

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 317 of 2014

BETWEEN : HONORE TIASINMAL

Claimant

AND: REPUBLIC OF VANUATU

Defendant

Coram: Justice Aru

Counsel: Mr. J. Ngwele for the Claimant
Ms. J. Warren for the Defendant

JUDGMENT

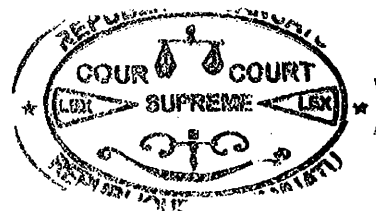
INTRODUCTION

1. The claimant was a former public servant. He was working as a customs officer within the department of customs when he sustained injuries to his body as a result of an accident which subsequently led to his early retirement. He now claims compensation under the Workmen's Compensation Act [CAP 202] as amended.

BACKGROUND

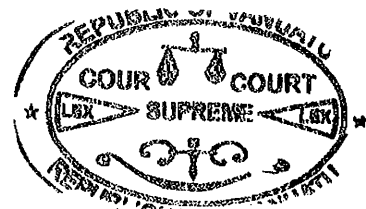
2. The following chronology of events which are not disputed sets out the factual background to this claim.

29 October 2001 - whilst the claimant was on official duty in Santo as the Manager of Boarder Control within the Department of Customs, he was involved in an accident on his way



to the Champagne beach and sustained injuries. After recovering he returned to work.

- 4 June 2011 -the claimant wrote a letter to the director of Customs requesting early retirement on medical grounds.
- 19 August 2011 -the defendant through the Public Service Commission (the PSC) retired the claimant on medical grounds.
- 15 July 2013 -the claimant wrote to the PSC seeking compensation for personal injuries sustained whilst in the Public Service.
- 22 July 2013 -the chairman of the PSC responded by letter advising the claimant that his claim was justifiable and that the PSC was considering it.
- 19 September 2013 -the Acting Secretary of the PSC by letter informed the claimant that his claim was being assessed to determine the amount of compensation.
- 10 June 2014 -the Acting Secretary of the PSC advised the claimant by letter that the PSC in its meeting No 12 of 2014 held on 5 June 2014 decided to award a sum of VT 6, 350, 400 as compensation.
- 18 August 2014 -the Acting Secretary of the PSC by letter further advised the claimant that based on legal advice received, the PSC revoked its decision for compensation in the sum of VT 6, 350, 400 but instead advised that the compensation will be paid in the sum of VT 1, 000, 000.



3. The sum of VT 1, 000, 000 has been paid and received by the claimant.

CLAIM

4. The claimant's claim is that the amount of VT 6, 350, 400 was determined correctly pursuant to the Workmen's Compensation (Amendment) Act No 21 of 2013. Secondly that there was an offer made by the defendant through the PSC to pay that amount and the offer was accepted by the claimant.
5. The claimant alleges that there was a binding contract which was breached by the defendants and as a result he is seeking the following relief:-
 - a) a declaration that the defendant's repudiation breached the terms of the contract.
 - b) a declaration that the defendant's actions to repudiate the contract amounted to a deliberate and fundamental breach.
 - c) an order that the defendant pay the claimant the sum of VT 5, 350, 400.
 - d) general damages in the sum of VT 1, 500, 000 for breach of contract.
 - e) 5% interest per annum.
 - f) Indemnity costs.

DEFENCE

6. The defendant in its defence says that the decision to compensate the claimant in the sum of VT 6, 350, 400 was made pursuant to the 2013 Workmen's Compensation (Amendment) Act No 21 of 2013.
7. It says that the amendment to the Act cannot apply retrospectively as the claimant sustained his injuries in 2001 and the Workmen's Compensation Act as applied then applies to the claimant's case for the purposes of calculating any compensation due to him. It further says that the PSC under the Public Service Act [CAP 246] has the powers and discretion to review its own decisions to ensure compliance with the law.



EVIDENCE

8. The evidence in chief for the claimant was his sworn statement which was tendered as **Exhibit C1**. The claimant was cross examined on his evidence. Judith Melsul gave evidence for the defendant and was cross examined. She filed a sworn a statement which was tendered as **Exhibit D1**.

ISSUES

9. Two issues which the parties have identified for determination by the Court are as follows:-
- i) whether the Workmen's Compensation (Amendment) Act No 21 of 2013 applies to the claimant's case;
 - ii) whether a legally binding contract had been created by the parties.

DISCUSSION

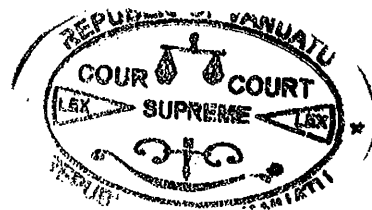
Issue i) whether the Workmen's Compensation (Amendment) Act No 21 of 2013 applies to the claimant's case;

10. Under the Workmen's Compensation Act [CAP 202], it is mandatory for an employer to pay compensation to an employee who suffers injury from any accident in the course of his employment (section1). The amount of compensation payable as provided under section 2 is set out in the schedule to the Act and clause 1 of the schedule states:-

"the amount payable for death or total disability shall be three times the annual wages of the employee, subject to a maximum limit of two million vatu ."

(emphasis added)

11. The Act was amended by Act No 21 of 2013 by amending the above clause of the schedule to the Act to read:-



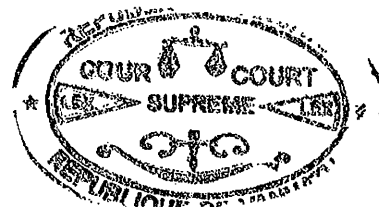
"clause 1 of the schedule

*Delete "two million" substitute eight million six hundred and forty thousand
vatu"*

12. The commencement date of Act No 21 of 2013 is 6 May 2014.
13. Mr Ngwele submits on behalf of the claimant that the earlier decision of the PSC to award compensation under the 2013 amendment is correct. He submits that if the Act is amended, any determination by the PSC must be in accordance with the recent amendment. It is further submitted that the amendment to the Act must not be interpreted as retrospective as it does not remove any existing right.
14. This submission is misconceived for a number of reasons. The undisputed fact is that the claimant suffered his injuries in 2001. He continued in his employment as a customs officer until his early retirement on 19 August 2011. When the claimant left the defendant's employment his entitlement to compensation under the Workmen's Compensation Act was "three times annual wages subject to a maximum limit of two Million Vatu. That provision of the law was changed after the claimant had retired. Act No 21 of 2013 commenced on 6 May 2014.
15. First, the law applying during the claimant's term of employment up to the date of his retirement was the principal Act therefore that must be the basis for the calculation of his compensation. Secondly, Act No 21 of 2013 cannot apply to the claimant for reasons that it commenced or applied as of 6 May 2014. Parliament in enacting the amendment has not said it will apply retrospectively. The Court of Appeal per Cooke J in *Burns Philip (Vanuatu) Ltd v Maki* [1989] VUCA 4 stated that:-

"In the interpretation of any statute it must be read as having effect from the date of commencement."

16. Act No 21 of 2013 does not state that it will apply retrospectively. In my considered view, the effect of the 2013 amendment is that it only applies from the date of commencement and to future events therefore it does not apply to the claimant's case.



Issue ii) whether a legally binding contract had been created by the parties

17. The defendant does not deny that it made an offer of VT 6, 350, 400 which was accepted by the claimant but says that upon receiving legal advice revoked its earlier decision and decided to award the sum of VT1, 000, 000. The claimant was then informed that the compensation payable to him is VT 1, 000, 000. The sum of VT 1, 000, 000 was paid and the claimant has acknowledged receipt.
18. The claimant submits in essence that there was an offer and acceptance which indicated the parties intentions to create a legal relationship therefore a binding contract was created.
19. The PSC decision to award compensation in the sum of VT 6,350,400 was made on 6 December 2014 [Annexure 'JM7' to the sworn statement of Judith Melsul]. It states:-

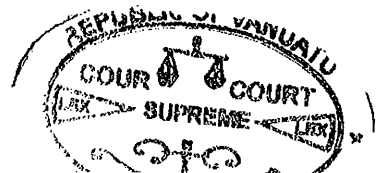
"DECISION No. 6-12-2014

Commission deliberate on this matter and decided to award compensation in the amount of VT6, 350, 400 according to the requirement of the Amended Work Man's Compensation Act. "

20. Following this decision a letter was issued by the PSC Secretary to the claimant on 10 June 2014 [Annexure "JM8"] advising as follows:-

"this letter serves to inform you that that the Commission at its meeting No 12 of 2014 dated 5 June 2014 deliberated on your claim for compensation for personal injuries sustained while working in the Department of Customs back in the year 2001 and decided to award you with compensation in the amount of VT 6,350,400. This compensation is made pursuant to the requirement of the Workman's Compensation (Amendment) Act of 2013 which took effect on 6 May 2014."

21. Given my ruling in relation to the first issue, the evidence shows that there was a misunderstanding of the law by the PSC when deciding to award damages under the 2013 amendment. This was realised upon receiving legal advice from the state law office and the decision was revoked. This is confirmed by Judith Melsul



in her evidence. Under cross examination she maintained that the PSC's earlier decision was revoked following legal advice received from the State Law Office. The PSC then reconsidered its position in relation to the legal advice and awarded the sum of VT 1, 000, 000. The claimant was advised on 18 August 2014 [Annexure "JM14"]. This amount was paid to the claimant and he acknowledges its receipt.

22. As the offer made was based on a misapprehension of the law, the defendant could not be bound for to do so would not only be contrary to the law but it would also be acting contrary to public policy. Therefore a legally binding contract was not created and could not have been created in those circumstances.

CONCLUSION

23. I come to the conclusion after considering the two issues posed that the claim is misconceived and is therefore dismissed. The defendant is entitled to costs on a standard basis to be taxed failing agreement.

DATED at Port Vila, this 26 day of May, 2016

BY THE COURT

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D. Aru
Judge

