

IN THE MAGISTRATE'S COURT
OF THE REPLUBLIC OF VANUATU
HELD IN PORT VILA
(Civil Jurisdiction)

Civil case No. 53 of 2012

HT

15/42/13

BETWEEN: BEVELEIGHT KANAS
Claimant

AND: PARLIAMENTARY MANAGEMENT BOARD
First Defendant

AND: REPUBLIC OF VANUATU
Second Defendant

Mr Kiel Loughman for the Claimant
Ms Christine Lava for the Attorney General

RESERVED JUDGMENT

The Claim

The claim (and amended Claim) was for breach of a contract of employment. The amendment to the Claim added the Second defendant and an alternative amount of the claim.

The Claimant claimed VT 627,393 or in the alternative "some remuneration for work done" during the period of 2 months and 12 days in 2012, to which the claim relates.

The Onus of Proof

In the claim the onus is on the claimant to prove the case on the balance of probabilities.

Background

The Claim relates to a purported contract of employment for the Claimant to work in the position of Principal Parliamentary Officer (PPO). The claimant states that she worked in this position from 18th January 2012 until she was asked to leave the Premises of Parliament on 30th March 2012.

The claim is for breach of contract but the Claimant in her pleadings and in her sworn statements makes a number of references to the fact that there was no written signed contract of employment. As the case progressed it became clear that the claimant was relying on the existence of an oral contract for her claim. In her sworn evidence the Claimant agreed there was no written contract of employment.

The issues for the Court to decide

It was agreed that no written contract ever existed. The issue for the Court to decide is whether there was an oral contract of employment between the claimant and the defendants.

The relevant law

Contracts of employment, subject to the provisions of the Employment Act, can be oral.

To prove an oral contract existed a party can rely on evidence of surrounding circumstances and the conduct of the parties. In addition, a party can rely on direct evidence from witnesses about the negotiations relating to the contract.

Not every agreement to do something where another party acts on the agreement, creates an enforceable oral contract.

To prove an oral contract there must be evidence concerning the terms of the contract, evidence that both parties understood the contractual relationship and evidence of an intention by the parties to enter into an oral contract. The evidence needs to prove a contract that is clear and binding with terms that are certain.

Negotiations and agreements on what is to be reduced to a written contract do not automatically create an oral contract in those terms up until the written contract comes into existence.

S9 Employment Act requires contracts of employment for longer than six months to be in writing. This Act applies to public servants. (S76) This provision was not the subject of submissions perhaps because the period the subject of the claim based on an oral contract refers to a period less than 6 months.

The evidence

The Claimant

The evidence is that the claimant attended for an interview for one position which she was not offered. She was then later offered the position of Principle Parliamentary Officer (PPO), a position that was not advertised and for which she had not applied.

The Claimant provided evidence to the court that the selection panel offered her the position and told her to start work on 18th January 2012. She also gave evidence that she was told her contract would be "prepared in due course". Her evidence from her sworn statement dated 12th September 2013 was that "when I took up the post, I did not sign any contract with PMB. They informed me that my contract would be finalized at a later date". In paragraph 5 of that statement she said "It was the decision of the interview and selection Panel to give me the position of PPO". Her evidence also included the fact that she knew that the selection Panel was not able to contract with her as it was the PMB which had the authority to recruit.

From document BK1, a document headed "The Panel Outcome for Principal Parliamentary Officer-House procedures Division" the claimant knew the pay condition of the position. That document however was dated the day before she said she was offered the position yet it has her name as the selected candidate. There is no evidence these terms were discussed between the parties or agreed to as the terms of any oral contract.

In her sworn statement dated 11th June 2014 at paragraph 3, the Claimant's evidence is that "During the time I was at the parliament complex, there were discussions about my employment contract". The claimant relied on an email chain to prove that her contract "was ready" to sign but this email chain refers to "draft contracts" and how they will be "printed". This evidence points strongly to a conclusion that between the people discussing her proposed contract, there was no intention to create an oral contract covering the employment. It clearly pointed to an intention to create a written contract.

The Claimant failed to present evidence of clear terms of any oral contract, nor any agreement between the parties to form an oral contract.

There was evidence of her attending the parliamentary premises, sending an email to Ministers, preparing some brochures and attending on one trip.

There is no evidence she made inquiries about the payment of her wages every fortnight during this period.

The Defence

The defence evidence is that the First Defendant only has the authority to recruit for the position of PPO. The evidence is that the position was never advertised and that the Selection committee does not have authority to contract on their behalf. Their evidence is that they did not intend to, nor did they enter into any contractual agreement with the Claimant.

Their evidence is that they did not know the claimant was there although there is an email from Leon Teter thanking the complainant for an email she sent to Ministers.

Their evidence is that the Claimant did not occupy the office set aside for a PPO officer but rather that she based herself in the library.

Conclusions on the evidence

There are many aspects of this case which are agreed by the parties. Whilst the PMB had no plans to advertise or fill the position of PPO when the Claimant was purportedly offered this position, a Selection Panel set up to fill another position seems to have taken it upon themselves to exercise recruiting functions it did not have. Be that as it may, it is clear on the evidence that the Claimant knew that the contract of employment referred to was a written contract of employment and it had not come into existence before she was asked to leave the premises and stop coming there.

Findings of fact by the Court

The surrounding circumstances of the Claimant attending the parliamentary premises, sending an email to Ministers, preparing some brochures and attending on one trip are not adequate to reach a conclusion that an oral contract had been agreed upon by the parties.

The Complainant's failure to inquire about her wages during the period leads to a conclusion that she knew that until the contract was signed, she was not entitled to wages.

The evidence that the contract which the Complainant was waiting on being prepared was a contract to be reduced to writing, leads to a conclusion that she knew, at the time she was present at the parliamentary premises, that she was not there under any contract of employment, oral or written.

The fact she based herself in the library and not in the office set aside for the person holding the position of PPO, suggests that she knew she was there of her own accord and not pursuant to any contract of employment, oral or written.

There was no intention on the part of the PMB to enter contractual relations with the Claimant.

The PMB did not enter into any contractual relationship with the Claimant.

From the evidence the court can conclude that Mr. Harrison desired to bring about an employment contract for the Claimant for a position that had not been advertised, however, he did not have authority to enter a legal contract of employment with the Claimant on behalf of the PMB.

The Claimant, knowing no binding contract was in place, chose to attend the parliamentary premises and spend her time there in the library, performing tasks. There is no evidence who requested her to perform these tasks.

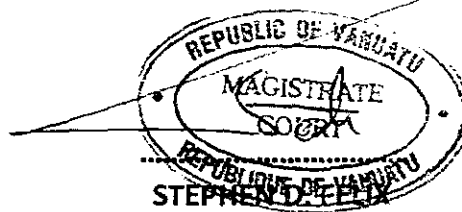
Conclusions based on the law and the facts.

On the evidence before the court the Claimant has failed to prove that the parties entered into a binding oral contract.

Decision

- 1) I am not satisfied on the balance of probabilities that the Claimant has established its claim.
- 2) I find for the Defendant.
- 3) Each party bear their own costs.

DATED at Port Vila this 20th day of June, 2017



Chief Magistrate