

**BETWEEN: DANIEL RENE TARI**  
Claimant

**AND: NOEL BEGLEY**  
Defendant

*Coram:* Mr. Justice Oliver A. Saksak

*Counsel:* Eric Molbaleh for Claimant  
Nigel Morrison for Defendant

*Date of Hearing:* 9<sup>th</sup> June 2015  
*Judgment:* 28<sup>th</sup> October 2015

---

## JUDGMENT

---

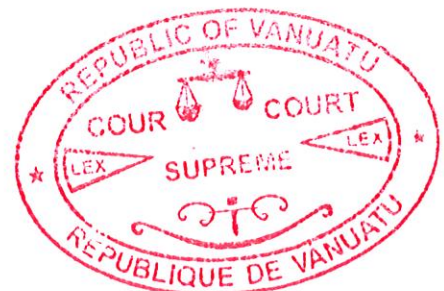
### **Introduction**

1. This is a simple employment case.

### **Facts**

2. The claimant alleges he worked for the defendant as a mechanic for 23 months from January 2003 until December 2004. He alleges that the defendant did not pay his VNPF contributions during this period. Further that he resumed work with the defendant upon his return to Vanuatu from overseas in March 2008 until March 2014 under a contract. He earned VT 12.000 per week and VT 48.000 per month. For this period the claimant alleges his VNPF contributions were not paid and his annual leave not taken were not paid by the defendant. His total claims are as follows:-

- a) Severance – VT 288.000 x 6 ( Multiplier) = VT 1.728.000
- b) Annual Leave – VT 273.600
- c) Three Months Notice – VT 144.000
- d) Public Holiday: 84 x 6 = VT 201.600.
- e) VNPF contributions



- f) 5% interests per annum, and
  - g) Costs
3. The Claimant had the onus of proof on the balance of probabilities. He relied on his evidence by sworn statement filed on 16<sup>th</sup> January 2015 (Exhibit DRT-C2) and his sworn statement of 18<sup>th</sup> August 2014 (Exhibit C1). He was cross-examined on his evidence by Mr Morrison.

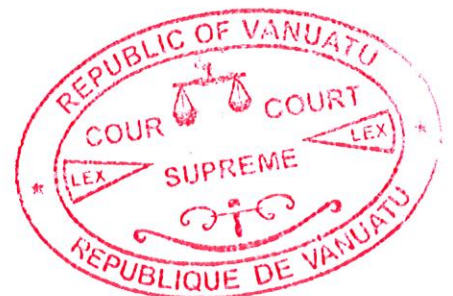
### **Defence Case**

4. The defendant filed a defence on 16<sup>th</sup> September 2014 denying all claims made in paragraphs 4, 5, 6, 7 and 8 of the claimant's claims. The defendant however admits the only moneys the claimant is entitled to receive is the sum of VT 384.000.

This was the sum he and the claimant had agreed to at their meeting held at the Department of Labour. As a counter-claim the defendant alleges that the claimant had negotiated for the purchase of his car. The agreed price was VT 250.000 of which the claimant had made some instalment payments leaving the balance at VT 120.000.

Offsetting VT 120.000 from VT 384.000 the balance is VT 264.000 which the defendant is willing to pay in full and final settlement of the claimant's claims.

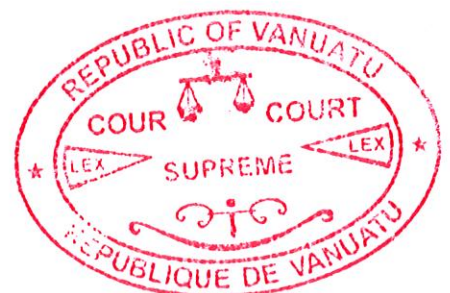
5. The defendant relied on his sworn statement dated 27<sup>th</sup> October 2014. (Exhibit D1). He produced Time Sheets (Exhibit D2) for 10<sup>th</sup> December 2013, 17<sup>th</sup> January 2014 and 7<sup>th</sup> March 2014 for comparative purposes. He shows a Note (Exhibit D3) indicating the dates of payments of instalments the claimants made in respect of the car. The balance due is VT 120.000. He produced his new approval certificate from VIPA dated 18<sup>th</sup> November 2008 (Exhibits D4). He further produced his Business Licence for the year 2009, issued on 12<sup>th</sup> January 2009. Finally the defendant produced a subcontracting Agreement dated 3<sup>rd</sup> April 2012 signed by both the defendant and claimant on the same date.





## 6. Discussions

- 6.1. At the outset it is the view of the Court that the relationship between the claimant and the defendant is unsatisfactory and uncertain. From the evidence before the Court by both parties that relationship is uncertain. There appears to be a subcontract arrangement but it is so uncertain in its terms and conditions. The dates appearing on it are not consistent. Whilst it is dated 3<sup>rd</sup> April 2012 in handwritten form, the date appearing at the top right hand corner is given as October 15, 2012.
- 6.2. The time sheets produced by the defendant (Exhibit D2) were incomplete. They show only details of payments and deductions in respect to 10<sup>th</sup> December 2013, 17<sup>th</sup> January 2014 and 7<sup>th</sup> March 2014.
- 6.3. On 10<sup>th</sup> December 2013 a deduction of VT 30.000 was made but it is not stated what it was for. On 17<sup>th</sup> January 2014, no deductions were made. And on 7<sup>th</sup> March 2014, VT 5.000 was deducted but it is not stated what it was for although the Court can infer that it was for the instalment payment for the car but unfortunately the record of payment (Exhibit D3) do not show it. It stops only on 25<sup>th</sup> October 2013.
- 6.4. These inconsistent and insufficient evidence do not assist the Court. The Claimant could have easily filed evidence from VNPF to confirm whether or not his VNPF contributions were paid by the defendant for the periods for which he is claiming.
- 6.5. Absent these, the only starting point will be the amount the parties agreed to at their joint meeting at the Labour Department in 2013. The agreed sum payable by the defendant to the claimant is VT 384.000.



**7. Conclusions and Orders**

- 7.1. I therefore enter judgment for the claimant for the sum of VT 384.000 payable within the next 14 days from the date hereof.
- 7.2. All other claims except costs and interests by the Claimant are dismissed. The claimant is entitled to interests on VT 384.000 at 5% per annum from 2013. There was no reasonable excuse the defendant could have paid this amount in 2013.
- 7.3. The Counter-claim by the defendant for VT 120.000 being for the purchase of his motor vehicle is dismissed. In all probabilities, these have been paid off by the claimant.
- 7.4 The claimant is entitled to his costs of and incidental to this proceeding on the standard basis as agreed or determined by the Master.

**DATED at Port Vila this 28<sup>th</sup> day of October 2015**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

