

BETWEEN:

JENERY SAMSON

Claimant

Lent Tevi & Associates
Claimant's Lawyer

AND:

PUBLIC SERVICE COMMISSION

First Defendants

REPUBLIC OF VANUATU

Second Defendants

AND:

Office of the Attorney General
First and Second Defendants' lawyer

Date of hearing: 23.08.24

Before: Magistrate Toaliu

Appearance: Aaron. S of the State law Office for
the Defendants

DECISION ON APPLICATION TO DISMISS CLAIM

1. On 28th May 2024, the defendants applied to dismiss the claimant's case for failure to comply with Section 6 of the State Proceedings Act.
2. The Government Proceedings Act (No.9 of 2007) was amended by the Government Proceedings (Amendment) Act (No. 4 of 2010). One of the effects of the latter act was to change the title of the former to the State Proceedings Act. By section 6 of the State Proceedings Act a notice has to be given by a Claimant in proceedings involving the State.

6 Notification of intention to institute proceedings

(1) No proceeding against the State other than an urgent proceeding, may be instituted under section 3 unless the party intending to do so first gives written notice to the State Law Office of such intention.

(2) The notice under subsection (1) must:

(a) include reasonable particulars of the factual circumstances upon which the proposed proceedings will be based; and

(b) be given not less than 14 days and no more than 6 months prior to the institution of proceedings.

3. The effect of Section 6 was considered by the Court of Appeal in the case of **Kwang Sing 1** [2013] VUCA 35; Civil Appeal case 21 of 2013 where the Court said:

“It is timely to mention that it is not clear on the papers filed whether this proceeding was commenced subsequent to the requisite notice having been given under s. 6 of the State Proceedings Act No. 9 of 2007 [as amended by the Government Proceedings (Amendment) Act No.4 of 2010]. Section 6 prohibits the commencement of a proceeding against the State unless detailed notice of the intention to commence the proceeding is given to the State at least 14 days and not more than 6 months before the proceeding is commenced.”

The court further added:

*“This was not an issue raised at any time in the Supreme Court. Accordingly, we do not consider that it should be a factor taken into account in respect of the matters in issue before us; particularly given the way in which the appeal has been determined. **However, it does appear that the failure to give such notice will operate as a complete prohibition to the commencement of a proceeding against the State. Those contemplating commencing proceedings against the State need to appreciate the likely consequences of proceeding without the giving of notice under s. 6.**” (My emphasis.)*

4. The Court of Appeal further held in **Republic of Vanuatu v Napuat** [2023] VUCA 8 that s. 6 of the **State Proceedings Act** provides an absolute bar on proceedings being instituted under s. 3, that is to say against the State, unless notice has been given as required and within the required minimum and maximum periods of 14 days and 6 months respectively.
5. The claimants do not say that this is an urgent proceeding and so they MUST comply with the requirements of section 6. They have failed to give a written notice to the State Law office of their intention to initiate proceedings against the State. As per the case of **Kwang Sing 1 & Republic of Vanuatu v Napuat**, Section 6 places an absolute bar on proceedings against the state unless notice has been given.
6. Ily Freddy, the state clerk at the Attorney General’s office, provided a sworn statement confirming that the state law has not been served with a notice as required under Section 6 of the Act.
7. The claimants on the other hand have made no submission in response to the application to dismiss their claim.
8. The application to strike out the claim must succeed. The claim against the defendants is accordingly struck out.
9. The defendants are entitled to costs of VT20,000 payable within 21 days.

DATED at PORT VILA on this 23rd day of August 2024

BY THE COURT

A handwritten signature in black ink, appearing to read "P. Tealin". The signature is written in a cursive style with a small flourish at the end.A decorative handwritten flourish consisting of a single, sweeping, curved line that starts under the signature and extends to the right.

MAGISTRATE