

(Civil Jurisdiction)

BETWEEN: GIDEON TABIUS

Claimant

**AND: PENAMA PROVINCIAL GOVERNMENT
COUNCIL**

Defendant

Mr Justice Oliver A. Saksak

**Mr John Less Napuati for the Claimant/Respondent
Mr Dudley Aru for the Defendant/Applicant**

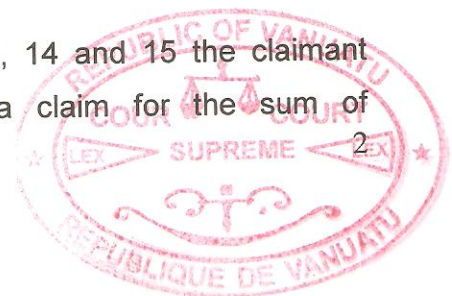
**Date of Hearing: 1st February 2011
Date of Judgment: 8th December 2011**

JUDGMENT

1. The defendant filed formal application on 31st January 2011 seeking Orders that the claims of the claimant be struck out, or in the alternative, that the claimant offers security for costs.
2. The defendant alleges that the claims do not disclose a reasonable cause of action against them and that the claims are frivolous, vexatious, and/or abuse of process.
3. The Court sat on 1st February 2011. The Claimant was not present in person or by Counsel on that date. The Court having noted the application was not yet served issued directions requiring the Claimant to file and serve written submissions and response within 14 days. The defendant was to have filed submissions within 7 days thereafter. The Court would then formulate judgment and notify the parties about a date on which judgment was to be delivered. The Court took note of Mr Napuati's letter of 31st January 2011 seeking an adjournment.



4. On 2nd February 2011 service of the application and further sworn statement filed in support thereof was effected on the offices of Ronald K. Warsal & Co Lawyers by Amy Binihi. A sworn statement to that effect was filed on 16th February 2011.
5. On 18th February 2011, Counsel for the defendant filed submissions in support of the application to strike out. The claimant by himself or counsel has not filed any submissions in compliance with Direction 1 of the Orders of 1st February 2011.
6. The Court notes that on 23rd March 2011 Counsel for the claimant filed a Notice of Ceasing To Act. That is not accepted by the Court.
7. Counsel for the claimant had clear service of the application and the statement in support on 2nd February 2011. He was obliged by the order at paragraph 1 to have filed a response and sworn statements within 14 days thereafter, that is by 16th February. Instead some 35 days later, Counsel filed a Notice of Ceasing to act for the claimant. That did not excuse him and his client to comply with the orders of 1st February 2011. However, their failure and/or omission indicates that they do not challenge the application of the defendant. That is sufficient for the Court to decide in favour of the defendant's application.
8. The Court will however go beyond to examine the claims of the claimant in light of the submissions by defendant's counsel and the evidence available by sworn statements filed by both the claimant and the defendant.
 - 9.1. The facts pleaded by the claimant in paragraphs 1, 2, 3, 4, 5, 6 and 7 are admitted by the defendant and are therefore not in issue.
 - 9.2. Under paragraphs 8, 9, 10, 11, 12, 13, 14 and 15 the claimant pleads unfair treatment and makes a claim for the sum of



VT1,411,200 being the difference in his salaries for 6 years from 28th March 2003. The defendant takes issue with the claimant regarding these allegations.

9.3. The claims of the claimant do not include paragraphs 16, 17, 18 and 19. He resumes his pleadings under paragraphs 20, 21 and 22. Under these, the Claimants pleads unlawful suspension by the defendant on 23rd December 2008, and unlawful termination by the Secretary-General on 19th March 2009 because he alleges –

- (a) There was no notice of termination;
- (b) No valid reasons for termination given;
- (c) No opportunity given for him to be heard; and
- (d) His salaries were withheld.

The defendant takes issue with the claimant regarding these allegations.

9.4. In paragraph 23 the claimant pleads slander and/or libel for which he claims the sum of VT500,000 which, the defendant denies.

9.5. In paragraphs 24 and 25 the claimant pleads special skills and expertise for which he claims the sum of VT2,500,000 which the defendant denies.

9.6. In paragraph 26 the claimant claims the following entitlements –

- (a) Recovery of half remuneration in January 2009 – VT35,000
- (b) 3 months notice at VT70,000 x 3 - VT210,000
- (c) Severance Pay at VT35,000 x 5 - VT175,000
- VT 8,750
- (d) Defamation - VT 500,000
- (e) Salary differences old structure & new structure –
VT1,411,200
- (f) Skills, expertise and knowledge - VT2,500,000
- (g) General damages - VT1,500,000
- (h) Exemplary damages - VT 500,000



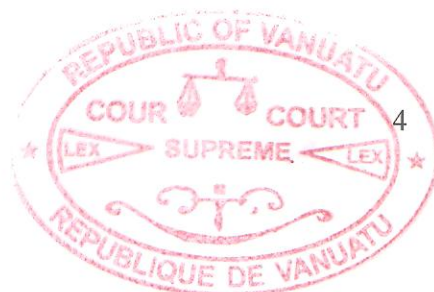
		- VT 8,750
(d)	Defamation	- VT
	500,000	
(e)	Salary differences old structure & new structure –	
		VT1,411,200
(f)	Skills, expertise and knowledge	-
VT2,500,000		
(g)	General damages	-
VT1,500,000		
(h)	Exemplary damages	- VT
<u>500,000</u>		
	Total	- <u>VT6,339,950</u>

The defendant says the claimant was paid all his benefits and entitlements except half remuneration in 2009, but deny each and every other claims in paragraph 26.

10. Returning now to the issues –

(a) Unfair treatment – From the facts and evidence it appears the claimant was given some unfair treatment when he was the only one receiving the 3 months notice of termination while all the other staff did not. Secondly, when his salaries were dropped from VT1,075,200 under the old structure down to VT840,000 under the new structure.

However, the claimant faces a legal obstacle in pursuing his claim for the differences of salaries because of time limitation of 3 years imposed by Section 20 of the Employment Act Cap. 160. These claims relate to the period from 28 March 2003 to his suspension on 23 December 2008. These are clearly outside the 3 years limitation period. As such, there is no cause of action against the defendant in relation to claims for unfair treatment for the period prior to and from 28 March 2003 to 23rd December 2008.



fact acknowledging that suspension of the claimant and subsequent termination on 19th March 2009 were unlawful. However, the defendants remedied that unlawful action by re-engaging the claimant in office. He was specifically requested by the Secretary-General to report to office on Monday 29th September 2009. By copy of the same letter the Secretary-General instructed the Accountant to place the claimant's name back on payroll and that his salaries which were withheld be paid. (Annexure "GT12").

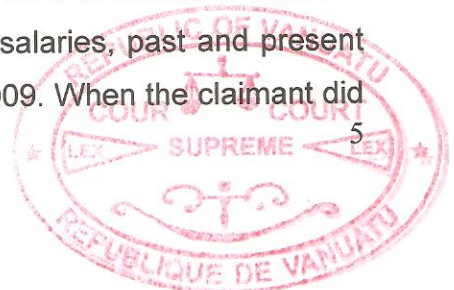
- (ii) However, on 25th September 2009, the claimant responded to the Secretary-General's letter of 21st September acknowledging receipt of the revocation letter. (See Annexure "GT12"). The relevant parts of that letter are paragraphs 2 and 3 which read:

"Please be informed that agreement has been reached between the President, Vice President and myself at 7.00 am of the same day (22/09/09) that final decision shall be reached in November 2009 on a compromised agreement to solve the issue outside the Court before I return to work

Furthermore, for your information, my lawyer has advised me to wait until he has written a letter to the Council regarding the matter." (emphasis added).

- (iii) There is no evidence by the claimant that a final compromised agreement had been reached in November 2009. And he has not shown any evidence that his lawyer wrote to the Council as he informed in his final paragraph quoted above. Neither the President nor the Vice President have filed evidence to confirm the agreement mentioned by the claimant.

- (iv) What was really happening? We have here a scenario where it appears the claimant had been paid his salaries, past and present but he was not at work since 17th April 2009. When the claimant did

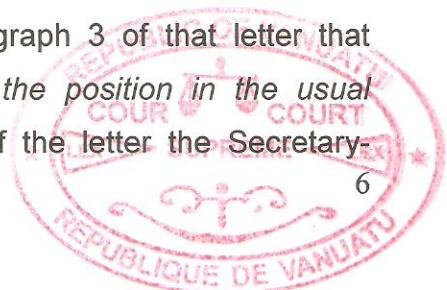


not report to office on 29th September 2009, and there is no evidence from him that he did return to office and work at any time thereafter, the Council of the defendant sat from 2nd to 13th November 2009 and took a decision to terminate the claimant's engagement by giving him 3 months notice and an opportunity for him to re-apply for the position should he so choose. The Secretary-General issued the Notice of Termination by his letter of 19th November 2009. (Annexure "GT13"). The 3 months notice ended on 28th February 2010. That notice of termination was a lawful and valid notice given by the defendant. It was not a termination done by the Secretary-General as alleged by the claimant. The Secretary-General was writing on behalf of the Council of the defendant.

(v) The Claimant's failure and/or omission to return to work on 29th September 2009 could be read to imply that (a) the Claimant had not accepted his re-engagement, and (b) his absence amounted to serious misconduct. For these reasons, the Court concludes the Claimant has no cause of action against the Defendant for unlawful suspension and termination.

11.1. In relation to the claimants' claim for damages for slander, libel and defamation. In paragraph 23 he claims that the letter of 19th March 2009 amounted... *"to slander and or libel and in general demotes the claimant's reputation as seen in the eyes of right thinking members of society."* He further alleges that by it *"the claimant was regarded as a corrupt person."*

11.2. Examining the letter in great detail, there is nothing defamatory at all about the claimant in that letter. Further, there is nothing in that letter to suggest the claimant was a corrupt person. If that was the case, the defendant would not have stated at paragraph 3 of that letter that*"you are encouraged to apply for the position in the usual manner."* Further, at the last paragraph of the letter the Secretary-



General personally acknowledged the claimant during many years and months that he served. On this issue, therefore the Court concludes the claimant has not established any cause of action against the defendant.

12.1. Finally, on the amounts claimed under paragraph 6 the Court has considered the issue in light of the evidence by Mr Lonsdale Hinge in his sworn statements dated 17 December 2010 and 31st January 2011. These show as follows –

(a) On 13th August 2003 the claimant was paid VT193,700 being outstanding salaries for period April to June 2009.

(b) On 8th February 2010 the claimant was paid VT162,375 being outstanding salaries for period April to June 2009.

(c) On 25th February 2010 the claimant was paid VT460,833 being severance for 6 years and 7 ½ months.

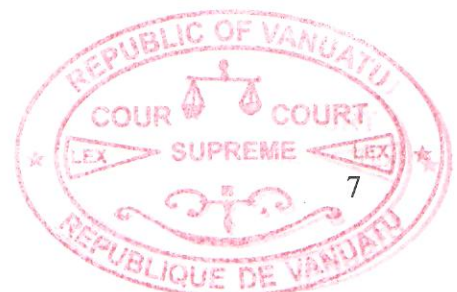
(d) On 26th April 2010 the claimant was paid VT421,100 being for his final claims.

(e) On 24th August 2010 the claimant was paid VT28,500 being for repatriation costs.

12.2. In total the claimant has been paid the sum of VT1,266,508.

12.3. In the final conclusion, it is the view of the Court the claimant has not established any cause of action against the defendant in respect to his claims for –

- (a) 3 months notice;
- (b) Severance payments;
- (c) Salary differences;
- (d) Skills, expertise and knowledge;
- (e) Defamation;



(f) General Damages; and

(g) Exemplary Damages.

These parts of the claimant's claims are therefore dismissed.

13. The only claim the defendant has admitted to in the defence in regard to paragraph 26(a) is the claim for half remuneration for January 2009 in the sum of VT35.000. He is entitled to judgment in this action only for the sum of VT35,000. He is only entitled to recover his filing fees in the sum of VT20.000. All his other costs lie where they fall.
14. The defendant is hereby ordered to pay the sum of VT35,000 plus VT20.000 as costs within 28 days after the date of this judgment.

DATED at Saratamta this 8th day of December 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

