



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

Civil Case No. 160 of 2009

**BETWEEN: NEIL NIMOHO**

Claimant

**AND: TELECOM VANUATU LIMITED**

Defendant

**Coram:** Justice D. Fatiaki

**Counsel:** Mr. Neil Nimoho (in person)  
Mr. Abel Kalmet for the Defendant

**Date of Decision:** 2<sup>nd</sup> July 2010

**RULING**

1. On 18<sup>th</sup> November 2009 the Claimant who has appeared throughout these proceedings in person, filed a claim in the Supreme Court which reads as follows in its material parts:-

**"FACTS UPON WHICH THE CLAIMANT RELIES**

1. Events leading to termination of Neil Nimoho from Telecom Vanuatu Limited
2. Delay in payment affecting direct family and the basic family needs
3. Unlawful termination resulting on home loan slowly going beyond reach with it's related monthly interests
4. Additional land guaranteed for home loan slowly moving beyond reach
5. Unlawful termination deliberate

**STATUS AND PRINCIPLES OF LAW UPON WHICH THE CLAIMANT RELIES**

The claimant relies upon the principles of Chapter 2, cap 5 of the Constitution of the Republic of Vanuatu

**REMEDIES OR ORDERS SOUGHT BY THE CLAIMANT  
AND THE CLAIMANT CLAIMS: Justice**

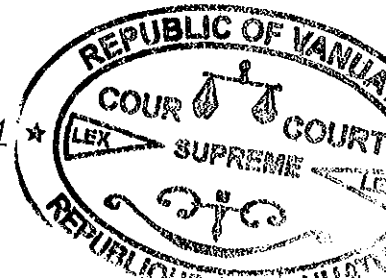
1. An order that the Defendant pay the claimant justice
2. Interest at the rate of 5%
3. Filing fee of VT20,000
4. Costs
5. Such further or other orders the court deems fit."



2. The Claimant also filed a brief sworn statement in support deposing that the above sub-hearings of his claim are true.
3. By letter dated 9<sup>th</sup> December 2009 the Chief Registrar at the direction of the Court, referred the Claimant "to the Public Solicitor's Office for their consideration and assistance".
4. On 7<sup>th</sup> January 2010 the Defendant company filed a defence of sorts and nor surprisingly asserted that the claim "fails to disclose any reasonable cause of action against the Defendant." On the same day the Defendant filed an application to strike out the claim on the above pleaded assertion.
5. On 18<sup>th</sup> January 2010 the Defendant's application to strike was personally served on the Claimant. The application was listed for hearing on 19<sup>th</sup> February 2010.
6. On 19<sup>th</sup> February 2010 much to the concern of the Court, the Claimant appeared in person again and advised that he had unsuccessfully approached several lawyers including the Public Solicitor's Office as directed by the Court and none were willing to act for him. Reluctantly the Court granted the Claimant leave to serve an amended claim and the matter was adjourned to 26<sup>th</sup> March 2010.
7. In the course of discussions during the chamber hearing and with a view to assisting the Claimant in formulating an amended claim the Court drew his attention to the requirements of Rules 4.2; 4.3 and 4.10 of the Civil Procedure Rules 2002.
8. A brief synopsis of those Rules will suffice for present purposes. Rule 4.1 (2) identifies 3 distinct purposes of a statement of the case which must be included in a claim, viz, to set out the facts of what happened between the parties which the Claimant relies upon and identify areas where the parties agree and the issues that need to be determined by the Court. Rule 4.2 (1) set out more fully what must be included in a statement of the case including, all the relevant facts and the statute(s) or principle(s) of law relied upon by the Claimant. Finally Rule 4.10 requires a claim which seeks damages to state the nature and amount of the damages claimed and if general damages are claimed, the nature of the loss or damage suffered, the exact circumstances in which the loss or damage was suffered and the basis on which the amount claimed has been worked out or estimated. For the sake of completeness Rule 4.11 permits an amendment of the statement of the case to better identify the issues in the case, or to correct a defect in the statement of the case or provide better and fuller facts about the case.
9. The amended claim was filed on 10 March 2010 and reads as follows in its amended parts:

**"1. Events leading to termination**

Employment date with date of secrecy act 29<sup>th</sup> January 2001 ★



The claimant was employed by the defendant on 29<sup>th</sup> January 2001 with a 'Declaration of secrecy'.

Below are investments the defendant spent on claimant while employed by the defendant. Included with the investments are increments and promotions with payslips to certify.

a) Investments (courses)

1. August 2001 – Getting started with Unix user workshop
2. September 2001 – Mastering Microsoft
3. December 2001 – Billing and Customer care management course
4. September 2002 – Implementing Microsoft Windows Professional server
5. June 2003 – Data Protocols
6. December 2003 – Data Protocols
7. May 2005 – Client management suite
8. December 2007 – SUN Platform

b) Increments

The claimant earned continuous pay increments while working for the Defendant and included are payslips to certify.

Pay Rise 1% - 09<sup>th</sup> December 2002  
Bonus 18,614VT - 09<sup>th</sup> December 2002  
Payslips - 2001 to 2009

c) Promotions and Responsibilities

The Claimant started working as an IT technician and was promoted to Switching team. Under the switching team, he was further given addition roaming coordination responsibilities while carrying out the daily monitoring of traffic through the company. The additional responsibilities were given to claimant following A Switching Technician's resignation letter. (Francis)

**2. Delay in due payments affecting direct family needs**

Verbal termination date – 7<sup>th</sup> August 2009

The claimant was verbally informed about his termination on the 7<sup>th</sup> August 2009. The first page of the termination letter is dated 6<sup>th</sup> August 2009. The second page of the termination letter states the date of termination "4<sup>th</sup> August 2009".

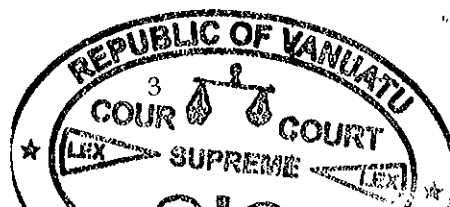
The claimant gets an advance of salary on 10<sup>th</sup> per month. On the 10<sup>th</sup> August 2009 a workmate gave the claimant 1 000VT to meet family needs from sympathy's perspective.

Date Payment received – 11<sup>th</sup> August 2009

The claimant received amounts due from the defendant on the 11<sup>th</sup> August 2009.

**3. Unlawful termination side effects**

The unlawful termination is resulting on the claimant's personal home loan moving beyond reach with its monthly interests.



**4. Additional land guaranteed for home loan slowly moving beyond reach**

The unlawful termination of the claimant is resulting on land guaranteed for the claimant's personal home loan moving beyond reach.

**5. Unlawful termination of claimant deliberate**

Events on days before termination and after termination of the claimant confirm the illegal termination of the claimant deliberate.

**6. Resourceful age**

The unlawful termination of the claimant was made during the claimant's resourceful age of 37 years old.

**STATUS AND PRINCIPLES OF LAW UPON WHICH THE CLAIMANT RELIES**

The claimant relies upon the principles of chapter 2, cap 5, of the Constitution of the Republic of Vanuatu.

**REMEDIES OR ORDERS SOUGHT BY THE CLAIMANT  
THE CLAIMANT CLAIMS JUSTICE**

1. An order that the defendant pay the claimant justice
2. Interest rate 5%
3. Filing fee of VT20,000
4. Costs
5. Such further or other orders the court deems fit."

10. It is plain that the claim as amended, is based on the Claimant's alleged unlawful termination from his employment with the Defendant company on 7<sup>th</sup> August 2009, but again, the amended claim suffers from a lack of clarity as to the claimant's employment history and relevant details and particulars as to why he claims, his termination was "*unlawful and illegal*".
11. There is an admission that the Claimant received some payments from the Defendant company after his termination and there are better details in the amended claim about the adverse personal consequences suffered by the Claimant as a result of his termination but no attempt to refer to or quantify the same in terms of any Employment Act entitlements. In this latter regard the only legislation that is relied on by the Claimant is Chapter 2 of the Constitution.
12. In the event defence counsel renewed the application to strike out the claim which was fully argued.
13. The jurisdiction and principles that guide the Court in an application to summarily strike out a claim were iterated by the Court of Appeal in *Noel v. Champagne Beach Working Committee [2006] VUCA 18* in the following terms:-

"Although, as this Court pointed out in *Kalses v. Le Manganèse de Vaté Ltd [2005] VUCA 2, Civil Appeal Case 34 of 2003 (3 May 2005)*,



there is no specific provision in the Civil Procedure Rules to strike out a proceeding on the grounds that there is no reasonable cause of action or that it is frivolous, vexatious or an abuse of process, it was not disputed that such a power exists. Jurisdiction can be found within the broad terms of ss.28 (1) (b) and 65 (1) of the Judicial Services and Courts Act No. 54 of 2000 and the Civil Procedure Rules themselves provide in Rules 1.2 and 1.7 a basis for exercising the jurisdiction. In practice the existence of such an inherent jurisdiction has been assumed by the Supreme Court: see e.g. the judgment of Treston J in **Nafak Teufi v Kalsakau [2004] VUSC 94; Civil Case 102 of 2002 (6 May 2004)** and **Kalomtak Wiwi Family v Minister of Lands [2004] VUSC47, Civil Case 14 of 2004 (2 September 2004)**.

However it has always been recognized that the jurisdiction should be exercised sparingly and only in a clear case where the Court is satisfied it has the requisite material; the claimant's case must be so clearly untenable that it cannot possibly succeed: **Electricity Corp Ltd v Geotherm Energy Ltd [1992] 2 NZLR 641.**"

14. In addition, in an application to summarily strike out a claim the Court will normally deal with the application on the basis that the facts pleaded in the claim can be proved. In other words the Court is primarily concerned with the Claimant's statement of the case without reference to any sworn statement(s) or defence that might be filed.
15. When the Claimant's amended statement of his case is scrutinized against the minimum requirements of the applicable Rules and with the requisite caution identified by the Court of Appeal, the statement is seriously wanting in its failure to clearly, concisely and chronologically set out:-
  - The Claimant's employment history with the Defendant company including the nature and details of his contract of employment and remuneration with the Defendant company;
  - The factual circumstances including any relevant correspondence leading to the termination of his employment and subsequent;
  - The facts that support his assertion that his termination was unlawful or illegal;
  - The statutory or principle of law which the Claimant relies upon to found and support his claim of unlawful termination;
  - The immediate and direct financial losses suffered by the Claimant (in contrast with the consequential losses) as a result of his termination; and
  - Details of the amount of the damages claimed and the basis on which they are claimed.



16. The Claimant's singular reliance on Chapter 2 of the Constitution which contains the fundamental rights and duties of citizens in Vanuatu is also wholly misconceived in the context of his claim of unlawful termination of employment by the Defendant Company. (see: *Francois v. Ozols* [1998] VUCA 5 and per Tuohy J in *Simon Kelep v. Sound Centre* [2008] VUSC 13).
17. In all the circumstances and in light of the foregoing the Defendant's application is granted. The claim is accordingly dismissed with costs fixed at VT10,000.
18. Finally, the claim having been summarily dismissed without consideration of its merits, the Defendant's attention is drawn to the provisions of section 20 of the Employment Act [CAP. 160].

**DATED at Port Vila, this 2<sup>nd</sup> day of July, 2010.**

**BY THE COURT**

