

(Civil Jurisdiction)

BETWEEN: SOLOMON NGARI

Claimant

**AND: VANUATU TEACHERS' UNION EXECUTIVE
COMMITTEE**

First Defendant

AND: MOORES ROWLAND VTU ADMINISTRATOR

Second Defendant

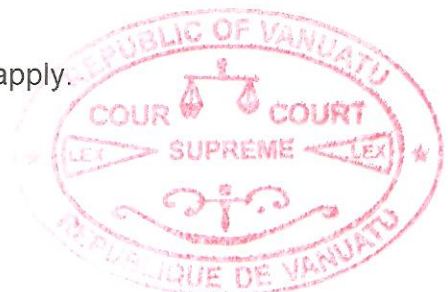
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Mary Grace Nari for the Claimant/Respondent
Ms Jennifer La'au for the Defendants/Applicants

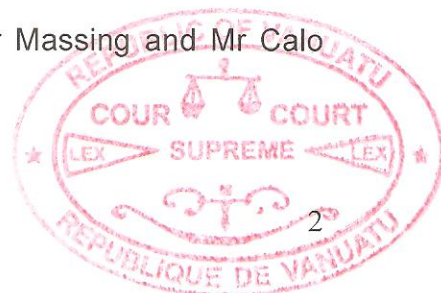
Date of Hearing and Decision: 18th May 2011

DECISION

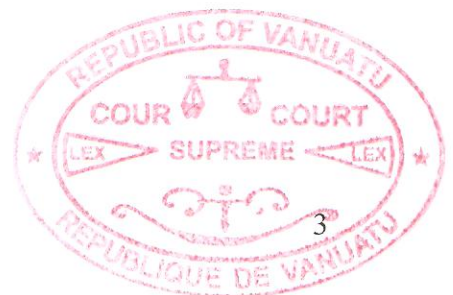
1. The Court heard an application by the Defendants filed on 12th April 2011 seeking orders that –
 - (a) Civil Case No. 7 of 2011 be struck out; and
 - (b) Costs are allowed to the Defendants.
2. The application is supported by the sworn statement of Mr Morrison dated 31st March 2011 and filed on the same date as the application.
3. The grounds are that –
 - (a) The claim was filed out of time; and
 - (b) The Limitation Act and the Employment Act apply.



4. Counsel for the Respondent argued the claims were not time-barred on the basis of the Resolutions dated 7th – 10th December 2007.
5. From the evidence in support of the claim, the Claimant claims for loss of salaries for the period from 5th October 1995 to 7th February 2000.
6. From the Court's point of view that is the relevant period. The Claimant filed his claims on 3rd March 2011. That is some 16 years.
7. Under Section 20 of the Employment Act Cap 160, the period of limitation is 3 years. And under the Limitation Act the period for actions founded on simple contracts or torts is 6 years.
8. It is undoubtedly clear that the claims are time-barred as they were filed well beyond the limitation periods specified in both the Employment and Limitation Acts.
9. That deposes of the first issue.
10. The second issue raised appeared to be concerning the Resolutions dated 7th – 10th December 2007 as to whether by it the First Defendant had agreed to pay the Claimant's salaries for 1995 – 2000?
11. Paragraph 8 of the Resolution states –
*"THE VTU/SEV NATIONAL EXECUTIVE COMMITTEE MUST:
48. Compensate Mr Solomon Ngari, Mr Obed Massing and Mr Charles Calo."*
12. There is no evidence by the Claimant that Mr Massing and Mr Calo have been paid compensation.



13. There is no evidence by the Claimant that he pursued his claims as early as 1995. He annexures five correspondences Marked "C".
14. The first is a letter from him to the Chairman of the Committee dated 9th May 2009. The second is a letter by Charles Calo to the Claimant dated 26th September 1995. The third is an information dated 9th December 2008 about calculations of the Claimant's salaries for the period claimed. The fourth is an information about the Claimant's resignation in 1995 and his re-appointment to the Teaching Service on 7th February 2000 by Mr George Berry Reman. It is dated 11th December 2008. And the fifth is by Mr Bani, VTU Treasurer to the Administration, Second Defendant dated 31st August 2009. None of those documents are of any assistance to the Claimant.
15. The Resolutions dated 7th – 10th December 2007 record at paragraph 8 that compensation must be made to the Claimant and two others. It is not an agreement in the strict sense of the word. The Parties never at anytime put their signatures to that document.
16. But even if the Resolutions amounted to an agreement, it is the view of the Court that it is an illegal agreement because it is made in breach of the limitation periods specified in both the Employment and the Limitation Acts. As such, the resolution to pay compensation to the Claimant is not capable of being enforced by the Court as a legally binding agreement.
17. That being so, the Applicants must succeed in their application and the Applicants are entitled to the orders they seek.
18. The final orders of the Court are that –



(a) Civil Case No. 7 is struck out in its entirety.

(b) The Defendants are entitled to their costs of and incidental to the application on the standard basis as agreed or taxed.

DATED at Luganville this 18th day of May 2011.

BY THE COURT



OLIVER A. SAKSAK

Judge

