

BETWEEN: SAM ELKEM LUKAI, JOYCE MAHIT, BILLY JOHN MARK, RENE PETER OBED, JOHN KALO, SANDY SAMSON ROBERT TOUGEN, KENCY TASSO JOHNATHAN, PAKOA BEN, JEREMIAH DANIEL, COLLIN TOMAKI, ANDRAY NAMBITH, NATIOIASE LOUME, SANGUL JACKLYNE, NALISERE JOHN ALICK, FRED TASSO, HANNINTON SERLI, AGATH ROGER TARI, AMOS MATHIAS, BAIS JOHN MARK
Claimants

AND: PORT VILA MUNICIPALITY
Defendant

Coram: Mr. Justice Oliver A. Saksak

Counsel: Mr Leon Malantugun for the Claimants
Mr Less Napuati for the Defendant

Date of Hearing: 25th July 2017
Date of Judgment: 18th August 2017

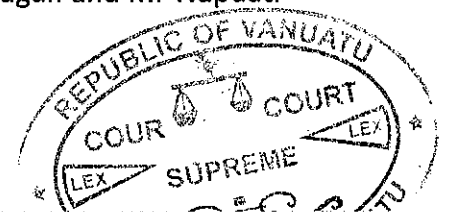
JUDGMENT

Background

1. On 29th May 2017 the Court entered judgment as to liability against the defendant with quantum to be assessed.
2. The defendant appealed to the Court of Appeal against the decision. The Court of Appeal heard the appeal and allowed it. At paragraph 17 of the Judgment dated 21st July 2017 the Court of Appeal said:-

" For these reasons the appeal is allowed, the matter referred back to the trial judge to give reasons for his determination of liability and to hear any further evidence and/or submissions on the question of damages including an award under section 56(4) of the Employment Act".

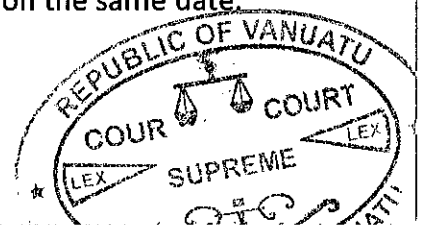
3. I heard Counsel further in relation to the Court of Appeal Judgment on 25th July 2017 in Chambers and in particular to paragraph 17. Both Mr Malantugun and Mr Napuati



accepted and agreed there were things required namely (a) for the Court to publish its reasons and (b) for the Court to hear further evidence and/or submissions as to quantum. Both Counsel agreed that no further hearing was required before the Court giving or publishing its reasons. Only after the Court has done that, it will require a further hearing in order to assess appropriate amounts of damages.

Facts

4. The 19 Claimants are all former employees of the Port Vila Municipal Council (PVMC) and in different capacities. They were appointed at different times to their respective posts.
5. On 3rd March 2014 PVMC informed the staff through a memorandum issued by the Town Clerk that PVMC was to undergo a restructuring program. In it the Town Clerk sought indications from those who wanted to be included in a redundancy package to so apply and to do so in writing by 15 April 2014. None of the 19 Claimants wrote to indicate their willingness.
6. And as a result on 25th February 2015 the Town Clerk wrote to the Commissioner of Labour advising him of the redundancy program.
7. However, sometime thereafter the 19 Claimants received a letter on various dates advising them that they had been made redundant. Redundancies were made by PVMC and severance and leave entitlements were paid. Some of the claimants were made to serve their 3 months notice while others were paid 3 months salaries in lieu of notice.
8. The Claimants issued this proceeding on 27th September 2016. They claim that their termination of employment was wrong and sought damages for unlawful terminations.
9. Initially the State Law Office acted for PVMC and filed a defence on 11th January 2017. Subsequently Mr Napuati began acting instead of the State Law office and filed another defence on 28th January 2017. In both defences PVMC denied the claimants were or are entitled to any damages as claimed.
10. Pursuant to those defences PVMC filed an application on 9th February 2017 seeking orders to strike out the claimant's claims in part. The defendant placed reliance on section 67 and section 49 of the Employment Act [CAP.160].
11. On 13th March 2017 I dismissed the defendant's application with costs. The reasons for that decision are contained in the Decision of the Court issued on the same date.



Those reasons became the basis of the Court's subsequent decision on 29th May 2017 giving judgment on liability against the defendant.

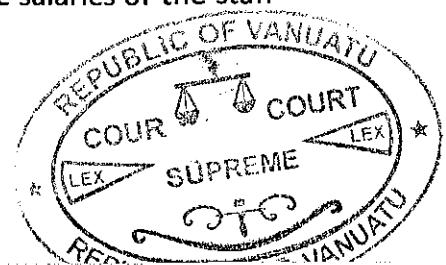
12. I now provide the other reasons for reaching that conclusion. I deal first by analysing the evidence of the claimants.

The Claimants Evidence

13. All the 19 named Claimants deposed to sworn statements except Fred Tasso who is deceased. There is an additional sworn statement by David Morris filed on 7th March 2017 but he is not named as one of the Claimants. Except for Roger Tari Agath and Sam Elkem Lukai who deposed to 2 statements each, all the other 16 Claimants deposed to one statement each.

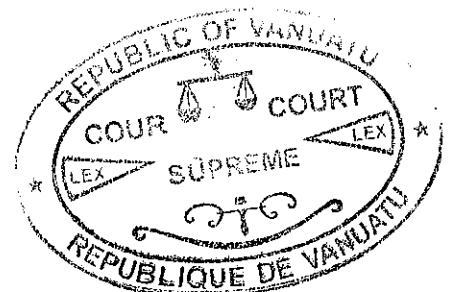
14. In Summary, all the Claimants say-

- a) They were appointed by PVMC on different dates in different capacities to various departments or divisions of PVMC.
- b) They were paid monthly salaries for those posts under the old structure.
- c) They were terminated in either April, May, June or July 2015 and paid redundancy packages of (i) severance payments, (ii) outstanding administrative leave, (iii) 3 months payment in lieu of notice and (iv) outstanding wages.
- d) They received letters entitled " Notice of Redundancy as a PVMC staff" in either May or June 2015 prior to their terminations.
- e) They were not given a fair hearing before their employments were terminated.
- f) Their posts under the old structure remained and continuing under the new structure.
- g) The old structure in 2010 had 5 Divisions with 20 units or sections, however the new structure in 2015 had 3 Divisions with 25 units or sections.
- h) Three units namely City Waste Removal, Market House and Ward Councils exist and are not included in the new 2015 structure. The salaries of the staff



working in these three units are still paid by PVMC. (See paragraph 22 of Amos Mathias's sworn statement dated 6th June 2017).

- i) Under the 2010 structure the total number of PVMC staff was 96 however the number of staff under the new 2015 structure is 126 (see paragraphs 35-36 of Amos Mathias' statement).
 - j) Under the 2010 structure the projection for salaries for 2015 was VT 69.068.608 (see Amos Mathias' statement, paragraph 28-29) however the projection for salaries under the new 2015 structure is VT 90.548.545 (see paragraph 54 of Roger Tari's statement of 7th March 2017).
 - k) The new 2015 structure was not approved by the Council and/ or the Minister responsible. (see paragraph 36-37 of Amos Mathias' statement).
15. The sworn statements of all the 18 claimants (except Fred Tasso) confirm and supplement each other.
16. The sworn statement of David Morris dated 7th March 2017 confirms the statements of Roger Tari Agath of 7th March 2017 and in particular that-
- I. He was in the meeting of April 2015 but it was only for Divisional Managers and none of the 19 claimants were present.
 - II. The Town-Clerk raised the issue of redundancy at the meeting but failed to invite comments, questions or debate on the issue.
 - III. No opportunity was given to any of the 19 Claimants to comment or ask questions.
 - IV. No comprehensive or redundancy program was shown or presented at the meeting to show what divisions, sections or units could not exist under the new structure to warrant or require redundancies to be made.
 - V. There has been an increase from 19 sections under the 2010 structure to 28 sections under the new 2015 structure as stated by Roger Tari Agath.
 - VI. He contradicts Ronald Sandy's evidence that under the new structure there are 117 staff whereas in reality there are 127 staff and confirms Roger Tari Agath's statement.



- VII. After PVMC terminated the 19th Claimants in 2015 they recruited 49 staff to replace them, increasing the number from 117 to 126, that is 9 more staff than the 117 that existed under the 2010 structure.
- VIII. The sworn statement of Roger Tari Agath (7/03/2017) annexes the structures including the old and New Organisation and structures amongst others.

The Defendant's evidence

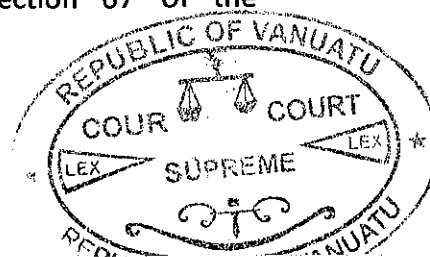
17. The defendant filed at least 3 sworn statements from Kasten Ruru Herve dated 4th May 2017 and from Ian George Baltor dated 8th June 2014 and from Ronald Sandy dated 8th February 2017. The former 2 statements were relevant only in relation to the defendant's application to strike out the claimants' claims. The latter is of relevance to the defendant's defence which is relevantly summarised as follows-

- a) The restructuring was resolved by PVMC on 29-31 October 2014.
- b) He wrote to the Labour Commissioner by letter dated 15 February 2015.
- c) No response was received from the Commissioner of Labour.
- d) All former staff were served with his letter dated 3rd March 2014 annexed as "RS1". They all signed a log book to confirm receipt.
- e) He received 2 responses from Mandray Nambith and Sandy Samson Tougon. The former resigned and the latter retired as he had attained 55 years of age.
- f) No other Claimants responded to his letter.
- g) He annexes the Staff Manual of PVMC as "RS2"

Findings

18. From the defence evidence of Ronald Sandy I find as follows-

- a) The deponent has not disclosed the Minutes of PVMC's meeting of 29-31 October 2014 to show the 2015 structure was resolved or approved by PVMC.
- b) When there was no response by the Commissioner of Labour to the letter dated 15th February 2015, there is no evidence by PVMC that they took any reasonable steps towards compliance with the requirements of section 67 of the Employment in accordance with subsection (3).



- c) The Town Clerk, Ronald Sandy, did not disclose PVMC's letters to Mandray Nambith and Sandy Samson Tougon and/or their letters requesting early retirement and resignation.
- d) The evidence of Ronald Sandy lacks credibility and as such it cannot be admitted as having any weight at all on the defence of the defendant.
- e) There is no evidence showing Notices issued to the claimants pursuant to section 49 of the Act as they plead in the defence dated 23rd January 2017.

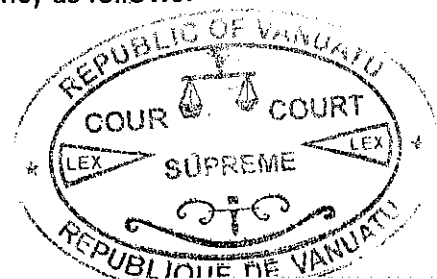
19. Regarding the evidence of the claimants I find as follows-

- a) Their evidence that the old structure had lessor number of staff than the new 2015 structure is unchallenged.
- b) The budget available to pay staff salaries under the old structure was less than the budget under the new structure and this is unchallenged evidence.
- c) Their positions under the old structure still existed under the new structure and their evidence is unchallenged.
- d) The old 2010 structure had 5 divisions with 20 units but the new 2015 structure had 3 divisions and 25 units, but failed to include 3 more units such as City Waste Removal, Market House and Ward Councils, bringing up the total to 28 units. This evidence is unchallenged.
- e) The claimants were not invited or given the opportunity to attend the meeting of April 2015 to give their views on the issue of redundancy. Their evidence is confirmed by the evidence of David Morris and is unchallenged.
- f) The terminations of the 19 claimants were done by PVMC under the guise of redundancies and were therefore unlawful terminations.

The Law

20.1. Section 67 of the Employment Act places the duty on PVMC to notify the Commissioner of Labour. I have made my analysis of this section under paragraph 5 of my Decision dated 13th March 2017 and adopt the same here.

20.2. Clause 8.12 of the Draft Staff Manual 2015 provides for Redundancy as follows:-



- " (a) Should at any time the Council determines that a greater number of officers are employed than is considered necessary, it may, subject to the Employment Act, declare an officer or officers as the case may be redundant and terminate him or her on their employment accordingly,
- (b) An officer who is declared redundant and unsuccessful in getting placed in another position must be given a notice of termination in accordance with the standard notice periods specified above.
- (c) An officer who is made redundant shall be eligible for the standard entitlements as well as a redundancy payment."

(underlining for emphasis)

20.3. The required periods of notice and entitlements are provided under clause 8.3.1 of the Staff Manual, and it is not necessary to quote them at this point.

Applying Law to Facts

21. Applying the provisions of Clause 8.12 to the Facts, I find-

- a) PVMC did not make any proper declarations as required by Clause 8.12 (a) of their staff manual.
- b) PVMC did not give any proper notices to the 19 claimants as required by clause 8.12 (b) of their staff manual.
- c) The terminations of all the 19 claimants by PVMC were unlawful terminations.

The Result

22. I therefore enter judgment against PVMC as to liability in favour of all the 19 claimants. I adjourn the issue of assessing the amounts of damages to another date to be discussed with counsels upon delivery of this judgment.

DATED at Port Vila this 18th day of August 2017

BY THE COURT

OLIVER.A.SAKSAK

Judge

