

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

Civil
Case No. 20/3089 SC/CIVL

**BETWEEN: Floyd Timothy Sovuai trading as
"Moroni Security Services"**

Claimant

**AND: The Church of Jesus Christ of Latter
Day Saints (Mormon Church)**

Defendant

Date of Hearing: 16 March 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mr J.I. Kilu
Defendant – Ms L. Raikatalau
Date of Decision: 17 March 2021

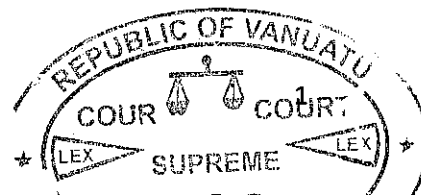
JUDGMENT

A. Introduction

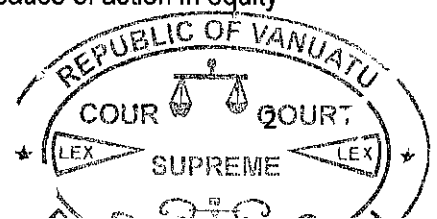
1. By the Claim, the Claimant Floyd Timothy Sovuai trading as "Moroni Security Services" seeks orders for damages and 'equitable relief'.
2. The Defendant Church of Jesus Christ of Latter Day Saints ('Mormon Church') filed its Defence and then Application to Strike Out Claim (the 'Application').
3. Mr Sovuai did not comply with Orders to file submissions and sworn statements in response to the Application. When wasted costs were sought if the hearing of the Application would be adjourned, Mr Kilu elected to proceed with the hearing. He made oral submissions.

B. Discussion

4. In 2012, the parties entered into an oral contract for the provision of security services to the Mormon Church (admitted in para. 5 of the Defence).



5. The contract ended in September 2017 and then 'resumed' shortly afterwards for some services before being finally terminated in February 2019 (set out in para. 8 of the Defence).
6. By February 2019, the hourly rate under the contract was VT350 per hour.
7. The contract was terminated after the Mormon Church conducted a tender process and selected a third party to provide it with security services. The contract with the third party provided for an hourly rate of VT800 per hour.
8. Mr Sovuai then filed the Claim alleging that the parties' contract was an 'unfair contract' and claiming the difference between VT350 and VT800 per hour from 2012 to 2019.
9. The Application is made on the grounds that the Claim does not disclose a reasonable cause of action, that parts of it are statute barred and is therefore frivolous and vexatious and should be struck out for abuse of the Court process.
10. The Application was opposed. Mr Kilu agreed that there is no breach of contract pleaded in the Claim but that it is a claim in equity. He submitted that time be given to amend the Claim to set out the elements of the cause of action in equity and to address the accepted limitation issue. Ms Raikatalau opposed amendment of the Claim as the Mormon Church would be prejudiced by further costs when the Claim does not disclose a cause of action.
11. I now consider in turn the grounds of the Application.
12. Breach of contract is not pleaded anywhere in the Claim. The Claim therefore does not disclose a cause of action in contract.
13. Paragraphs 21 and 22 of the Claim allege a continuous promise by the Mormon Church to provide a written contract and para. 23 sets out the total claimable by Mr Sovuai as 'equitable relief'. However, the alleged continuous promise is not pleaded as a promise relied on by Mr Sovuai to his detriment, to set up a cause of action in equity. I agree with Ms Raikatalau's submission that the Claim does not disclose a cause of action in equity. Mr Kilu accepted this when he submitted that time be given to amend the Claim to plead the cause of action in equity.
14. Finally, common law damages are sought in the Claim on the basis of 'the Defendant's high handed and arrogant behaviour shown in the aggravating circumstances of the case'. I agree with Ms Raikatalau's submission that this is not a proper basis for general damages in law. There is not even any pleading of a tort therefore the Claim also does not disclose a cause of action in tort.
15. Given that the Claim does not disclose a cause of action, no limitation point arises.
16. On the material before the Court, I consider that even if the Defendant were given time to amend the Claim, that it could not be amended to disclose a cause of action in equity or otherwise.



17. Accordingly, the Claim must be struck out.

C. Costs

18. There was no legal merit in the Claim filed. I am minded therefore to order that Mr Kilu personally pay the Defendant's costs of the proceeding.

19. Therefore in accordance with r. 15.26(3) of the *Civil Procedure Rules*, I hereby require Mr Kilu's written response **by 4pm on 7 April 2021** as to why the Defendant's costs of the proceeding should not be personally paid by Mr Kilu.

D. Result and Decision

20. The Defendant's Application to Strike Out Claim is granted.

21. The Claim is struck out.

22. In accordance with r. 15.26(3) of the *Civil Procedure Rules*, I require Mr Kilu's written response **by 4pm on 7 April 2021** as to why the Defendant's costs of the proceeding should not be personally paid by Mr Kilu.

**DATED at Port Vila this 17th day of March 2021
BY THE COURT**

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Viran Molisa Trier
Judge

