

(Civil Jurisdiction)

**BETWEEN: BRUNO CEVUARD
SARSOUM MERIADECK
PALAUD MALAKI**

Claimants

AND: COLLEGE DE LUGANVILLE

First Defendant

AND: VANUATU GOVERNMENT

Second Defendant

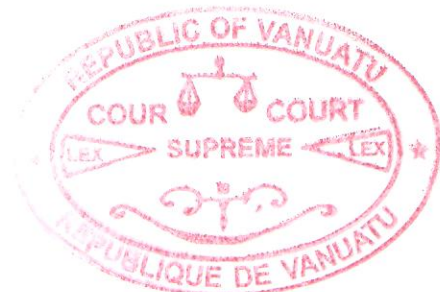
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Willie Kapalu for Claimants
Mr Godden Avock for the Defendants

Date of Hearing: 4th August 2010
Date of Judgment: 23rd May 2011

JUDGMENT

1. On 4th August 2010 Counsel agreed that facts were not in dispute but they requested time to make written submissions. The Court directed Counsel to file their submissions within 21 days.
2. The Claimants filed their written submissions on 20th September 2010. The Defendants filed their submissions on 23rd March 2011.
3. The Claimants filed their claims initially on 23rd December 2009. They subsequently amended their claims and filed same on 14th April 2010.



4. All three Claimants claim for unpaid overtime allowances. All of them alleged they worked 24 hours a day for 7 days each week including on public holidays from 2005 through 2007. The total claims are –

(a) Bruno Cevuard –	VT10,093,278;
(b) Sarsoum Meriadeck –	VT10,093,278; and
(c) Palaud Malaki –	<u>VT 534,820</u>
Making a total claim of	<u>VT20, 721,376.</u>

5. The Claimants rely on the following sworn statements in support of their claims –

- (a) Bruno Cevuard dated 4th May 2010;
- (b) Sarsoum Meriadeck dated 4th May 2010;
- (c) Blandine Judah dated 4th May 2010;
- (d) Lamai Ware dated 30th April 2010; and
- (e) Palaud Malaki dated 28th June 2010.

6. The burden of proof rests of the Claimants to prove their claims on the balance of probabilities.

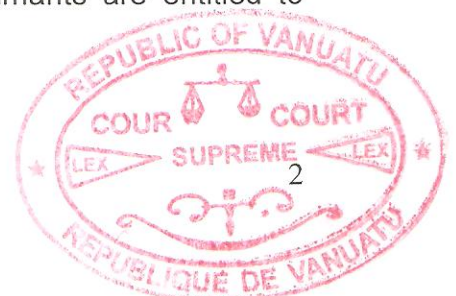
7. The Defendants did not deny the Claimants were in their employ at the following times –

- (a) Bruno Cevuard from 1998 to 2007 as Boarding Master.
- (b) Sarsoum Meriadeck from 20th April 1999 to 2007 as Boarding Mistress.

These two Claimants have been re-appointed and they are still currently being in employ of the First Defendant.

- (c) Palaud Malaki from 2001 to 2007 as Cook. He has not been re-appointed.

The Defendant however denies that those Claimants are entitled to any overtime allowances.



8. The Defendants rely on the sworn statement of Mr Jean-Marie Virelala dated 3rd August 2010 in support of their defence. The deponent annexes copies of contracts of employment of –

- (a) Bruno Cevuard – JMV1;
- (b) Sarsoum Meriadeck – JMV2; and
- (c) Palaud Malaki – JM3.

Annexure JM4 shows copies of extended contracts of employment of Bruno Cevuard and Sarsoum Meriadeck to 2002. The contracts were extended annually thereafter until 2007. On 1st October 2007 each of them was issued three months notice of termination due to financial difficulties. (See Annexure JMV5). In 2008 their positions were re-advertised. Both Claimants applied and were successful and have occupied those positions to date.

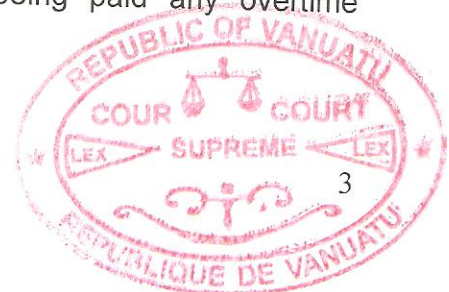
Issues

9. The Claimants raised three issues in their submissions as follows –
- (a) Whether the Claimants have worked overtime?
 - (b) Whether they had brought their overtime claims to the attention of the First Defendant?
 - (c) Whether they are entitled to their overtime payments?

The Defendant raised one issue of whether the claims of the Claimants for overtime allowances from 2005 to 2007 were time barred?

Discussions

10. As stated in paragraph 6 above, the Claimants have the burden of proof on the balance of probabilities. Their evidence do not disclose –
- (a) Any contracts of employment beyond 2007.
 - (b) Whether in 2008 to date they were being paid any overtime allowances.



(c) Any records or entries of overtime duties maintained by them or the First Defendant.

(d) The dates and hours worked as overtime.

(e) The actual dates they raised the issue with the First Defendant or with Labour Department.

The failure or omissions of the Claimants in particular Bruno Cevuard and Sarsoum Meriadeck show that they have not discharged the burden of proof resting on them to the required standard.

10.1. The essential issue has to be that raised by the Attorney General relying on Section 20 of the Employment Act Cap 160. Section 20 states:

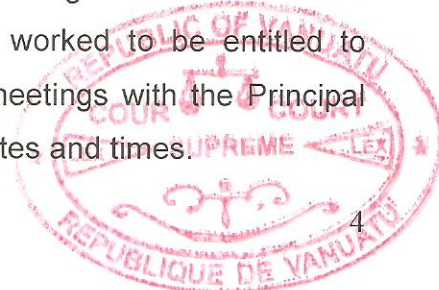
"No proceedings may be instituted by an employee for the recovery of the remuneration after the expiry of 3 years from the end of the period to which the remuneration relates."

10.2. The Claimants give some evidence of meetings with the Labour Department but have failed to specify the exact dates of those meetings. The sworn statement of Labour Officer Lamai Ware is not admitted as evidence in support of the Claimants' position because it was brought in only after the hearing had taken place.

10.3. It appears that overtime entitlements for 2005 and 2006 were clearly time-barred by virtue of Section 20 of the Act. That leaves only entitlements for 2007. But as indicated earlier, the Claimant had to show they had done overtime duties by showing the actual dates and the hours worked. They have not done that.

Conclusions

11. The conclusion reached by the Court after examining evidence is that the Claimants have not proved (a) any overtime worked to be entitled to payment and (b) that they had any previous meetings with the Principal and Labour Department by providing specific dates and times.



11.1. As such, the Court answers the issues raised as follows –

(a) Whether the Claimants had worked overtime?

Answer: No.

(b) Whether the Claimants have brought their overtime claim to the attention of the Defendant?

Answer: No.

(c) Whether the Claimants are entitled to their overtime claim?

Answer: No.

(d) Whether their claims for overtime for 2005 to 2007 time barred?

Answer: (1) Yes, the claims for 2005 and 2006 are time-barred.

(2) The claim for 2007 is not time-barred but the Claimants have not shown they performed any overtime duties to be entitled.

11.2. The Claimants' claims are therefore dismissed in their entirety.

11.3. The Defendants are entitled to their costs of the action to be agreed or taxed.

DATED at Luganville this 23rd day of May 2011.

BY THE COURT


OLIVER A. SAKSAK
Judge

