

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

**Civil  
Case No. 17/1836 SC/CIVL**

**BETWEEN: Jean Marc Pierre**  
*Claimant*

**AND: The Republic of Vanuatu**  
*Defendant*

**Coram:** *Justice Aru*  
**Counsel:** *Mr. A. Bal for the Claimant*  
*Mr. L. Huri for the Defendant*

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## **JUDGMENT**

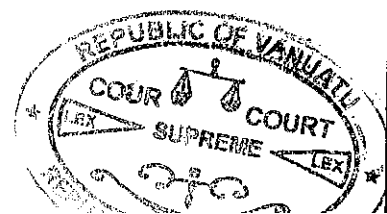
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### **Introduction**

1. The claimant filed his amended claim on 19 October 2018 claiming severance entitlements and damages. His severance entitlements have been settled and paid to him. The remaining part of the claim which is in issue is his claim for damages. The claimant claims that he is entitled to damages for the delay in paying his severance.

### **Background**

2. The claimant is the former director of lands.
3. On 22 September 2016 the Public Service Commission in its decision of the same date approved the claimant's retirement with three (3) months' notice to be given and payment of his severance entitlements by the Ministry of Lands.
4. On 28 September 2016 the claimant was notified of the decision and informed that he was serving his three (3) months' notice effective from 22 September 2016 to 22 December 2016. He was also informed that he was entitled to severance at 2 months' salary for each year of service and pro rata for any period less than 12 months.
5. On 3 March 2017 the Department of Finance issued a cheque payment for his severance in the sum of VT 8,727,022.
6. On 9 March 2017 Counsel collected the cheque from the State Law Office (SLO) on behalf of the claimant. The same day the cheque was returned to the SLO. The claimant



did not agree to the amount and advised that he will be challenging the decision to retire him.

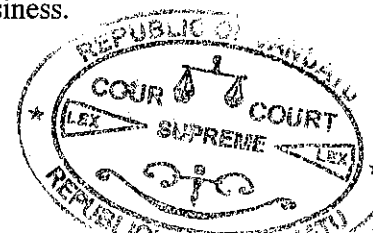
7. On the 14 February 2017 the claimant filed a judicial review claim challenging his retirement. The JR claim was dismissed on 11 December 2017 on the basis that he was lawfully retired.
8. On 27 April 2018 the claimant appealed the decision. The appeal was heard and dismissed on 27 April 2018.
9. On 18 July 2018 the current claim was filed claiming VT 11, 289, 600 in severance and damages.
10. On 24 October 2018 the claimant collected a cheque from the SLO in full settlement of his severance in the sum of VT 12, 746, 884.
11. The parties were allowed time to resolve the damages issue without success. On 23 June 2020 the parties were directed to file their sworn statements and submissions on the assessment of damages.

### Issues

12. The main issue relates to the delay by the defendant to pay the claimant's severance for a period of roughly 19 months from 22 December 2016 to 24 October 2018. As a result of the delay the claimant says that he suffered damages.
13. The claimant submits that the defendant's delay in paying his severance in a timely manner caused him to use up his savings to sustain himself and his family. He claims he suffered the following damages:-
  - Loss of benefit of the director's salary
  - Difficulty sustaining the welfare of his family
  - Difficulty paying school fees for his children
  - Suffered pain and anxiety due to being unemployed
  - Difficulty finding another employment
14. Any entitlement to damages must not only be pleaded but proved by the claimant. (*see Republic of Vanuatu v Emil [2015] VUCA 16*).

### Discussion

15. In his evidence the claimant says that at retirement he received his VNPF entitlements in the sum of VT3, 393, 474 which he wanted to use to start a piggery and poultry business. The delay of 19 months in paying his severance resulted in him using these funds to sustain his family and as a result lost the opportunity to start his business.



16. The claimant provided a bank statement from his BSP Account showing ATM withdrawals. No other evidence was provided to show what these withdrawals were used for. He claims the funds were used for school fees for his children. No evidence is provided of the schools, the school fee invoices or receipts of payments made.
17. Similarly there is no medical evidence filed to show that the claimant suffered pain and anxiety.
18. The defendant informed the claimant that he was entitled to be paid severance and any arrears of leave earned but not taken. The cheque was collected on 3 March 2017 but returned the very same day. This added to the delay. As of 22 December 2016 the claimant was effectively retired and no longer entitled to any salary as Director although he persisted to remain in office until March 2017. Thereafter the proceedings he filed caused further delay.
19. Finally, the difficulty in finding employment could not be attributed to the defendant as the claimant had reached the retirement age. There is no evidence that he even applied for another job.

### Result

20. On the balance of probabilities the claimant has not proved that he is entitled to damages. The claim for damages is refused and is hereby dismissed. The defendant is entitled to damages in the sum of VT 250,000.

DATED at Port Vila this 19<sup>th</sup> day of April, 2021

BY THE COURT

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D. Aru  
Judge

