

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

Civil Case No. 5 of 2014
Civil Case No. 10 of 2014

BETWEEN : COLLIN NATONGA

Claimant

AND: TONY WRIGHT, MINISTER OF YOUTH AND
SPORTS

First Defendant

AND: VANUATU NATIONAL SPORTS COUNCIL

Second Defendant

Coram: Justice Aru

Counsel: Mr. L. Napuati for the Claimant
Mr. L. Huri for the First Defendant
Mr. G. Boar for the Second Defendant

JUDGMENT

1. The claimant applies for Summary Judgment. The Application was filed on 30 June 2014 supported by further sworn statement no. 2 of the claimant where he deposes that he will be relying on his sworn statements already filed. The statement of claim was filed on 9 January 2014. It was later amended and an amended statement of claim was filed on 14 April 2014. Four sworn statements deposed by the claimant were filed in support.
2. The first defendant filed its defence to the amended claim on 19 June 2014. The second defendant filed a defence to the claim on 3 March 2014. Following the filing of a defence



by the defendants, the claimant now applies for Summary Judgment on the basis that he believes the defendants do not have any real prospects of defending the claim (Rule 9.6 of the Civil Procedure Rules). Before hearing the Application the defendants were required to file their response and sworn statements in support which they did.

3. At paragraph 4, 5, 6, 7 and 8 of the amended statement of claim, the claimant alleges the following:-

"4. Sometimes in 2012 the Claimant was employed with the Second Defendant as Chief Executor Officer.

Particulars

- (1) He was appointed by the Chairman of the VNSC Eric Pakoa as the Chief Executive Officer for three years.*
- (2) He resumed his duties was being paid his monthly salary and was allocated an office with the Ministry of Education.*
- (3) Copy of the contract of Employment dated 25 June 2012.*

5. Sometime in August 6 , 2013 he was terminated by the First Defendant.

Particulars

Letter of termination dated August 6 , 2013;

6. The claimant claims the first defendant's termination of August 6 was unlawful .

Particulars

- i) The first defendant has no power under the VNSC Act to terminate the claimant but the Council as stipulated in section 21 of the Interpretation Act [CAP 132]*
- ii) Even if the first defendant had power , the claimant was never given an opportunity to be heard in accordance with section 50 (4) of the Employment Act*
- iii) Letter from the claimants Counsel to the first defendant of August 8 2013*

7. Despite the claimant's counsels letter, the first defendant still maintains his letter of termination and requested the claimant to seek legal redress.

Particulars

Letter of the first defendant dated August 30 2013

8. The claimant further claims that the first and second defendants endorsement of the claimant's termination of August 22 2013 was unlawful.

Particulars

- i) There was no notice of meeting issued for the purported meeting and there was no quorum for the alleged VNSC meeting;*



- ii) *The appointment of the first and second defendants members present either as members , chairman and deputy chairman of the VNSC were never gazetted in accordance with section 3 (5) and (7) of the VNSC Act before the alleged meeting;*
- iii) *There is no provision for endorsement of termination of the claimant in the VNSC Act or in law;*
- iv) *The terminations of the former VNSC were never gazetted .”*

4. The claimant's contract of employment is annexed to the further sworn statement of the claimant filed in support of the claim and was signed by Eric Pakoa as Chairman of the Vanuatu National Sports Council and the claimant.

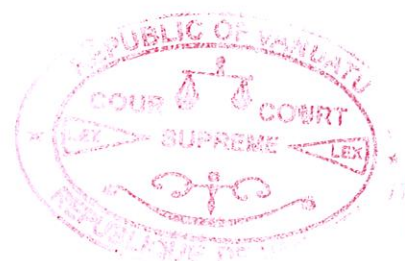
5. The relief sought in the amended statement of claim is for :-

- i) A declaration that the claimant's termination by the first defendant was unlawful;
- ii) Payment of the remaining balance of the contract and all employment entitlements by the Defendants; and
- iii) Costs of the proceedings.

CC No 10 of 2014

6. Civil Case No.10 of 2014 is a claim filed by the Vanuatu National Sports Council ("the VNSC") against Collin Natonga on 15 January 2014 claiming reimbursement of some VT5, 505, 000 being funds allegedly collected by Mr Natonga during the term of his employment but not deposited into the VNSC accounts. The second relief sought is for Mr. Natonga to account for all monies collected.

7. On 22 May 2014, upon application by the VNSC to have these two matters consolidated, Justice Sey ordered that CC No 10 of 2014 be consolidated with this case which in essence becomes the second defendant's counterclaim against the claimant .



8. Pursuant to Rule 9.6 (7) of the Civil Procedure Rules, the court may give Judgment for the claimant if it is satisfied that the defendant has no real prospects of defending the claim. The onus is on the claimant to satisfy the court that the defendants have “*no real prospects of defending the claim.*”

9. Furthermore, Rule 9.6 (9) provides:-

“ the Court must not give Judgment against a Defendant under this Rule if it is satisfied that there is a dispute between the parties about a substantial question of fact or a difficulty question of law.”

10. The gist of the claimant’s submissions is that he was appointed by the second defendant pursuant to provisions of the Vanuatu National Sports Council Act [CAP 208] (“the Act”) and only the second defendant can terminate his appointment not the Minister as he purported to do on 6 August 2013.

11. I note that the Act does not specifically provide for the position of Chief Executive Officer nor his functions apart from the Secretary and Treasurer. The claimant has also not identified the relevant provision in his submissions apart from relying on s 21 of the Interpretation Act [CAP 132] and the claimant’s employment contract. I am assuming for the purposes of this application that it is accepted that the claimant’s appointment was made pursuant to s 8 (c) of the Act where the Vanuatu National Sports Council can appoint “*...such officers and employees as may be required for the proper and efficient discharge of the functions of the Council.*”

12. Section 21 of the Interpretation Act provides :-

“21. Power to appoint includes power to remove

where an Act of Parliament confers power on any authority to make any appointment that authority shall also have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint or reinstate any person appointed in the exercise of the power.”

13. Furthermore, the claimant submits that the Court of Appeal decision in Bong v. President of the Republic of Vanuatu [2012] VUCA 21 is authority for his submissions that since



the claimant was appointed by the Vanuatu National Sports Council which is vested with the power to appoint, he can only then be terminated in the same manner and relies on s 21 of the Interpretation Act. The Court of Appeal in Bong said:-

“... s 21 (Interpretation Act) applies to an Act of Parliament. It is not confined to some Acts or Acts which are of general application.”

14. Both defendants in turn accept that the Minister does not have the power to terminate the claimant but submit that the termination was regularized by the Vanuatu National Sports Council decision of 22 August 2013 when it endorsed the Minister's decision to terminate the claimant. The first defendant in its defence says:-

“.....

5. As to paragraph 5:

- (a) Says that on 6 August the claimant was terminated by the then Minister of Youth and Sports ;
- (b) Says that the second defendant held a meeting on 22 August 2013 and endorsed the first defendant's termination letter ;and
- (c) Otherwise denies the paragraph ;

6. As to paragraph 6:

- (a) says that on 19 February 2013 a letter was sent to the claimant by the Director General of the Ministry of Youth and Sports in regards to the second defendant's financial statements for 2011 to 2012 ;

Particulars

letter from the Director General of the Ministry of Youth and Sports to the to the claimant dated 19 February 2013

- (b) says that the claimant failed to respond to the letter from the director general ;
- (c) says that on 18 April 2013 , another letter was sent to the claimant by the chairman of the second defendant suspending him on half salary because he failed to respond to the director general 's letter;
- (d) says that an investigation team was appointed to investigate the allegations against the claimant and they compiled a report on their findings ;

Particulars

Report on investigation into unlawful use of Vanuatu National Sports Council Fund from June 2012 to 8 April 2013

- (e) otherwise denies each and every allegation contained in the paragraph .



7. As to paragraph 7:

(a) says that on 8 April 2013, the then chairman of the second defendant wrote to the claimant suspending him on half salary ;

Particulars

Letter dated 8 April from the then chairman of the second defendant to the claimant ;

(b) Says that on 6 August 2013, the then Minister wrote a letter to the claimant terminating him as chief executive officer of the second defendant ;

Particulars

Letter dated 6 August 2013 from the then Minister to the claimant

(c) Says the second defendants meeting on 22 August 2013, the second defendant unanimously approved the claimant's termination ;

(d) "

15. The second defendant's defence at paragraph 6 and 7 says:-

".....

6. they deny the allegations contained in paragraph 6 thereof and further say the Vanuatu National Sports Council had on 22 August 2013 terminated the claimant as chief executive officer of the Vanuatu National Sports Council ;

7. they deny the allegations contained in paragraph 7 thereof and further say the claimant was terminated for misappropriation of the Council funds and following the audit Report on the claimant's management of the Council .

....."

16. Furthermore, the second defendant submits that they have a counterclaim against the claimant after CC No 10 of 2014 was consolidated with this case and the counterclaim relates to the claimant's employment. It was submitted that summary judgment should not be granted so that all issues raised be properly dealt with at trial. The second defendant in his counter claim alleges that:-

".....

2. The defendant is Collin Natonga, a resident of erakor village and former chief executive officer of the VNSC;

3. At all times from June 2012 to 8 April 2013, the defendant sold VNSC assets (vehicle and land) and used the proceeds thereof for private use;

4. About 4 June 2012, the defendant inappropriately used his position and sold the VNSC double cabin hilux without authorization from the VNSC:



Particulars

The defendant sold the vehicle for VT 1,500,000 to a Mr Manipen Nokai to which only VT 650,000 was received by VNSC. The rest of the sale proceeds was left unaccounted for by the defendant;

5. On 23 July 2012 , the defendant raised a cheque of VT 700,000 to Thrifty Auto Centre as deposit for a brand new vehicle without authorization from the VNSC;

Particulars

A cheque of VT 700,000 was raised and paid to Thrifty Auto Centre as a deposit for a brand new double cabin vehicle which costs VT 3,800,000. To date, VNSC is still waiting for the new vehicle;

6. Further to paragraph 5 above, Thrifty Auto Centre obtained VT 315,000 out from VT 700,000 deposit for the new vehicle, to cover the costs of a hired car at Thrifty used by the defendant for his private company;

7. On 7 November 2012, the defendant misappropriated public funds obtained from the sale of the cricket grounds at Korman to the Vanuatu Cricket Association (VCA)

Particulars

A misappropriation of public funds to the value of VT 500, 000 purportedly for the surrender of the Vanuatu National Sports Council lease title NO 11/OE 53/012A to the VCA;

8. At all material times , the claimant alleges that the defendant misappropriated public funds of the VNSC for private use;

Particulars

- a) A misappropriation of public funds to the value of VT65,000 by the defendant for the stade gate collection
- b) Failure to account for VT1, 617,500 being for the hire of VNSC properties

9. At all material times the defendant negligently and dishonestly performed his duties as CEO of the VNSC thus resulting in damages suffered by the claimant

Particulars

- a) The defendant being the CEO of the VNSC owes a duty to manage the finances of the VNSC in a professional manner as was required of him;
- b) He failed to perform to the standard required of him as he breached his duties by misappropriating funds belonging to the VNSC;
- c) If it was not for the defendant's failure to perform as required , the VNSC would not have suffered from the loss of revenues which are unaccounted for;

10. The claimant has suffered losses and damage as a result of the defendant's actions.

....."



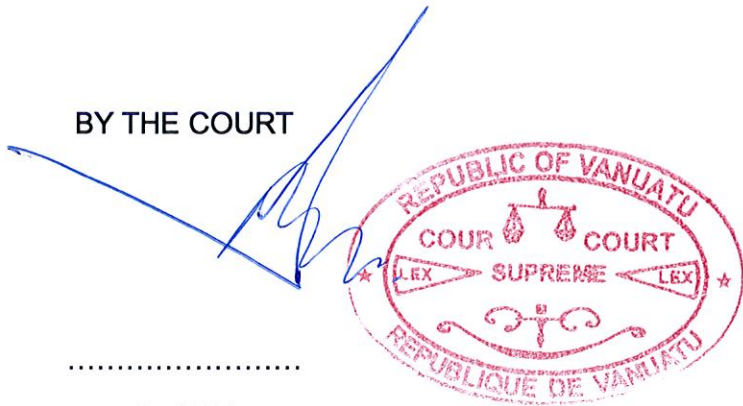
17. The second defendant's counterclaim raises issues which in my mind are clearly at the heart of the claimant's termination. Whether or not the termination was unlawful is arguable in light of the defences filed. I am satisfied that there is a dispute between the parties about substantial questions of fact and law therefore the Application for Summary Judgment is refused and is hereby dismissed.

18. The first and second defendants are entitled to costs on a standard basis to be taxed failing agreement.

19. A further conference is listed for 11.00 am on 7 October 2014.

DATED at Port Vila, this 9 day of September, 2014

BY THE COURT



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D. ARU

Judge.