

Mr. Bogui Mele -v- Mr. Fred Cocker.

Coram: The Honourable Mr. Justice F.G. Cooke.
Madam Duch, Interpreter.
Miss Millett, Ass. Registrar.

JUDGMENT

The Plaintiff Bogui Mele worked for the Government on the island of Malo, building class rooms. Every month he came to Luganville to collect his wages. In the month of August 1981 he said he came as usual to Luganville and whilst on his way with three others to the Education Department and in front of the town hall, the defendant called me. I went to the Defendant who said to me that if I would leave the Government and come and work for him as a foreman, he would give 200,000VT. He said he agreed and went and told the Education Officer Amos Did Tangoa that he was finishing working with the Government at the end of August. He said there was one more house on Malo to be built but he did not build it. He stated he started working for the defendant in September or October 1981. It was agreed that the defendant was to give me three sums of money. 1,100VT per day for foundation work, 1,300VT for doing walls and 1,500VT per day for plastering. I did two houses for the dressers behind the rural health. When I had finished the defendant told me to have a holiday. He told me to come every Monday to see whether there was any work which I did for seven weeks at 1000VT each way. The taxi driver whom he called stated it was only a total of 7000VT. He stated he claimed for four days on walls at the rate of 1,300VT per day and was only paid 1,100VT per day = 800VT. Also four days plastering at 1,500VT per day instead of 1,100VT paid = 16,000VT. Seven trips in the taxi at 1000VT (confirmed by the taxi man) = 7000VT and 200,000VT as promised. The Plaintiff called Moli Taloti from Malo who stated he was with the Plaintiff when the defendant promised the Plaintiff 200,000VT to leave the Government and build two houses.

The plaintiff called another witness, Vanua Gideon, who stated he was with the plaintiff on the road near the Town Hall when the defendant told the plaintiff that he would pay him more wages, if he worked for him.

This witness stated the sum promised to the plaintiff was 200,000VT but he was so hesitant in stating such and his whole demeanour led me to believe that he was not telling the truth. He was unable to remember the month when it happened - not even the time of the year, beginning, middle, or the end. I formed the opinion that he was lying. I did not believe him.

Then Graeme Tomato was called who stated without hesitation that all that the defendant had said to the plaintiff was that if he left the Government and worked for the defendant he the defendant would pay him more wages. This witness thought the occasion was after independence day. I believed this witness.

Mr. Ene Cana, a builder, gave evidence that the plaintiff worked with him in the British Government Service since 1974. He supervised the plaintiff's work. That in 1979, the plaintiff was getting 1,100VT per day. That the plaintiff constructed many buildings and that he was pleased and satisfied with his work.

Finally the plaintiff called the taxi driver who brought him from South Santo at least seven times and that he owed him 7000VT.

The defendant's case was that he never agreed to give 200,000VT to the plaintiff to leave the Government and join him. That the figure agreed was 1,100VT a day for any kind of job. He said the Plaintiff signed the pay sheet. However, the plaintiff said he did complain to the defendant but the defendant told him to wait until the house was completed and that he would give him more money. Later the defendant said he was not satisfied with the plaintiff's work and gave him notice to terminate his services.

The plaintiff denied that he ever received a notice from the defendant's secretary.

The only document produced in Court was a carbon copy of the alleged notice. The defendant said that the plaintiff stopped him at Unity Park and asked him for a job and was told to come see the defendant the following Monday morning; that the plaintiff did not come on Monday but did come on Tuesday when he the defendant took the plaintiff home to lunch; that he asked the plaintiff the wages he received and he said 1,300VT per day, that he, the defendant said it was too much and that he would pay him 1,100VT per day and that the plaintiff started work that day.

The defendant contended that the plaintiff asked for an increase in wages but he the defendant told the plaintiff that his work was not good. The defendant said the plaintiff worked for him from November to the 30th of January 1982. The defendant submitted pay sheets for each month which were signed by the plaintiff.

Finally, the defendant contended that the plaintiff did not know his job and that he engaged another foreman.

Chief Moli Hauso Tamata from South Santo an uncle of the plaintiff, was called by the defendant and who stated the plaintiff was always disobeying the laws of the village which had no relevance to this matter. He also stated that the plaintiff did not always tell the truth. The defendant also called his wife and daughter who alleged they were present at the house when wages were discussed and that they heard the defendant say that he could only pay the plaintiff 1,100VT per day.

In this matter I formed the opinion that both the plaintiff and the defendant were not telling the absolute truth. I am satisfied that the defendant did not offer the plaintiff an inducement of 200,000VT to leave the Government and work for him but I am of the opinion that the defendant did ask the plaintiff to work for him.

There was still a house to be completed by the plaintiff when he left the Government and started to work for the defendant. I am satisfied that there was some inducement for the plaintiff to have left the Government and join the defendant. I therefore believe the plaintiff when he stated he was offered 1,100VT per day for foundation work;

1,300VT per day for construction of walls and 1,500VT per day for plastering.

The plaintiff claims four days working on walls, that is the difference between 1,100VT and 1,300VT per day $4 \times 200 = 800VT$

Also four days plastering, that is the difference between 1,100VT per day and 1,500VT per day $4 \times 400 = 1,600VT$.

Seven trips in the taxi to report for work which I accept and is 7000VT.

Further as the plaintiff was being paid every two weeks he should have been given two weeks notice instead of one or salary in lien.

I will allow 6,500VT for that week being an average between 1,100VT and 1,500VT.

Further the plaintiff is entitled to costs of 5000VT, Court costs, which I award against the defendant.

Therefore the total amount to be paid by the defendant is 25,900VT.

I give judgment for the sum of 25,900VT.

Dated the 28th of September 1982.

Frederick G. Cooke

FREDERICK G. COOKE

Chief Justice.