

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

Civil
Case No. 19/2639 SC/CIVL

BETWEEN: Christopher Desonville
Claimant

AND: Port Vila Municipality
Defendant

Date of Hearing: 28 April 2020
Before: Justice V.M. Trief
In attendance: Claimant – Ms J. Kaukare
Defendant – Mr L.J. Napuati
Date of Decision: 29 April 2020

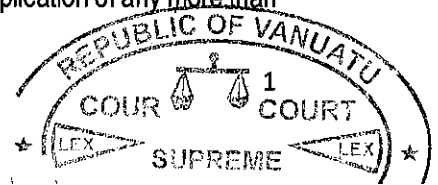
DECISION AS TO STRIKE OUT APPLICATION

A. Introduction

1. By its Application to strike out part of the claim, the Defendant seeks to strike out the claim for overtime pay.

B. Submissions

2. Mr Napuati submitted firstly, that pursuant to s. 20 of the *Employment Act* [CAP. 160] that the Claimant is limited to claiming 3 years overtime and not the further 4 months he is claiming. Secondly, that the first mention of overtime in the entire claim is in the prayer for relief, seeking VT15,079,680 overtime allowance. There is no antecedent pleading with appropriate particulars as to the overtime claim. Mr Napuati sought costs of the application of VT5,000.
3. Ms Kaukare opposed the strike out application. She submitted that the Claimant did not file his claim within 3 years of the oldest incurrence of overtime as he wrote letters to the Defendant and had waited faithfully for them to pay. It had not paid the Claimant's overtime but have paid it for his fellow worker Fred Tavi. Ms Kaukare said she could amend the Claim to particularise the claim for overtime. She opposed costs of the application of any more than VT5,000.



C. Discussion

4. Section 20 of the Employment Act provides:

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

5. The question I have is whether or not "remuneration" includes overtime pay?

6. The Court of Appeal considered this provision in *National Bank of Vanuatu v Cullwick* [2002] VUCA 39. It held at p. 6 that:

In our opinion s. 20 is limited in its operation to periodic payments that become due to employees during the currency of a contract of employment. The expression covers ordinary wages paid periodically whilst an employee is at work, but extends to include annual leave and sick leave payments that become due whilst the contract of employment remains on foot: see s. 31.

7. The Court of Appeal noted that its construction of the word "remuneration" is consistent with the observations of that Court in *Banque Indosuez Vanuatu Limited v Ferrieux* (1990) 2 VLR 490. In that decision, the Court observed that although "remuneration" is not defined in the Act, the term must be given the same meaning throughout the Act. Accordingly it held that "remuneration" for the purpose of subs. 56(2) means salary only.

8. Likewise I answer the question above, "No". That is, that "remuneration" means salary only and does not include overtime pay. I am comforted in this conclusion that remuneration and overtime pay are dealt with in separate Parts of the Act – Parts 5 and 6 respectively.

D. Result

9. In the circumstances, s. 20 of the *Employment Act* is no bar to the Claimant's claim for overtime.

10. The Defendant's Application to strike out part of the claim is **declined** and dismissed.

11. There is no order as to costs.

DATED at Port Vila this 29th day of April 2020
BY THE COURT


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V.M. Trief
Judge

