

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

Civil
Case No. 24/1602 SC/CIVL

**BETWEEN: Jonas Virabulu Liu trading as
Jaydine Consultrancy Services**

Claimant

**AND: The Fletcher Organisation (Vanuatu)
Limited**

Defendant

Date of Trial: 27 June 2025
Before: Justice V.M. Trief
In Attendance: Claimant – Mr E. Molbaleh
Defendant – Mr J.C. Malcolm

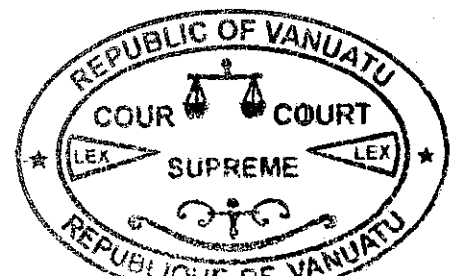
EX TEMPORE JUDGMENT

A. Introduction

1. The Claimant Jonas Virabulu Liu trading as Jaydine Consultancy services is suing the Defendant The Fletcher Organisation (Vanuatu) Limited ('Fletcher') for VT41 million damages for unjustified dismissal and negligence.

B. Background

2. Mr Liu trades in the name of Jaydine Consultancy Services.
3. On 9 January 2023, Fletcher (referred to as the "employer") and Mr Liu (referred as "Sub-Contractor") entered into a contract for Mr Liu to provide security services to Fletcher. The term of the contract was from 9 January 2023 to December 2025.



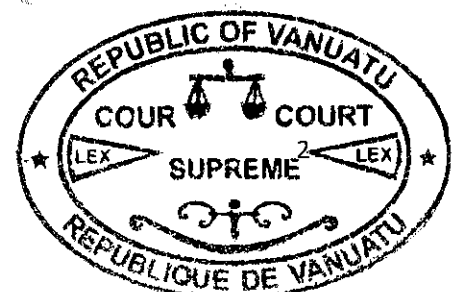
4. On 29 April 2024, Fletcher terminated the parties' contract.

C. Preliminary matter

5. On 13 June 2025, Mr Tari filed his Sworn statement of Jonas Virabulu Liu in support of the Claim. The Defendant objected to the admissibility of the sworn statement on the following grounds:

- a) The statement was filed outside of the time ordered – I note that the Claimant was directed in the last Minute and Orders dated 11 September 2024 to file and serve sworn statements in reply by 4pm on 25 September 2024. The statement has been filed well outside the time ordered;
- b) Mr Malcolm stated that on receipt of the statement, he immediately wrote to Mr Molbaleh setting out the objection but he has not received any response nor has any application been filed for leave to file the statement out of time;
- c) Specific objections to the material in the statement:
 - i. Para. 1 – the deponent is purporting to give evidence about Fletcher's awareness;
 - ii. Para. 4 – the deponent has no right to make that assertion about Mr Plant's role or his visa conditions;
 - iii. Para. 5 – hearsay as there is no independent evidence from the Department of Customs or the Department of Immigration;
 - iv. Paragraphs 6 and 7 – legal opinion but the deponent is not qualified to give legal advice;
 - v. Para. 8, 12, 13, 15 and 16 – irrelevant;
 - vi. Para. 20 – hearsay as no email is attached;
 - vii. Para. 21 – it is not for this deponent to make this assertions; and
 - viii. Para. 22 – the deponent is purporting to give evidence about what Fletcher thought.

6. In response, Mr Molbaleh acknowledged that the statement was filed outside the time ordered but submitted that it was filed and served within 14 days of trial. I reminded him of rule 11.6(b) of the *Civil Procedure Rules (CPR)* which provides that a sworn statement which is to be relied on at trial must be filed and served in advance of 21 days before trial. Mr Molbaleh then stated that the Claimant would not rely on that statement for the trial.



7. I therefore declared that the Claimant's sworn statement filed on 13 June 2025 is **ineffectual** pursuant to rule 18.10(2)(c) of the CPR due to the Claimant's failure to comply with those Rules.

D. Evidence

8. Mr Liu adduced into evidence his sworn statement filed on 24 February 2024 [**Exhibit C1**] and his sworn statement filed on 25 July 2024 [**Exhibit C2**]. In cross-examination, the following were tendered through Mr Liu: (i) Vanuatu Financial Services Commission ('VFSC') Company Extract for the Defendant The Fletcher Organisation (Vanuatu) Limited [**Exhibit D1**]; and (ii) VFSC Business Name Extract for Jaydine Consultancy Services [**Exhibit D2**].

E. Consideration

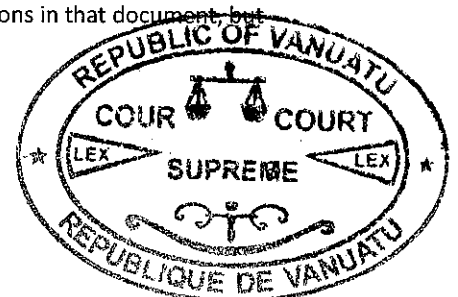
9. At the close of the Claimant's case, Mr Malcolm applied for dismissal of the Claim on that ground that Fletcher had no case to answer as Mr Liu had not adduced any evidence to prove liability or quantum of damages. He submitted that contrary to Mr Liu's case, the parties' contract was not an employment contract, but was an independent contract for services hence Mr Liu's claim for breach of employment contract must fail. Mr Malcolm cited the judgment in *Public Prosecutor v Lowen* [2003] VUSC 31 per Lunabek CJ for the test for whether a contract is an employment contract or an independent contract.¹

10. In response, Mr Molbaleh submitted that he had not seen the *Lowen* authority before. He submitted that the contract between Mr Liu and Fletcher is an employment contract and that the Court must decide first whether or not Fletcher is liable, and then assess the quantum of damages. He submitted that the application be dismissed.

11. Having heard both counsel and having considered the Claimant's evidence, I ruled as follows in relation to the Defendant's application that it had no case to answer:

- a) That I would not consider the *Lowen* authority in making this ruling as it had not been provided to the Claimant in advance of the application being made;
- b) In cross-examination, Mr Liu asserted that his claim is for breach of contract, whether as an employment contract or of the contract for services;

¹ Mr Malcolm handed up a copy of the judgment to the Court and to Mr Molbaleh which was Tab 1 to the filed "Synopsis of submissions." He asked the Court and Mr Molbaleh not to look at the submissions in that document, but only at the judgment at Tab 1.



- c) However, the way that the Claim has been pleaded is contrary to Mr Liu's assertion;
- d) Paragraphs 1-5 of the Claim describe the parties;
- e) It is pleaded in paras 6 and 7 of the Claim that Mr Liu was unjustifiably dismissed in that he was not given adequate notice and no opportunity to respond to any allegations made. There is no question that this aspect of the Claim is based on the contract being an employment contract. Indeed, Mr Molbaleh in his submissions stated that the contract was an employment contract;
- f) However, I consider that the parties' contract [**Exhibit C1 – Attachment "JL2"**] is not an employment contract. The plain meaning of the terms of the contract is that Mr Liu entered that contract as a Sub-Contractor to provide security services to Fletcher. He was not personally hired as an employee of Fletcher;
- g) In cross-examination, Mr Liu was questioned on clauses 1-11 of the contract. He asserted that Fletcher controlled his employees, set their pay rates and provided the money for their pay. I do not, however, accept that Mr Liu's employees were under Fletcher's control as Mr Liu employed them to deliver the contracted security services, Mr Liu had to submit their pay slips to Fletcher each month, Fletcher remitted the requisite amount for their pay into Mr Liu's bank account then Mr Liu paid them their monthly pay. In addition, Mr Liu is the person responsible for paying his employees' VNPF contributions, per clause 9 of the contract;
- h) Accordingly, I consider on the Claimant's evidence that Mr Liu was responsible for his employees under Jaydine Consultancy Services and that they were under Mr Liu's control, not Fletcher's control. I consider therefore that the parties' contract was a contract that Mr Liu entered as an independent contractor;
- i) Given the preceding findings, the claim for unjustified dismissal in paras 6 and 7 of the Claim fails as the parties contract was not an employment contract;
- j) Paragraph 8 of the Claim is asserted to be a claim in negligence. However, there is no duty of care pleaded, no breach of duty of care pleaded and no loss or damage pleaded to have been suffered due to any alleged breach of duty of care. Accordingly, the claim in para. 8 of the Claim fails;
- k) The balance of the Claim, namely paras 9-14, set out Mr Liu's financial commitments but do not contain any pleading as to clauses of the parties'



contract alleged to have been breached. Accordingly, there is no pleading as to breach of the contract for services;

- l) As to loss, I accept Mr Malcolm's submissions that **Exhibits C1 and C2** do not contain any evidence as to quantum of damages as there is no evidence as to the amount of Mr Liu's salary (if any), no evidence as to his employees' pay slips or what amounts they were paid, and no evidence of school fees. A loan statement is attached but it is not pleaded how Fletcher could be responsible for Mr Liu's inability to keep up with his loan payments; and
- m) For the reasons given, I find that Mr Liu has not proved liability on Fletcher's part and Fletcher has no case to answer. I also agree that Mr Liu's evidence does not contain any evidence as to quantum of damages. Accordingly, the application is **granted** and the Claim must be dismissed.

F. Result and Decision

- 12. The Claim is **dismissed**.
- 13. Costs must follow the event. The Claimant is to pay the Defendant's costs as agreed or taxed by the Master.

DATED at Port Vila this 27th day of June, 2025
BY THE COURT

VM Trier
Justice Viran Molisa Trier

