Interests of 5% per annum from October 2015 to Judgment =
 $VT124,891 \times 4 = VT499,564$

Total = VT3,097,388 less the amount already paid on termination (if any).

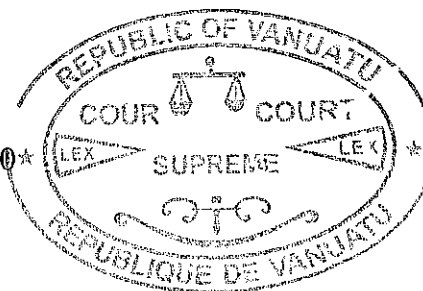
(c) Sam Elkem Lukai –

- (i) Common Law Damages – VT100,000
 (ii) Severance – $VT 89,208 \div 2 = VT44,604 \times 16 = 713,664 \times 2 =$
 $VT1,427,328$ (Multiplier).
 (iii) Interests of 5% per annum from July 2015 to judgment = $VT76,366 \times$
 $4 \text{ years} = VT305,464$.

Total = VT1,832,792 less the amount already paid on termination (if any).

(d) Joyce Mahit –

- (i) Common Law Damages – VT100,000*



(ii) Severance – $VT80,000 \div 2 = VT40,000 \times 9 \text{ years} = VT360,000 \times 2 =$
 ~~$VT720,000$ (Multiplier).~~

(iii) Interests of 5% per annum to judgment (from June 2015) =
 $VT741,000 \times 4 = VT164,000$.

Total = VT984,000 less any amount already paid on termination (if any).

(e) Mandre Nambit –

(i) Common Law Damages – $VT50,000$

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 6 \text{ years} = VT122,244 \times 2 =$
 $VT244,488$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgments
 $VT14,724 \times 4 \text{ years} = VT58,896$

Total = VT353,384 less any amount already paid on termination (if any).

(f) Billy John Mark –

(i) Common Law Damages – $VT100,000$

(ii) Severance – $VT61,832 \div 2 = VT30,915 \times 13 \text{ years} = VT401,895 \times 2$
 $= VT803,790$ (Multiplier).

(iii) Interests – 5% per annum from June 2015 to judgment = $VT45,189 \times$
 $4 = VT180,758$.

Total = VT1,084,548 less any amount already paid on termination (if any).

(g) John Kalo –

(i) Common Law Damages – $VT100,000$

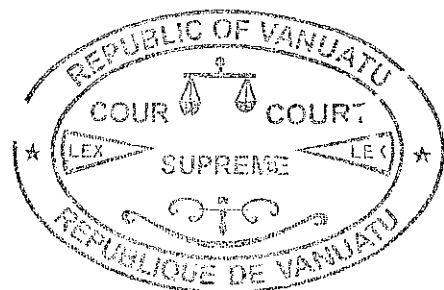
(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 22 \text{ years} = VT448,228 \times 2$
 $= VT896,456$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT49,822 \times 4 \text{ years} = VT199,291$.

Total = VT1,195,747 less any amounts already paid on termination (if any).

(h) Colin Tomaki –

(i) Common Law Damages – $VT100,000$



(ii) Severance – $VT45,096 \div 2 = VT22,548 \times 2 \text{ years} = VT45,096 \times 2$
 $VT90,192$ (Multiplier).

(iii) Interests of 5% per annum from June 2015 to judgment = $VT9,509 \times 4 \text{ years} = VT38,038$.

Total = VT138,230 less any amount paid on termination (if any).

(i) Bais Jean Marc –

(i) Common Law Damages – $VT100,000$

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 6 \text{ years} = VT122,244 \times 2$
 $VT244,488$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT17,224 \times 4 \text{ years} = VT68,897$

Total = VT413,385 less any amount paid on termination (if any).

(j) Jeremiah Daniel James –

(i) Common Law Damages – $VT100,000$

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 26 \text{ years} = VT529,724 \times 2$
 $VT1,059,448$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT57,974 \times 4 \text{ years} = VT231,888$

Total = VT1,391,336 less any amount paid on termination (if any).

(k) Pakoa Ben -

(i) Common Law Damages – $VT50,000$

(ii) Severance – $VT50,000 \div 2 = VT25,000 \times 28 \text{ years} = VT700,000 \times 2$
 $VT1,400,000$ (Multiplier).

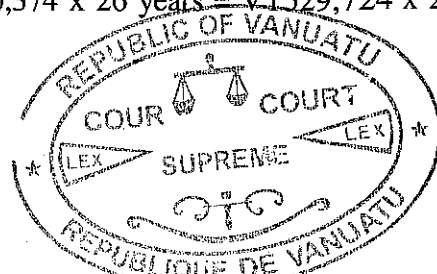
(iii) Interests of 5% per annum from August 2015 to judgment =
 $VT75,000 \times 4 \text{ years} = VT300,000$

Total = VT1,800,000 less any amount paid on termination (if any).

(l) Sandy Samson Robert Tougen –

(i) Common Law Damages – $VT100,000$

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 26 \text{ years} = VT529,724 \times 2$
 $VT1,059,448$ (Multiplier).



(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT57,972 \times 4 \text{ years} = VT231,888$

Total = VT1,341,336 less any amount paid on termination (if any).

(m) Jacklyne Sangul –

(i) Common Law Damages – VT100,000

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 10 \text{ years} = VT203,740 \times 2$
 $VT407,480$ (Multiplier).

(iii) Interests of 5% per annum from June 2015 to judgment = $VT25,374 \times 4 \text{ years} = VT101,496$

Total = VT608,976 less any amount paid on termination (if any).

(n) Hannington Sali –

(i) Common Law Damages – VT100,000

(ii) Severance – $VT35,432 \div 2 = VT17,716 \times 5 \text{ years} = VT88,580 \times 2$
 $VT177,160$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT713,858 \times 4 \text{ years} = VT55,433$

Total = VT332,592 less any amount paid on termination (if any).

(o) Rene Peter Obed –

(i) Common Law Damages – VT100,000

(ii) Severance – $VT46,000 \div 2 = VT23,000 \times 5 \text{ years} = VT322,000 \times 2$
 $VT644,000$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT37,200 \times 4 \text{ years} = VT148,800$

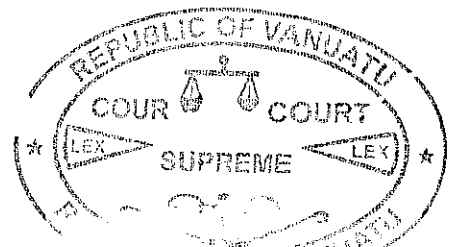
Total = VT744,000 less any amount paid on termination (if any).

(p) Natioase Jean Loume –

(i) Common Law Damages – VT100,000

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 7 \text{ years} = VT142,618 \times 2$
 $VT285,236$ (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
 $VT19,261 \times 4 \text{ years} = VT77,047$



Total = VT462,283 less any amount paid on termination (if any).

(q) Nalisere John Alick –

(i) Common Law Damages – VT100,000

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 20 \text{ years} = VT407,480 \times 2$
VT814,960 (Multiplier).

(iii) Interests of 5% per annum from October 2015 to judgment =
VT45,748 x 4 years = VT182,092

Total = VT1,097,952 less any amount paid on termination (if any).

(r) Kency Tasso Johnathan –

(i) Common Law Damages – VT100,000

(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 10 \text{ years} = VT203,780 \times 2$
VT407,560 (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
VT25,378 x 4 years = VT101,512

Total = VT609,072 less any amount paid on termination (if any).

(s) Fred Tasso –

(i) Common Law Damages – VT100,000

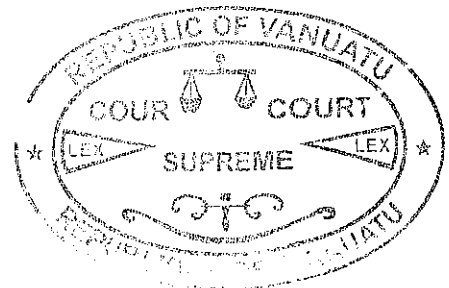
(ii) Severance – $VT40,748 \div 2 = VT20,374 \times 7 \text{ years} = VT142,618 \times 2$
VT285,236 (Multiplier).

(iii) Interests of 5% per annum from September 2015 to judgment =
VT19,261 x 4 years = VT77,047

Total = VT462,283 less any amount paid on termination (if any).

21. Judgment is therefore entered in favour of the claimants against the defendant for payment of the total sum of VT20,422,071 in the manner as set out in the judgment.

22. The claimants made separate written submissions as to costs but those may be necessary only on any taxation of costs in future.

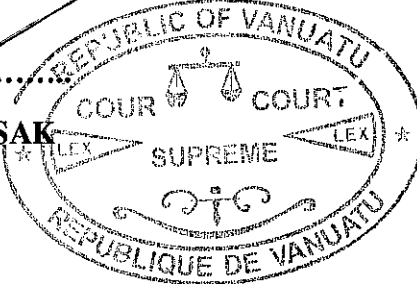


23. It suffices to award costs in favour of the claimants being costs of and incidental to this proceeding on the standard basis as agreed or be taxed by the Master, failing such agreement.

DATED at Port Vila this 29th day of August, 2018.

BY THE COURT

.....
OLIVER A. SAKSAK
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem of a scale of justice. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COUR" and "COURT" are positioned on either side of the scale, and "SUPREME" is centered below it. Two small stars are placed on the left and right sides of the seal, flanking the word "SUPREME".