

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

Civil case No. 9 of 2004

BETWEEN: PETER SALI

Claimant

AND: THE GOVERNMENT OF VANUATU

Defendant

JUDGMENT

The Plaintiff, on 15 January, 2004 filed a Magistrate Court Claim. He prayed *inter alia* the court order the defendant to pay the sum of VT 942,500 being for housing allowance owed to him when he was working as a Political Adviser to the Ministry of Trade. Despite various correspondences and agreements signed the Plaintiff claims the defendant still refuse to pay him. For this reason, he filed the case in court.

Brief Facts

Sometime 3 November, 1998, the Plaintiff worked as a Second Political Adviser for the Ministry of Trade under contract. He was then living in his wife's house at No.3 area at the rental rate of VT 80,000 per month. This was never paid although there was an agreement made between the wife and the Government.

The issue here is whether the plaintiff should be paid rent by the Government.

Facts and Evidence

The plaintiff, in his sworn statement at paragraph 3, said that as a Second Political Adviser, he is entitled to the benefits under the Official Salaries Act and this includes a furnished house at the rental fixed by the Government. Plaintiff said that as a result of that he remained in his wife's house under an agreement with the Government that the Government pay VT80,000 per month. He went on to say at paragraph 3 of his sworn statement that

sometime 3 November, 1999, he signed a second employment Agreement with the Vanuatu Government. At paragraph 8 he also said that the Council of Ministers at its meeting 5 June, 1999 agreed to pay rents for Ministers and political Secretaries. In support of his claim he referred to various correspondences he made with various other people who supported him. These are the Attorney General's letter dated 6 September, 2000, housing officer, Mr. Lowenbu's letter dated 17 May, 2000, First Political Adviser in the Prime Minister's office letter dated 6 September, 2000 and the Director General of Finance, Mr. Wilfred's letter.

In defense the defendant said that the claim is statute barred under section 20 of the Employment Act as it was filed after the expiry of 3 years from the end of the period of the Claimant's employment with the defendant. The defendant also denied the claim and said that the claimant had wanted to live in his own house and did not seek to exercise his right to a government house at the rate fixed by the government. This was supported by George Pakoasongi's sworn statement. At paragraph 3 of his sworn statement he said that Mr. Sali was never allocated a Government house because he chose to live in his own house. He went on to say that Mr. Sali did apply for the Government's housing allowance and was paid VT 7,500. Mr. Paul Kaun for the defendant also made a sworn in support of the defendant's defense.

The law

At the beginning of this discussion I raised the issue whether the Plaintiff should be paid rent by the Government. The answer to this question must be sought through the Official Salaries Act. Section 2 reads as follow;

Subject to sub-section (2) the holders of the offices set out in column 1 of part 1 of the schedule shall also be entitled to the benefits and allowances set out against those offices in column 3 of Part 1 of the schedule and described in detail in part 2 of the schedule.

(2) Notwithstanding the provisions of subsection (1) where the holder of any of the offices set out in column 1 of part 1 of the schedule is serving under an agreement and there is a provision in such agreement for similar benefits and allowances as those set out in column 3 of part 1 of the schedule, such person shall not be entitled to those benefits and allowances if the provision therefore is made in such agreement.

Column 3 part 1 of the schedule reads: *Second Political Secretary annual salary is VT 1,244,600, other benefits are,*

- (a) furnished house at rental fixed by the Government,*
- (b) child allowance of VT 1,200 a month per child,*
- (c) a gratuity payable at the rate of one twelfth of the annual salary for each year during which a person holds the office and pro-rata for each uncompleted year,*
- (d) annual leave calculated at the rate of one and three-quarter working days for each month of service,*
- (e) the payment or the reimbursement of the actual cost of transport between Port Vila and the home island and the return journey by the most direct route on home leave, and*
- (f) cost of leaving allowance of VT 2,500 a month.*

Submissions

Defense submitted that the Plaintiff is not entitled to the claim because the Government did not sign the lease agreement and also because the Plaintiff only applied for the housing allowance. They also submitted that the Council of Ministers' decision on 23 July, 1999 only talked about the Ministers being paid a housing allowance but not the Political Secretaries.

Plaintiff, on the other hand, stated that he did sign a lease for the Government to pay rent the sum of VT 80,000. They said that even if the Government did not sign the lease the plaintiff is nevertheless entitled to "a furnished house at the rental fixed by the Government".

Apply the law to the facts

It is clear from the Official Salaries Act that the Plaintiff is entitled to "a furnished house at rental fixed by the Government". There are 2 things here which must be cleared. First is the law which stipulates that the plaintiff is entitled to rents fixed by the Government and secondly, an agreement which

have benefits stated in its provisions. In the first case, sub-section 1 of section 2 of the Official Salaries Act gives no room for the defendant to ask questions whether he should pay rents to the plaintiff or not. The law is clear the defendant has to pay rents. This is different where if an office holder signs an agreement for employment. Under sub-section 2 if an office holder is serving under an agreement and there is provision in such agreement for similar benefits and allowances as those stated in the Official Salaries Act, such person shall not be entitled to those benefits and allowances if provisions therefore is made in such agreement. In other words, the plaintiff in this case cannot claim for those benefits under the Official Salaries Act if the contract he signed on 3 November, 1999 do not recognize those benefits. Having said that I find nothing in the contract signed 3 November, 1999 prohibiting the plaintiff from claiming those benefits under the Official Salaries Act. Clause 3 of that Agreement states that the plaintiff is to be remunerated by a fixed salary prescribed under the Official Salaries Act and also to be entitled to all those allowances and benefits as prescribed by the Official Salaries Act. For this reason, I cannot accept the defense submission that the Plaintiff has waived his right by applying for the housing allowance of VT7,500. To accept such a submission would, in my view, contrary to section 2 of the Official Salaries Act.

For this reason, I make order as follow.

Court Order

Judgment is hereby entered for the Plaintiff the sum of VT 942,500 plus interest of 10% calculated to be VT 258 per day commencing from the date of filing this case and that is 15 January, 2004 until completion, plus costs at the lower scale the sum of VT 23,000 being for drafting, appearance and filing fees.

DATED at Port Vila this 24th of March 2006

By THE COURT

Magistrate

