

**BETWEEN: NIEL STEPHENS NETAF**  
*Appellant*

**AND: VANUATU AGRICULTURE COLLEGE**  
*Respondent*

**Coram:** *Hon. Chief Justice Vincent Lunabek*  
*Hon. Justice Bruce Robertson*  
*Hon. Justice Oliver Saksak*  
*Hon. Justice John Mansfield*  
*Hon. Justice Dudley Aru*  
*Hon. Justice David Chetwynd*  
*Hon. Justice Paul Geoghegan*

**Counsel:** *Mr Britten Yosef for the Appellant*  
*Mr John Malcolm for the Respondent*

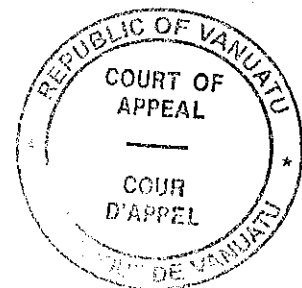
**Date of Hearing:** *Thursday 14<sup>th</sup> July 2016*  
**Date of Judgment:** *Friday 22<sup>nd</sup> July 2016*

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## **JUDGMENT**

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1. The issue for determination in this appeal is whether or not the Judge in the Supreme Court was correct in determining that a letter signed by the Ministry of Agriculture dated June 6<sup>th</sup> 2014 validly and effectively terminated Mr Netaf's employment contract.
2. Mr Netaf was employed by Vanuatu Agriculture College ("VAC") pursuant to a 3 year employment contract commencing on February 11<sup>th</sup> 2013. The terms of the contract are not relevant to this appeal.



3. On June 5<sup>th</sup> 2014, at a meeting of the VAC Council, it was resolved that Mr Netaf's contract would be terminated effective from June 5<sup>th</sup> 2014.

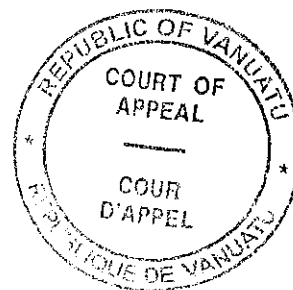
4. On June 6<sup>th</sup> 2014, Mr Netaf received a letter giving notice of that termination. The letter was issued on the letterhead of the Ministry of Agriculture, Livestock, Forestry, Fisheries and Bio-security and was signed by the Hon. David Tosul, the then Minister responsible for that Government Department. The first 2 paragraphs of the letter stated:-

*"The board of VAC had considered you recent correspondence. I refer you to clause 5 (1) (a) of the contract "either party may terminate this contract by the giving of notice or payment in accordance with employment".*

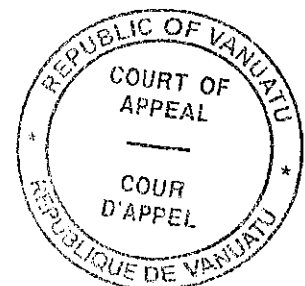
*The VAC council have taken legal advice and in circumstances of a contractual employment of 1 year, 4 months on a monthly salary the only legal requirement to cancel the contract is notice or payment of 1 month salary plus severance and leave".*

5. The letter then went on to set out the notice, severance and leave entitlements owed to Mr Netaf and referred to various others matters which are not relevant. The letter was accompanied by a cheque for the amount of notice, severance and leave entitlements referred to.

6. The argument presented on behalf of Mr Netaf was that his employment had not been validly terminated as the Minister had no authority to terminate it. The principal basis for that argument was the submission that the Judge had failed to take into consideration the principle of privity of contract between Mr Netaf and VAC, in the sense that Mr Netaf had entered into an employment contract with VAC but that that contract was terminated by the Minister who was never a party to it.



7. The argument presented for Mr Netaf ignores the fact that it was the VAC Council that resolved to terminate Mr Netaf's employment. The decision to terminate was made by the Council and not by the Minister. The fact that the Minister had signed a letter advising Mr Netaf of the Council's decision is completely irrelevant to the consideration of whether the decision was lawfully made. In that respect counsel failed to distinguish between the decision to terminate on the one hand and advice of that termination on the other.
8. As to the issue of privity of contract, that legal principle has no application to the current circumstances. Privity of contract involves the basic notion that the contractual agreement binds only the parties to that agreement. Accordingly only a party to a contract can be sued on it and only a party to a contract can claim a benefit under it. The Minister was doing neither of those things. The Minister was merely communicating the Board's decision. He played no part in the decision to terminate Mr Netaf's employment.
9. Mr Yosef endeavoured to rely on section 49 (4) Employment Act [Cap. 160] which provides that:-
- "Notice of termination need not be given if the employer pays the employee for remuneration to the appropriate period of notice specified in sub section (3)."*
10. This provision does not assist Mr Netaf's situation in any way. It merely emphasizes the fact that having paid Mr Netaf full remuneration for the appropriate period of notice, VAC need not have given him notice of termination. It is simply a provision which enables an employer to terminate employment with immediate effect provided that the appropriate remuneration as provided for in the Act is paid to the employee.

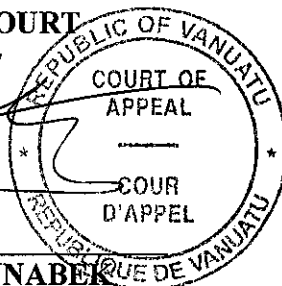
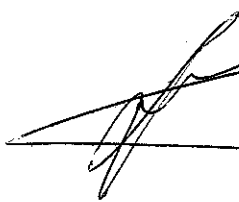


11. The Judge in the Supreme Court was correct in his determination of the issue and accordingly the appeal is dismissed.

12. Costs are granted in favour of the respondent with costs to be agreed within 14 days or to be taxed.

**DATED at Port Vila this Friday 22<sup>nd</sup> day of July, 2016**

**BY THE COURT**



**Vincent LUNABER**  
**Chief Justice**