

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

**Civil
Case No. 13/232 SC/CIVL**

BETWEEN: Supercool Vila Ltd
Claimant

AND: Sheraz Ali
Defendant

Coram: Justice Aru

*Counsel: Mr. D. Thornburgh for the Claimant
Mr. D. Yawha for the Defendant*

RESERVED JUDGMENT

Introduction

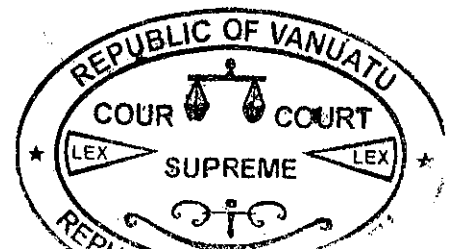
1. This is a claim for breach of employment contract filed by Supercool against Mr Sheraz Ali, a former employee. Prior to the claim being filed, Supercool obtained restraining orders against Mr Ali for allegedly breaching a restraint of trade clause in his contract. Whilst the claim was yet to be determined, Supercool filed and pursued two applications for contempt of the restraining orders. The matter went to a full trial on 20 December 2013 and was part heard. The hearing continued on 25 September 2014 with the claimant re opening its case. Following the trial, directions were issued allowing each party 14 days to file their written submissions. The claimant filed their submissions on 24 November 2016. The defendant responded on 13 February 2017. The decision was then reserved.

Background

2. On 24 July 2013 Shiraz Ali who is from Fiji signed a contract of employment with Supercool in Vila. A term of his contract prevented him from working in Vila for a period of 12 months after leaving Supercool.
3. Clause 15 which is at the heart of this dispute states:-

"15. Termination of employment

For a period of 24 (months) and renewal for 12 months after termination, the Employee not to work for any other business employer, individual or on their own right as RAC technician or related job within the boundaries of Municipal Port Vila or Luganville and PNG."



4. Upon leaving his employment with Supercool, Mr Ali returned to Fiji for a short while before returning to Vanuatu. Supercool pursued him and obtained restraining orders against him. The terms of the Orders issued on 1 November 2013 were as follows:-

“a.Until further order of the Court, the respondent is restrained from employment within the Municipal boundaries of Port Vila and Luganville as a refrigeration and air conditioning technician.

b. The applicant shall file and serve a statement of claim within 14 days by 13 November 2013.

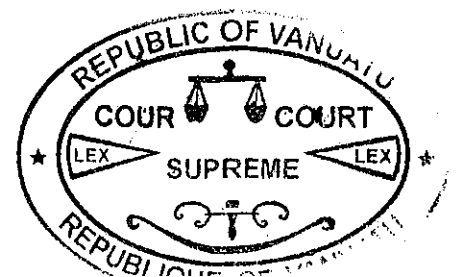
c. Costs reserved.”

Summary of the pleadings

5. Supercool claims that Mr. Ali breached the terms of his contract and seeks damages for loss of business and VT 10 million for financial loss. At paragraphs 8 and 9 the claimant pleads that when the defendant returned to Vanuatu he commenced employment with Au Bon Marche Supermarket as a Refrigeration and Air Conditioning (RAC) technician and constructed the Nambatu ABM butchery refrigeration and associated services within the Port Vila Municipality. As a result Supercool alleges that Mr Ali contravened his obligations to observe the restraint of trade clause as per clause 15 of his contract with Supercool.
6. The defendant in his defence denies that he was employed within Port Vila Municipality or that he was in breach of the restraint of trade clause. And further says that the orders and the entire claim should be struck out.

Applications for contempt

7. The first application sought orders that Mr Ali be found guilty of contempt of the restraining orders and be imprisoned for a period of time on the grounds that he breached the orders preventing him from working within the boundaries of Port Vila Municipality. This application is supported by two sworn statements of Mr Avi Narayan, the General Manager of Supercool filed on 8 October 2013 and 20 November 2103 respectively. The second application also sought similar orders and is supported by a sworn statement of Mr Colin Natonga filed on 18 March 2014.
8. The defendant’s response to both applications is that they should be dismissed on the basis that there was no contempt as Mr Ali was employed by ABM Manples which is in the Efate rural and not within the Port Vila Municipal Boundary.



Issue

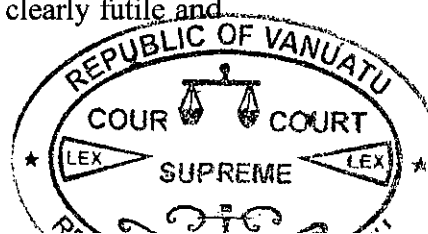
9. The main issue is whether Mr Ali was employed within the Municipal area of Port Vila. If the answer is yes whether he was in contempt of the restraining orders.

Discussions

10. As mentioned above, whilst the substance of the claim was yet to be determined the claimant was adamant in pursuing the contempt application for which a full trial was had.
11. When considering the evidence, I accept and prefer the defendant's evidence and reject the evidence put by the claimant. Mr Ali's evidence was never challenged that he ceased employment with ABM Manples when the restraining orders were issued on 1 November 2013. Second his evidence was never challenged that Supercool misled the Vanuatu authorities by allowing him initially to work up to 5 months or so without proper papers then employing him originally under a contract as a chef but working as a RAC technician. Upon leaving their employment the contract tendered in Court was that he was a RAC technician. Mr Narayan's evidence is misleading and irrelevant and is rejected in its totality. Mr Colin Natonga's evidence is also irrelevant and is rejected. The claimant's evidence does not establish that Mr Ali was employed within the municipal boundaries of Port Vila.
12. Mr Ali's contract of employment with ABM clearly states that the claimant is employed by ABM Manples.
13. The evidence of Jean Marie Duffau as the administrative Manager of ABM Manples confirms that ABM Manples is located within Efate rural on Rural Commercial lease title 12/0633/149. The town planner of Port Vila Municipality confirmed by letter of 13 December 2013 that ABM Manples is located outside the Port Vila Municipal boundary. Their business licence is issued by Shefa Province.
14. As ABM Manples is the employer under the contract signed on 23 September 2013 with Mr Ali, I accept that Mr Ali was not employed within the Port Vila Municipal boundaries.

Result

15. The result is that Mr Ali could not have been in contempt of the restraining orders as he was not employed to work within the Port Vila Municipal boundaries. Secondly, he ceased working for ABM Manples when the restraining orders were issued.
16. The issue is answered in the negative. Furthermore, the claim is clearly futile and without basis.



Conclusion

17. The applications for contempt are dismissed. Similarly the entire claim is also dismissed. The defendant is entitled to costs to be agreed or taxed.

DATED at Port Vila this 4th day of February, 2020

BY THE COURT

