

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

Civil
Case No. 24/1232 SC/CIVL

BETWEEN:

Jean Marc Pierre

Claimant

AND:

The Republic of Vanuatu

Defendant

Before: *Justice Oliver.A.Saksak*
In Attendance: *Mr Kent T Tari for the Claimant*
Mr Freddie Bong for the Defendant

Date of Hearing: *17th February 2025*

Date of Judgment: *20th February 2025*

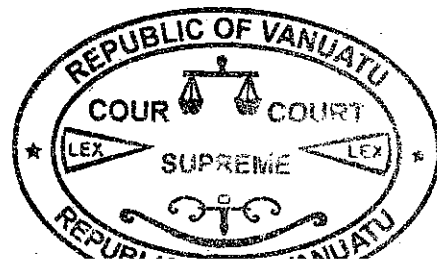
JUDGMENT

Introduction

1. Mr Pierre is claiming his unpaid salaries for balance of his employment agreement for 2 months, 3 weeks and 3 days in the sum of VT 867,048, VT 144,508 for 2 weeks notice, VT 144, 048, for severance, 5% interest per annum, common law damages at VT 800,000 and disbursement costs of VT 500,000.

Facts

2. He entered into an Agreement of Service (the Agreement) with the Ministry of Justice on or about 5 March 2023. The Agreement was for a duration of 6 months from 9th March to end on 9th September 2023.
3. The Agreement was approved by the Public Service Commission on 9th March 2023.
4. Following the Agreement Mr Pierre was employed as the National Co-ordinator of the Customary Land Management Unit within the Ministry of Justice and Community Services.
5. He occupied the office for 3 months and 5 days. His employment was terminated on 14 June 2023 when the secretary of the Public Service Commission wrote to him as follows:
" Dear Mr Pierre,
TERMINATION OF YOUR CONTRACT EMPLOYMENT AS NATIONAL
COORDINATOR – CLMO



This letter serves to inform you that the Commission in its flying Minute No 5 of 14th June 2023, decision 01 approves that your contract employment as National Co-ordinator-CLMO is terminated with immediate effect.

The Commission further acknowledges the services rendered during your appointment as National Coordinator -CLMO

Yours Sincerely,

James Melteres (signed)

Secretary

Office of the Public Service Commission"

6. Earlier on 10th March 2023, the Secretary, Mr Melteres wrote to Mr Pierre as follows:-

"Dear Mr Pierre,

APPROVAL OF CONTRACT EMPLOYMENT AS NATIONAL COORDINATOR- CLMO

I am pleased to inform you that the Commission at its flying Minute No. 2 of 09th March 2023 decision No. 13 has approved your contract employment as stated below with effect from 09th March 2023 to 09 September 2023.

Post Title : National Coordinator

Unit: CLMO

Ministry: Justice and Community Services

Salary Scale: Ps. 8.1

You will be remunerated with an annual salary equivalent to VT 2.693,000.

Yours Sincerely,

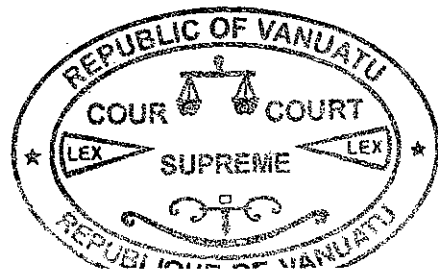
James Melteres (Signed)

Secretary

Office of the Public Service Commission"

Pleadings and Evidence

7. Mr Pierre pleads at paragraph 10 of his Supreme Court claim that the termination was made unlawfully.
8. He relies on section 10 of the Agreement. He relies on his evidence by sworn statement filed on 23rd April 2024.



Liability Accepted

9. On 23rd May 2024 the Court ordered the defendant to file and serve a response, a defence and sworn statements. However there was no compliance.
10. On 14th June 2024 the Republic admitted liability and sought time to make a "without prejudice" offer as to quantum.
11. From the memorandum filed on 22 July 2024 it appears an offer was made but not accepted and Mr Pierre filed his evidence in support of quantum on 26 July 2024 setting out his total entitlements at VT 1,07,488 made up of:
 - a) Unpaid Salaries for 2 months, 3 weeks, 3 days- VT 867,048
 - b) 14 days notice- VT 103, 220
 - c) Severance x 6 – 103,220
12. The defendant has no evidence in response to Mr Pierre's evidence. However the Solicitor General filed written submissions as to quantum of damages on 30 January 2025.
13. The Republic submits that (a) for unpaid salaries Mr Pierre is only entitled to the balance of his contract in the sum of VT 361,276.
 - a. For annual and sick leave the claimant is not entitled pursuant to section 29 of the Employment Act.
 - b. For severance, the claimant is not entitled under section 54 (1)(a) and according to the Court of Appeal ruling in Republic v Arnhambath CAC 24/1305.
 - c. For Common law damages the claimant is not entitled on the basis of Republic v Tari [2012] VUCA 6.
 - d. For 2 weeks notice, the claimant is not entitled relying on section 49 (1) of the Act.
 - e. For VNPF the Claimant is only entitled to VT 12,387.
 - f. For disbursement costs, the claimant is entitled only to VT 100,000.The total entitlement of Mr Pierre is VT 473,663.

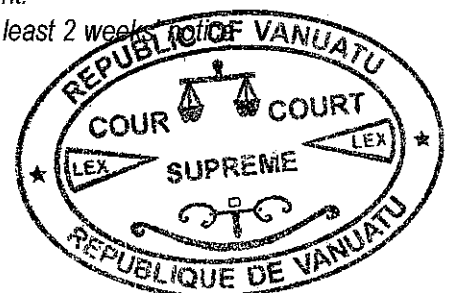
Discussion

14. Section 48 of the Employment Act states:

"48. Termination of contract
Subject to the provisions of this Part a contract of employment shall terminate on the last day of the period agreed in the contract or on the completion of the piece of work specified therein."
15. Clause 10 of the Agreement states:

" Termination of Agreement
This Agreement may be terminated:

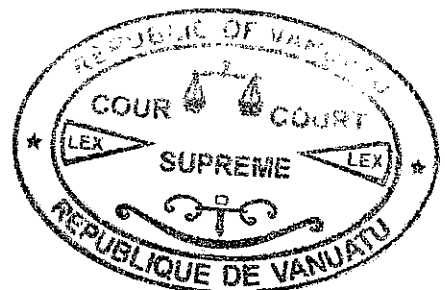
 - a) *Automatically and without notice- In the event of serious misconduct by the contractor the MICS may immediately terminate this Agreement.*
 - b) *With notice, either party may terminate this Agreement on at least 2 weeks notice in writing."*



16. There is no evidence by the defendant or its agents that Mr Pierre was alleged to have committed any serious misconduct. Therefore his termination on 14 June 2023 could not have been lawfully made under clause 10 (a) of the Agreement.
17. The only alternative option left was to proceed with termination under clause 10 (b) of the contract but that required 2 weeks notice. However no notice was given. The termination letter dated 14th June 2023 states that termination was " with immediate effect."
18. I find therefore that no misconduct was alleged against Mr Pierre and that no notice as required by clause 10(b) of the Agreement was given by the Public Service Commission. Accordingly I find Mr Pierre's termination on 14 June 2023 was unlawful. This case differs from the cases of Arnhambat and Tari submitted by the Republic.
19. Mr Pierre is therefore entitled to his balance of the Agreement of 2 months, 3 weeks and 3 days calculated as follows:

a)	2 months at VT 206,440 per month x 2	VT 412,880
b)	3 weeks or 15 working days at VT 10,322 per day	VT 153,830
c)	3 days at VT 10,322 per day	VT 30,966
		<u>VT 579,676</u>

20. Mr Pierre is also entitled to 2 weeks or 14 days notice in the sum of VT 103,220.
21. Mr Pierre is also entitled to his VNPF payments of VT 12,387 as submitted by the defendant.
22. For severance, Mr Pierre's termination by the Public Service Commission was unjustified. Under sections 54 (1), (2) (a), Sections 56 (2)(b) and section 56 (4), Mr Pierre is entitled to a multiplier.
23. Mr Pierre's contract was for 6 months to 9th September 2023 and he had a legitimate expectation that his employment would run tis full term. When the PSC terminated his employment on 14 June 2023 voluntarily but without any alleged misconduct and without 2 weeks notice required by clause 10(b) of the Agreement, there can be no doubt that as it was with immediate effect, sudden and without notice, Mr Pierre was depressed did distressed by it all.
24. In the circumstances he is entitled to a multiplier of 6 times of his severance of VT 103, 220 x 6 = 619,320. As such he is not entitled to a separate common law damages as this is inclusive in the multiplier.
25. As for disbursement costs, Mr Tari has not specified these costs as he should. Therefore I accept the defendant's submission that only VT 100,000 should suffice.



26. In summary, the claimant is entitled to judgment for the following:

a)	Unexpired term of contract	VT 597,676
b)	2 weeks notice	VT 103,220
c)	VNPF	VT 12,387
d)	Severance	VT 103,220
e)	Multiplier x 6	VT 619,320
f)	Disbursement Costs	VT 100,000
	TOTAL	<u>VT1,535,832</u>

The Result

27. Accordingly I enter judgment for the claimant against the Republic for payment of the total sum of VT 1,535,823

28. There will be no interest and no common law damages as there are inclusive in the multiplier in paragraph 22 and 24 of this judgment.

DATED at Port Vila this 20th day of February 2025

BY THE COURT


Hon. Oliver A Saksak

Judge

