

**BETWEEN:** Jean Yves Bibi  
*Claimant*

**AND:** Republic of Vanuatu  
*Defendant*

**Before:** Justice Oliver A. Saksak

**Counsel:** Mr Mark Hurley for the Claimant  
Mrs Jelinda T Tari for the Defendant

**Date of Hearing:** 26 September 2024

**Date of Judgment:** 9<sup>th</sup> October 2024

---

## JUDGMENT

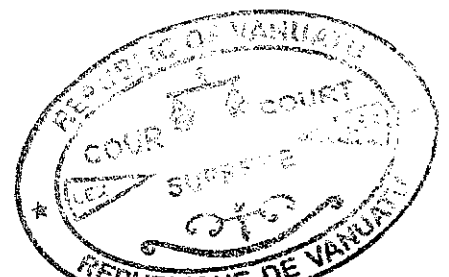
---

### Introduction

1. The judgment is about assessment of quantum of damages sought by the claimant as a result of and following his termination of employment in or about February 2021. Following are the background facts.

### Background Facts

2. The claimant was appointed by the Public Service Commission (the PSC) as its Secretary General on a fixed term contract for 4 years, commencing on 24 September 2019.
3. Subsequently on 24 December 2020 the claimant was suspended. A disciplinary process followed and on 18 February 2021 the PSC terminated the claimant's appointment on grounds of serious misconduct.
4. Mr Bibi challenged his termination as being unlawful in Civil Case 21/730 Bibi v Republic [2022] VUSC 13. Initially his claim was dismissed on 17 June 2022 and the claimant appealed.
5. In the Court of Appeal in CAC Bibi v Republic [2022] VUCA 15 Mr Bibi's appeal was allowed, the judgment dated 17 January 2022 was set aside and the case was remitted to the Supreme Court for rehearing with an order for costs in Mr Bibi's favour.



6. The proceeding was however stayed pending determination of a separate claim brought by Louise Nasak who was also alleged to have been involved in the same incident in the work place for which Mr Bibi was terminated, which allegedly occurred on 23 December 2020.
7. Mrs Nasak was successful in her claims for unjustified dismissal. The Republic appealed to the Court of Appeal in Republic v Nasak [2024] VUCA 4 which appeal was dismissed.
8. As a result of Mrs Nasak's successful appeal establishing that her termination was unlawful and given the same factual circumstances as with Mr Bibi's case, the claimant requested that the defendant admit liability also in relation to his claim.
9. On 5<sup>th</sup> July 2024 the defendant eventually admitted liability by its memorandum of even date.

### **Pleadings**

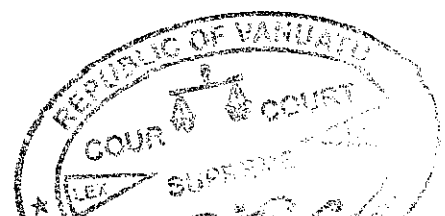
10. On 2<sup>nd</sup> August 22 Mr Bibi filed his amended claim particularising his claims in paragraph 27 in the total sum of VT 30,746,703.
11. On 11 September 2024 the claimant filed a Further Amended Claim increasing the total amount of his claims to VT 34,074,197 (see paragraph 27).
12. The defendant filed an amended defence on 24 August 2022.

### **Evidence**

13. The claimant's evidence in support of his quantum of damages are contained in the following sworn statements by the claimant dated-
  - a) 30 June 2021, 8<sup>th</sup> July 2021 responding to James Melteres and Brian Bani's statements, 18<sup>th</sup> and 19<sup>th</sup> August 2021 and of 4<sup>th</sup> October 2021.
  - b) Sworn statement of Nelly Naviti Bibi dated 8 July 2021 in support of the claim.
14. The defendant relied on the sworn statements of-
  - a) Brian Bani filed on 14 April 2021.
  - b) James Melteres filed on 13 April 2021 and 27 September 2021.

### **Submissions**

15. The claimant filed written submissions on 9 September 2024 and the defendants filed their written submissions on 20 September 2024.



**Discussion**

16. Mr Hurley submitted the claimant was legally entitled to-

a) Outstanding Salaries for balance of the contract-	VT 15,672,147
b) Housing Allowance-	2,465,399
c) Fuel Allowance-	VT 462,233
d) Telephone Allowance-	VT 60,000
e) VNPF-	VT 734,910
f) Outstanding Leave-	VT 1,965,700
g) Severance pay under section 56(4) of Employment Act:	VT 8,475,872
VT 4,237,936 x 2-	
<b>TOTAL</b>	<b>VT 34,074,197</b>

17. Mr Hurley relied on the cases of Watson v Public Service Commission [2023] VUSC 20 CC 21/3889, Republic v Watson [2023] VUCA 31 CC 23/307, and Iata v Tanna Coffee Development Co. Ltd [2020] VUCA 12, CAC 19/3155.

18. Mr Hurley also relied on the claimant's contract of employment annexed as ' JM2" to the evidence by sworn statement of James Melteres filed on 2013 April 2021 to submit that under the terms of the contract, the claimant is entitled to housing, fuel and telephone allowances in the sums as claimed.

19. Finally Mr Hurley submitted that the correct calculations to be accepted by the Court are those contained in the sworn statement of James Melteres in his sworn statement filed on 27 September 2021 where housing, fuel and telephone allowances are approved as the claimant's other entitlements, if the claimant is successful in his claims.

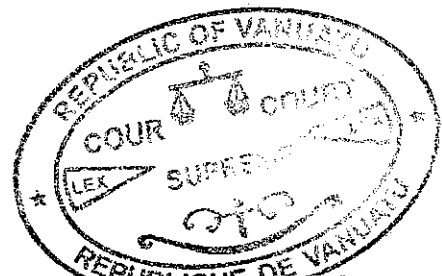
20. Mrs Tari for the Defendant did not make any oral submissions but relied solely on the written submissions filed on 20 September 2024.

21. In paragraph 24 of those submissions the defendant summarises the claims which they say the claimant is entitled to which are-

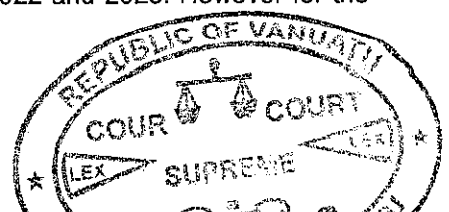
a) Amount due on Contract-	VT 15, 672,171
b) VNPF-	VT 652,982 – ( lower than claimed)
c) Severance-	VT 4,237,936 ( as claimed)

The total amount agreed by the defendant is VT 20,563,089

22. The defendant disputes the claims for housing, fuel and telephone allowances and argued that the severance amount should only be a multiplier of one.



23. I note from Mr Melteres' sworn statement dated 27 September 2021 that severance calculated was VT 1,949,272 and a multiplier of 3 times making a total of VT 5,847,816.
24. However the claimant has accepted severance of VT 4,237,936.
25. The amount of severance is now agreed but the issue is the multiplier. The claimant submits a multiplier of 2 times according to Watson's case. The Republic submitted that only a multiplier of one should be sufficient.
26. I disagree with the State's submission. The defendant endeavoured to justify or mitigated the claimant's financial losses and hardships by engaging Mr Bibi in the Innovation and Development Unit under a new contract effective from 11 March 2024 to 11 September 2024. This is disclosed in the sworn statement of Mr lavre dated 29 September 2024 as Annexure "J11".
27. However the engagement was only for a period of 6 months. And from the date of Mr Bibi's termination on 18 February 2021 to 18 February 2024, it has been some 3 years that he was unemployed.
28. Under those circumstances I accept Mr Hurley's submission that Mr Bibi is entitled to a multiplier of 2 times his severance allowance, which is  $VT\ 4,237,936 \times 2 = VT\ 8,457,872$ .
29. As for housing, fuel and telephone allowances which the defendant disputes in their written submissions, it is noted that Mr Melteres in his sworn statement of 27 September 2021 acknowledged these entitlements as lawfully due to the claimant.
30. Furthermore these allowances are provided for in the claimant's employment contract dated 24 September 2019.
31. Clause 10.3 of the contract provides for fuel allowances at the rate of VT 15,0000 monthly. Clause 11 of the contract provides for housing or accommodation allowances of VT 80,000 per month. And clause 13.1 of the contract provides for a establishment allowance of VT 20,000 which included the cost of installation and rental of telephone line and telephone at Mr Bibi's residence.
32. I therefore accept the claimant's submission that he is legally entitled to his housing, fuel and telephone allowances in the sums as claimed. And I therefore reject the defendant's submissions in opposition to or disputing the claimant's entitlement to these allowances.
33. Next the claimant claimed for VNPf. Mr Hurley informed the Court that the claimant accepts the sum as submitted by the defendant which is VT 652,982.
34. Finally for outstanding leave, I accept Mr Hurley's submission that Mr Bibi is entitled to his outstanding leave payments for the years 2019- 2020, 2021, 2022 and 2023. However for the



period 2019/2020 the amount shall be VT492,892 for 21 days not 26 days. The total outstanding leave entitlements in VT 1,843,637.

### The Result

35. The claimant is successful on his claims as to quantum of damages and I enter judgment in his favour against the defendant.

36. In summary the claimant is entitled to the following sums:-

a)	Amount due on contract-	VT 15,672,171
b)	Housing Allowances-	VT 2,465,399
c)	Fuel Allowances-	VT 462,233
d)	Telephone Allowances-	VT 60,000
e)	VNPF-	VT 652,982
f)	Outstanding Leave-	VT 1,843,637
g)	Severance- Section 56 (4) of VT 4,237,936 x 2 (Multiplier)	VT 8,475,872
	<b>TOTAL -</b>	<b>VT 29,632,294</b>

37. The Defendant is Ordered to pay the claimant damages in the total sum of VT 29,632,294 within 30 days from the date of this judgment.

38. The Defendant shall pay VT 29,632,294 together with interest at 5% per annum.

39. The Defendant shall pay the claimant's cost of and incidental to the action on the standard basis as agreed or taxed.

**DATED at Port Vila this 9<sup>th</sup> day of October 2024**

**BY THE COURT**

  
**Hon. OLIVER A SAKSAK**

**Judge**

