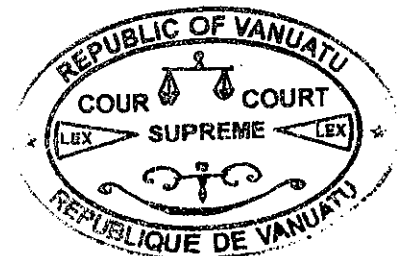


BETWEEN: Willie Sacksack
Claimant
AND: The Vanuatu Investment Promotion Authority
Defendant

Date of Pre-trial Conference: Thursday, 17 May 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr L Malantugun for the Appellant
Mr M Hurley for the Defendant

JUDGMENT

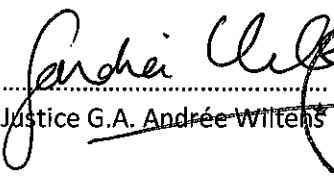
1. This matter was scheduled to be heard commencing at 9am on 28 May 2018, as counsel had previously advised there were no outstanding issues preventing the matter being set down for trial.
2. However, subsequently, in the process of getting ready for trial, Mr Hurley discovered he had inadvertently made concessions he should not have. He accordingly sought leave to withdraw the relevant concessions and to file an amended statement of defence.
3. Additionally, Mr Hurley's attention was drawn to clause 14 of the contract of employment. That clause requires the parties to revert to arbitration in the event of any dispute arising. As a result Mr Hurley raised the issue of jurisdiction.
4. An urgent conference was convened to deal with those matters.
5. Mr Hurley submitted, in line with the precedent cases of *Dick v Property Ltd* [2013] VUSC 2 and *SPIE-EGC Ltd v FIFA* [2003] VUCA 11, that Vanuatu follows the position of the United Kingdom in this area of the law.



6. In particular, the case of *Scott v Avery* [1856] 10ER 1121 is apposite. That is good authority for the position here, namely that the parties to a contract of employment can, and have, made arbitration and an attempt at amicable resolution a condition precedent to resorting to legal action; and further, that such a condition in a contract is valid and binding on the parties.
7. Mr Hurley's submission is unanswerable, even though Mr Malantugun tried his best.
8. It is regrettable that the point was only picked up at this late stage of the proceedings, but that cannot alter my decision.
9. I consider that the Court has no jurisdiction, at this point in time, to consider this dispute. Even though Mr Malantugun had argued against this, he eventually conceded that was correct. Accordingly, the claim is dismissed.
10. Costs are to lie where they fall.
11. The hearing of 28 May 2018 is vacated.
12. I have no need to make any orders regarding Mr Hurley's applications for leave.

Dated at Port Vila this 17th day of May 2018

BY THE COURT


Justice G.A. Andrée Wiltens

