

**BETWEEN:** Rex Thomas  
Claimant

**AND:** Vanuatu Qualifications Authority  
Defendant

*Date:* 28 January 2021  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr B. Bani for the Claimant (absent)  
Ms F. Williams Samuel for the Defendant

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Judgment

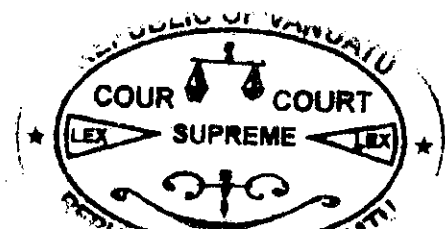
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A. Introduction

1. This is an application to strike out a Claim.

B. Background

2. Mr Thomas filed a Statement of Claim, with the assistance of counsel, on 11 September 2020 seeking certain payments amounting to just more than VT 2 million that he alleged were due to him as result of his being employed as a Qualification Assurance Officer in 2015.
3. The Claim was met with a Response filed on 27 October 2020 and an application to strike out the Claim filed on 12 November 2020. The strike out application was served on counsel acting for the Claimant on 23 November 2020.
4. The application was set down for hearing at 8am on 26 January 2021, with counsel duly advised.



C. Discussion

5. The application is based on Mr Thomas' lack of notice to the State Law Office which is required by section 6 of the State Proceedings Act No 9 of 2007, as adverted to in the sworn statement of Mr Daniel Morris filed in support of the strike out application. Mr Morris evidenced correspondence from the State Law Office to Mr Bani dated 11 November 2020 advising him of this requirement, which was not replied to.
6. In *Republic of Vanuatu v Kwang Sing* [2013] VUCA 35, this issue has been previously addressed. There the Court of Appeal stated:

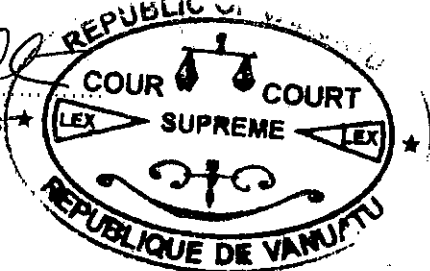
"...the failure to give such notice will operate as a complete prohibition to the commencement of a proceeding against the State."
7. That statement is binding on the Supreme Court.
8. Mr Bani has not responded to the application, and did not appear at the hearing of the same. In the circumstances the application has merit and there is no reason to grant the relief sought.

D. Result

9. The application to strike out the Claim is granted. The Claim is struck out.
10. Costs are appropriate. Mr Thomas is to pay VT 20,000 costs to the State Law Office within 21 days.

Dated at Port Vila this 28th day of January 2021  
BY THE COURT

*Gardier*  
Justice G.A. Andrée Wiltens ★

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written in a semi-circle, with "COURT" on either side. Below the central emblem, the word "LEX" is written in a box on both the left and right sides.