

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

Judicial Review
Case No. 24/1717 SC/JUDR

BETWEEN: Floyd Ray Mera
Claimant

AND: The Attorney General
First Defendant

**AND: The Office of the Vanuatu
Financial Intelligence Unit (of
the Government of the Republic
of Vanuatu)**
Second Defendant

Date of Conference *6th day of September, 2024*
following Rule 17.8:

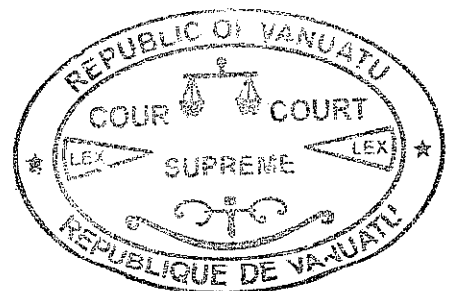
Date of Decision: *14th October 2024*

Before: *Justice E.P Goldsbrough*

In Attendance: *Livo, B for claimant*
Morrison, N for Defendants

DECISION FOLLOWING RULE 17.8 CONFERENCE

1. Floyd Ray Mera filed an urgent claim for judicial review on 5 June 2024 following his termination from the position of Director of the Vanuatu Financial Intelligence Unit (VFIU). The decision was made by the Attorney General, who is responsible for the VFIU.
2. Under a contract of employment dated 12 August 2021, the claimant was employed as the Director of VFIU. The contract provided for termination in its Clause 7, which could be either by the giving of written notice or payment in lieu of notice or alternatively without notice on the grounds of serious or gross misconduct.



3. The claimant alleges he was dismissed for serious misconduct. The claim is defended on the grounds that the termination of the employment contract was on notice in accordance with the provisions of the Employment Act.
4. The claim reached a Rule 17.8 Conference under the Civil Procedure Rules No. 49 of 2002. The rule provides: -

17.8 (1) As soon as practicable after the defence has been filed and served, the judge must call a conference.

(2) At the conference, the judge must consider the matters in subrule (3).

(3) The judge will not hear the claim unless he or she is satisfied that:

(a) the claimant has an arguable case; and

(b) the claimant is directly affected by the enactment or decision;
and

(c) there has been no undue delay in making the claim; and

(d) there is no other remedy that resolves the matter fully and directly.

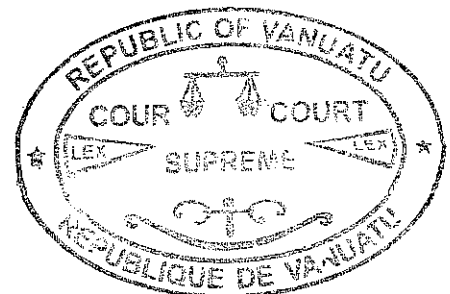
(4) To be satisfied, the judge may at the conference:

(a) consider the papers filed in the proceeding; and

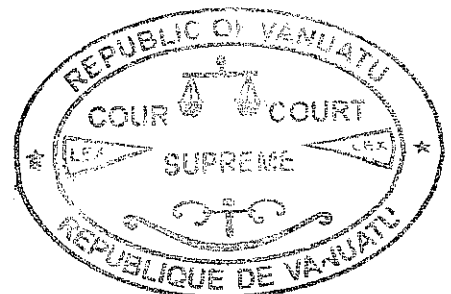
(b) hear argument from the parties.

(5) If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out.

5. The defence was filed on 26 August 2024. There was a delay between the filing of the claim and the filing of the defence as counsel had been attempting to resolve the matter. When it became clear that this approach would not resolve the matter, a defence was quickly filed.

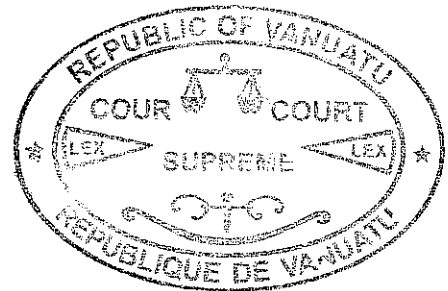


6. The Court took into account the claim, defence, reply to the defence, the sworn statements of the claimant (5/6/24 and 12/6/24) and a sworn statement of Shatima Meltekral filed 14/6/24. The Court also took into account submissions made by counsel for the claimant and from counsel for the defendants.
7. The conclusion reached is that the Court must decline to hear the claim and that the claim be struck out. Costs should follow that event.
8. There are two paragraphs in the claim which are clearly not supported by the evidence presented by the claimant. Paragraph 9 asserts that the termination was premised upon an investigation report and the recommendations contained in that report. Paragraph 13 asserts that the termination decision by the First Defendant made no mention of whether the Claimant's termination was premised on clause 7 (1) or (2) of the contract of employment.
9. The termination letter is exhibited as FRM5 of the claimant's sworn statement of 5 June 2024. Whilst that letter discusses the report referred to above, it is evident that the termination itself, whilst immediate, provided for the payment of 'benefits and entitlements'. If the claimant had been terminated for gross misconduct, he would have lost not only any notice period but also any 'entitlements and benefits'.
10. In other words, and using the language of the employment contract, termination under clause 7.1 comes with a payment in lieu of notice. Termination under clause 7.2 for gross misconduct comes without notice and payment in lieu of notice.
11. This distinction makes this termination a termination under clause 7.1 rather than 7.2. The letter could have been worded to make this even clearer than it does, but that does not



change the nature of the termination. It was not so badly worded as to mislead the claimant, as it was very clear that the termination came with the payment of terminal benefits, which were to be paid once calculated. As referenced above, it was this calculation of terminal benefits that was the subject of earlier negotiations. Those terminal benefits included not only payment in lieu of notice but also other benefits such as accrued leave, hence the time needed for calculation and agreement between the parties.

12. It is also clear, given that the report was also filed as part of the claimant's material, that there had been an investigation into alleged misconduct and the first defendant had provided the opportunity for the claimant to tender his resignation. The claimant made the choice not to do that. At this stage, the employer must make his choice. The two choices are to proceed with a termination based on alleged misconduct or to terminate in accordance with any existing contractual right which is provided in the employment contract. That choice can be difficult. It may be that an employer considers it important or even in the public interest that the gross misconduct route is followed. It may equally be that the employer determines that the matter is more efficiently disposed of by termination on notice or on payment in lieu of notice. That decision is for the employer alone. It cannot be said that the decision here to follow the Clause 7.1 route was a decision not open to the employer, nor was it a decision capable of review in these circumstances.
13. Whilst not relevant to this decision given its nature, there are other submissions made by the claimant which are equally unsupported by the circumstances or the law. There is a submission that the employer cannot act upon an allegation that amounts to a crime without the same being taken to a criminal conviction. There is a submission that the employer must follow the gross misconduct route after an investigation has taken place. Neither of these submissions are correct in law.



14. For these reasons, the claim must fail as the claimant does not have an arguable case.

15. In the event this Court declines to hear the claim and it is struck out as not disclosing an arguable case under 17.8 (3) (a) in accordance with Rule 17.8 (5). Costs of and incidental to the claim incurred by the defendants are ordered to be paid by the claimant, such costs to be agreed or assessed.

DATED at Port Vila this 14th day of October, 2024.

BY THE COURT

E.P.G.

E.P. Goldsbrough

Judge of the Supreme Court

