

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

Civil Case No. 102 of 2013

BETWEEN : MADELEINE SEWERE
Claimant

AND: VANUATU NATIONAL PROVIDENT
FUND
Defendant

Coram: Justice Aru

Counsel: Mr. S. Joel for the Claimant
Ms. H. Leo for the Defendant

JUDGMENT

Introduction

1. The claimant Madeleine Sewere is a former employee of the Vanuatu National Provident Fund (VNPF). On 17 January 2013 her employment was terminated and she now claims damages for unjustified dismissal and seeks the following relief:-

- a) An order that the termination of her contract of employment was unjustified;



- b) An order for damages in the sum of VT 1,249,998;
- c) VNPF 4% contribution at VT 50,000;
- d) Interest at 5% per annum;
- e) Costs.

Background

2. The following chronology of events are facts agreed by both parties.

- June 2011

The VNPF advertised a vacancy for the position of Manager Human Resources;

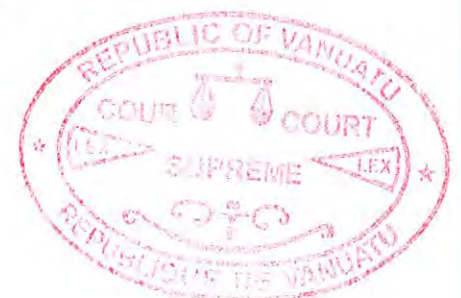
- 12 July 2011

The claimant wrote to the VNPF expressing her interest in the position;

- 1 March 2012

The VNPF employed the claimant as its Human Resource Manager under an unspecified term contract of employment with the following benefits:-

- a) basic salary: VT2,500,000 per year;
- b) medical benefit: VT 120,000 per year;
- c) 10 days compassionate leave;
- d) yearly bonus based on performance of VT 250,000;
- e) VT10,000 per month mileage allowance;
- f) VT5,000 mobile phone allowance per month;
- g) VT20,000 per month housing allowance;



h) annual leave , public holiday severance and sick leave entitlements pursuant to the Employment Act [CAP 160];

- 14 August 2012

A large crowd of people turned up at the VNPF building premises demonstrating against the decision of the VNPF Board to employ the claimant, Nadia Kanegai (Corporate Services Manager) and Anniva Tarilongi (General Manager) amongst others;

The VNPF Board then resolved to suspend the claimant amongst others pending further inquiry and full investigations into allegations of wrong doing against her and the VNPF;

- 17 January 2013

The VNPF Board resolved to terminate the claimant's employment and paid her final entitlements in the sum of VT 1,058,786 for-

- a) outstanding salary;
- b) 3 months-notice;
- c) severance allowance;
- d) phone allowance;
- e) mileage allowance;

- As a consequence of the demonstration by members of the public the VNPF Board required the Police, chiefs ,and others to assist in settlement and to bring back calm to Port Vila.



3. Issues agreed for determination are:-

- i) whether or not the termination of the claimant's employment was lawful?
- ii) If not lawful whether or not the defendant should pay damages?
- iii) What type of damages and how much?
- iv) whether or not the claimant is liable to pay for or reimburse the VNPF for expenses and costs incurred to calm demonstrators against the VNPF's decision to hire the claimant as its Human Resources Manager amongst others.

Counterclaim

4. The defendant did file a counterclaim seeking damages against the claimant for loss of reputation, loss of two days salaries paid but not worked, cost of hiring securities to protect VNPF premises and costs of hiring chiefs to help resolve the dispute.
5. The counterclaim was appropriately withdrawn during the hearing by Counsel for the defendant.

Evidence

6. The claimant relies on her sworn statement filed on 30 January 2014 and her further sworn statement in support of her defence to the counterclaim filed on 11 August 2015. The defendant on the other hand relies on the following sworn statements:-

- a) sworn statement of Simil Johnson filed on 20 February 2014; and



- b) sworn statement of Cynthia Kammy in support of counterclaim filed on 22 June 2015 .

Submissions

7. The hearing proceeded by legal submissions and no trial was required given that the essential facts were more or less agreed. I now deal with each of the issues below.

i) whether or not the termination of the claimant's employment was lawful ?

8. The claimant submits that her termination was not in accordance with s 49 of the Employment Act [CAP 160]. She submits that her termination was effective on 16 January, her final payments were made on 18 January but the cheque was received on 21 January. It was submitted that given these circumstances s 49 was not complied with and her termination amounted to unjustified dismissal and damages pursuant to s 56 (4) would be the appropriate remedy .

9. The defendant on the other hand submitted that the effective date for the claimant's termination was **16 January 2013** and all entitlements including notice were calculated and paid effective from that date. It was further submitted that the claimant was not a permanent staff and she had only been employed for about 11 months but the payments made to her were very generous.

10. Section 49 (1) and (4) of the Employment Act states:

"49. Notice of termination of contract



(1) A contract of employment for an unspecified period of time shall terminate on the expiry of notice given by either party to the other of his intention to terminate the contract.

.....

(4) Notice of termination need not be given if the employer pays the employee the full remuneration for the appropriate period of notice specified in subsection (3)."

11. Section 49 provides that a contract for an unspecified term shall terminate on the expiry of notice given by either party to terminate. Notice need not be given if the employer pays the employee the full remuneration for the appropriate period of notice.

12. The claimant's contract of employment was for an unspecified term. On 16 January 2013 the VNPF Board resolved to terminate her employment with immediate effect "*...with 3 months' notice and all entitlements effective 16 January 2013...*". In its letter of 17 January 2013 to the claimant, she was advised by the defendant that the VNPF Board had resolved to terminate her employment as Manager Human Resources with immediate effect commencing 16 January 2013. The letter in part said:-

"....

Your termination entitlement will therefore comprise of:

- 1. Any unpaid salary up to 16 January 2013;*
- 2. All accrued Annual Leave entitlement up to the end of three months' notice period ;*
- 3. Three (3) months salary in lieu of your entitlement to notice ;*
- 4. Severance pay calculated up to the end of the notice period*



....."

(emphasis added)

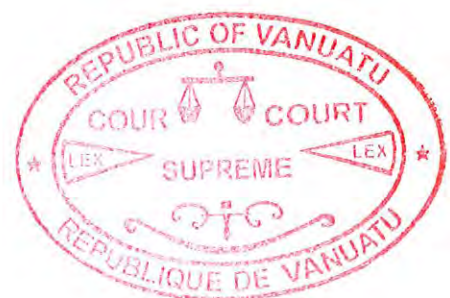
13. The claimant accepts that all her entitlements were paid including the notice. Annexure 'CMS5' to her sworn statement filed on 30 January 2014 is a cheque issued on the 18 January 2013 to the claimant as payment for all her entitlements inclusive of notice in the sum of VT 1,058,785.

14. The 17 January letter is clear evidence that the termination of the claimant's employment is made pursuant to s 49. Regarding the first issue, I am of the view that the termination was lawful. The starting point is that all entitlements including notice were paid with effect from 16 January 2013 when the VNPF Board resolved to terminate the claimant's employment. If the cheque is received a couple of days later it does not change that fact.

15. Given my answer on this issue, I need not answer the second and third issues concerning payment and assessment of damages.

iv) whether or not the claimant is liable to pay for or reimburse the VNPF for expenses and costs incurred to calm demonstrators against the VNPF's decision to hire Mrs Sewere as its Human Resources Manager amongst others.

16. This issue arises from the defendant's counterclaim and as the counterclaim was withdrawn it is no longer an issue for determination.

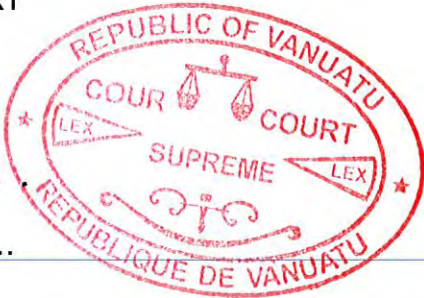


Conclusion

17. The claim is misconceived and is hereby dismissed. The defendant is entitled to costs to be taxed failing agreement.

DATED at Port Vila this 5 day of August 2016.

BY THE COURT



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D. ARU
Judge