

**BETWEEN:** Ezekiel Bule  
Claimant

**AND:** Ranwadi Churches of Christ College Council  
Defendant

*Date:* Thursday, 13 September 2018

*By:* Justice G.A. Andrée Wiltens

*Counsel:* Mr E. Molbaleh for the Claimant

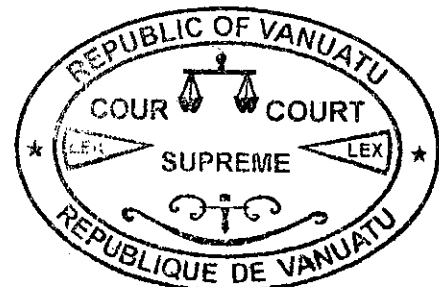
Mr S. Tari for the Defendant

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**JUDGMENT**

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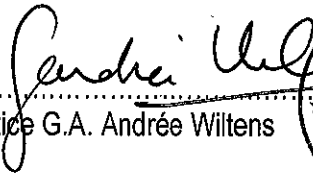
1. Mr Tari's application, to Strike-out the Claim in its entirety as being misconceived, an abuse of process and without a skerrick of possibly succeeding, was really based, not on the Civil Procedure Code No. 49 of 2002, but on the Court's inherent power to determine that the claimant's case is "...so clearly untenable that it cannot possibly succeed", as determined in *Electricity Corp Ltd v Geotherm Energy Ltd* (1992) NZLR 641.
2. When asked whether his client accepted that the Claim turned on a question of fact, he agreed. That question of fact revolves around whether Mr Bule was an employee or a private contractor. Mr Tari accepted that I would need to hear evidence on the point prior to being able to make a decision.
3. I suggested to Mr Tari, that his concession really meant his application was doomed – he accepted that also. His application was an attempt to bring the matter to a prompt conclusion, but he agreed a trial was necessary.



4. I did not need to hear from Mr Molbaleh. I dismissed the application, with costs of VT 25,000 payable to the Claimant – as agreed by Mr Tari. The costs are to be paid within 28 days.
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5. At present there is no response filed to the counter-claim. Mr Molbaleh has 14 days within which to file and serve the same.
6. Both counsel wish to file further sworn statements, in support of the Claim and the counter-claim. Both have one month in which to do so.
7. Both counsel have one further month thereafter to file any responses they deem necessary.
8. A one-day trial is now scheduled for 9am on 11 February 2019, at Dumbea. The principal issue to be determined is what was Mr Bule's employment status. Mr Tari advised that if he is found to be an employee then his client will, of necessity, accept the remainder of the matters pleaded by the Claimant.

Dated at Port Vila this 13<sup>th</sup> day of September 2018

BY THE COURT

  
Justice G.A. Andrée Wiltens

