

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

**Civil**  
**Case No. 17/1160 SC/CIVIL**

**BETWEEN: Basil Hopkins**  
First Claimant  
**Nanes Silyath**  
Second Claimant

**AND: Vanuatu Commodities  
Marketing Board**  
Defendant

*Date of Hearing:* 19 and 20 January 2021  
*Before:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr J. Boe for the Claimants  
Mr S. Aron for the Defendant  
*Date of Decision:* 25 January 2021

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**Judgment**

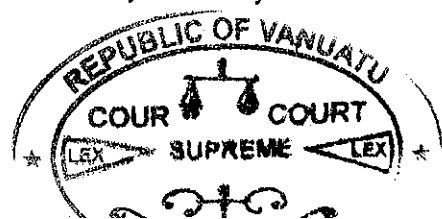
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A. Introduction

1. This was an employment matter, the claimants both alleging wrongful dismissal and seeking redress. The applications were opposed and a counter claim made for the recovery of what was said to be an over-payment of VT 3.5 million to the First Claimant.

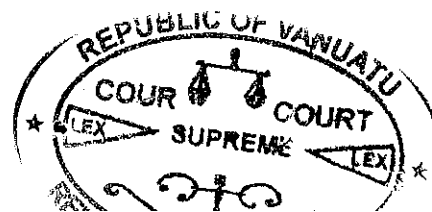
B. Background

2. Mr Hopkins was employed as the Acting General Manager of the Vanuatu Commodities Marketing Board ("VCMB") on a 3-year contract from 1 March 2014. Although still legally married, he was at the time in a new relationship with Ms Nanes Silyath. They were co-habiting in Luganville.



3. Ms Silyath was employed as an Administrative and Personal Manager of VCMB on a 3-year contract as from 16 May 2014.
4. The contracts of employment were in similar terms, and both included a provision whereby VCMB could dismiss for "serious misconduct".
5. There was evidently an incident in October 2014 when Mr Hopkin's wife went to the address where Mr Hopkins and Ms Silyath were residing in Luganville and an altercation took place. In the course of that altercation, Mr Hopkins advised his wife that she must leave as she was trespassing, and he went on to threaten her that if she returned he would physically remove her from the property with the aid of a firearm.
6. Mr Hopkins was arrested in relation to that threat, charged and he pleaded guilty in Court. He was sentenced to a suspended term of 2-months imprisonment.
7. VCMB learnt of the altercation and its aftermath. It reacted by sending a letter to Mr Hopkins dated 22 October 2014 in which Mr Hopkin's conduct was said to have tarnished the image of VCMB. As a result Mr Hopkins was immediately suspended pending a meeting of the Board the following Friday. Mr Hopkins was advised that he was required to answer the allegations at the Board meeting. The allegations related to Mr Hopkins being "...imprisoned last weekend as a result of violence and threatening your wife with firearms", and the fact that Mr Hopkins and a staff member (Ms Silyath) "...have been using the office to carry out your extra-marital activities".
8. There was no such similar letter sent to Ms Silyath.
9. There is a Minute of what occurred at the Board Meeting on 24 October 2014. Of relevance is the following note:

"The AGM was questioned by the Board Chairman on the allegations that went against him. The AGM admitted that he had had an affair with the personnel Administrator some years ago before appointed as AGM of VCMB. He was asked to leave the Board room while the Board decided on actions to be taken against him. The VCMB Board decided to terminate both the AGM and the Personnel Administrator but made an offer of contracting the AGM for APRA Bill purposes till APRA Bill reaches its final stage. He accepted the offer given by the Board. His contract is on a five months basis. The out-going AGM presented their annual leaves entitlement Documents calculated by the Labour Officer in Santo at the Board meeting with no other claims. The Board had agreed to settle their annual leaves."
10. The VCMB Chair, Mr Alilee wrote to both Mr Hopkins and Ms Silyath on 24 November 2014 confirming the Board's decision to terminate their employment with VCMB. The letters record Mr Hopkins of having "...admitted the allegations..." which were again set out in Mr Hopkin's letter as per paragraph 7 above, but varied for Ms Silyath to refer only to the affair being conducted in VCMB offices. Mr Hopkins was recorded as admitting the affair but to have denied carrying on the affair in VCMB offices. The letters conclude that their employment with VCMB was terminated from 24 November 2014 and further that only their leave entitlements will be paid out.
11. VCMB subsequently paid Mr Hopkins VT 900,000 for his leave entitlements and Ms Silyath VT 240,000 for her leave entitlements.



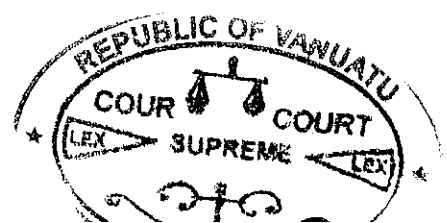
12. For reasons unexplained other than careless oversight, despite the advice of his termination, Mr Hopkins continued to receive his previous monthly salary for a further 7 months. This amounted to a total of VT 1,393,000. There were some half-hearted efforts to get Mr Hopkins to reimburse VCMB, but they came to nought.
13. Mr Hopkins was further paid a total of VT 800,000 in respect of the consultancy offered and accepted.
14. Surprisingly, VCMB thereafter made two further payments to their former employee who had seriously misconducted himself. The first payment in December 2015 was for VT 2 million; and the second in January 2016 was for VT 1.5 million. These payments were described respectively as an ex gratia payment and as a gratuity payment. Both payments were made at the express request of Mr Dunstan Hilton, then the Minister responsible for VCMB. The evidence as to why such payments were made was unsatisfactory and gave the impression of irregularity.
15. The claimants are two individuals, each with their own contract of employment. They are currently living together as a couple, and were at all relevant times. Both were employed by VCMB on 3-year contracts, and they were dismissed at the same time at least in part due to conducting what was described as an extra-marital affair. Hence the joining of their Claims is understandable. However, the Claimants ought to have been separately represented at trial, as their interests were not fully aligned.

C. Claim

16. The Claimants allege the process leading to their dismissal lacked natural justice in that they were not presented with evidence supporting the allegations made against them and were not able to confront their accusers. They took advice from the Department of Labour who considered that Mr Hopkins was entitled to a VT 9.3 million payout for his wrongful dismissal and Ms Silyath similarly entitled to VT 2.4 million. The Claim filed sought a total of VT 11.94 million, together with VT 1 million for specific and general damages, and costs.
17. The Claim also sought a multiplier of the severance payment due of times 4 in respect of the Employment Act section 56(4) calculation.

D. Defence and Counter claim

18. VCMB pleaded that a disciplinary hearing was appropriately held. It was further pleaded that Mr Hopkins had appeared on his own behalf and also on behalf of his partner. Mr Hopkins was said at all times to be fully aware of the allegations against him and was afforded the opportunity to respond to them. He admitted the allegations.
19. VCMB submitted that there was no obligation to pay severance for either Claimant as they were employed for less than 12 months, relying on section 54 of the Employment Act.



20. VCMB further pleaded that during the various negotiations regarding Mr Hopkins claims, there was agreement whereby if the ex gratia payment and the gratuity payments were made, there would be no further claims.
21. By way of counter claim, VCMB claim that in return for the oral offer of the consultancy, Mr Hopkins agreed he would make no further claims against VCMB. Despite that, however, he sought further payments and was paid a further VT 3.5 million. VCMB seeks the return of that on the basis of unjust enrichment.
22. Alternatively, VCMB seek to set off any award made in favour of the Claimants against the VT 3.5 million restitution sought, as well as interest and costs.

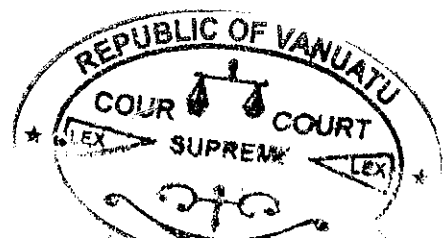
E. Evidence

23. The manner of the questioning of Mr Hopkins at the Board meeting was disputed, as were the admissions said to be made at the Board meeting by Mr Hopkins. There was also evidence suggesting that Mr Hopkins advised the Board that he was there on his own behalf and also on behalf of Ms Silyath, with contrasting evidence denying that.
24. The documentary evidence relating to these matters is generic, and therefore cannot be determinative.
25. Unfortunately, the examination of the relevant witnesses called did not greatly assist the Court.
26. There was no evidence as to Ms Silyath's status, whether she was or had been married, separated or divorced. Accordingly while Mr Hopkins might be said to have been carrying on an extra-marital affair, her evidence that she was in a relationship with Mr Hopkins better described the position from her perspective.
27. The end assessment as to these aspects of the case is that I accept it more likely than not that:

- Mr Hopkins was at the meeting representing both himself and his partner. In the end he accepted that when giving his evidence.

- Ms Silyath was not involved in the incident leading to Mr Hopkins' criminal conviction, but she was in a relationship with him which was the precursor to the incident.

- Mr Hopkins admitted to the Board that there was a relationship between him and Ms Silyath; as well as the fact that he made mention of a firearm to his wife as a result of losing his temper. There was no actual firearm involved at the time of the altercation.



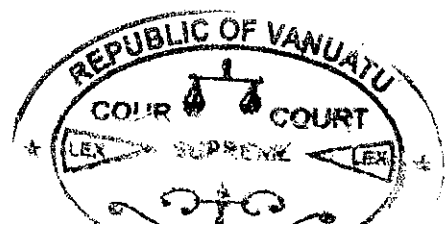
- Mr Hopkins admitted to the Board that he had been arrested, charged and pleaded guilty; and he confirmed to the Board his end sentence.

- There was no admission or evidence to suggest any inappropriate conduct by the Claimants in VCMB offices before the Court.

- The evidence that Mr Hopkins agreed to lodge no further claims in return for certain payments is not of sufficient weight to find it established as more likely than not. I noted it was not recorded in the Board's minute, and further that this suggestion was undermined significantly by the fact that further claims and further payments followed despite the alleged agreement to the contrary.

F. Discussion

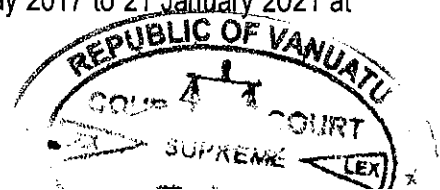
28. Mr Hopkins had been given notice of the Board meeting. He was told in sufficient detail the allegations against him. He was afforded natural justice in having the opportunity to respond to the allegations. Given his admissions, there was no need for the Board to have done any more, such as calling for witnesses to recount their evidence.
29. Given the public prominence that Mr Hopkins' conduct held in Luganville at the time, the VCMB in my view were entitled to suspend his employ and seek his explanation. That explanation amounted to admissions of misconduct which the Board considered serious. Accordingly, under the contract of employment, the VCMB was entitled to dismiss Mr Hopkins as it did. The process followed is unimpeachable.
30. I cannot understand why the Board then offered Mr Hopkins a consultancy. I also cannot understand why he was paid the ex gratia and gratuity payments. However, those matters do not in any way impinge on my findings that Mr Hopkins was not wrongfully dismissed. What I do understand is that Mr Hopkins was handsomely paid, yet seeks further funds from his previous employer without valid basis. His Claim demonstrates naked greed.
31. The Chair and a fellow member of the VCMB Board accepted that Ms Silyath was not given notice of the Board meeting at which her continued employment was to be considered. To rely on Mr Hopkins advising her of the details of the Board's letter to him is simply not compliant with VCMB's legal obligations. The fact that he did so advise her is not something the Board can rely on. It was the Board's obligation to give Ms Silyath notice, and it failed to do so.
32. Ms Silyath was dismissed from her employment without having any opportunity to answer the allegations. The allegations against her can only have been that she and Mr Hopkins were carrying on a relationship in VCMB offices. Although I am uncertain what that might involve, there is no evidence before the Court of any inappropriate behaviour in or on VCMB premises. As a justification for dismissal that does not fit the term "serious misconduct".



33. Accordingly, Ms Silyath was wrongfully and unlawfully dismissed from her employment. She has been egregiously treated by her former employer. She is entitled to be compensated for that. However, her Claim is inflated. She is not entitled to severance, as set out in section 54 of the Employment Act, having worked at VCMB for only several months.
34. The sums advanced by Mr Boe in his submissions as the appropriate amounts of compensation are inconsistent with the Claim and not supported by evidence.
35. I do not accept Mr Boe's abandonment of the claim for damages, which he purported to do without instructions and without fully understanding the significance of what was being put to him during his final submissions. In my view damages are appropriate to reflect VCMB's conduct towards her.
36. In respect of the counter claim, VCMB appears to have conflated their counter claim in that it seeks recovery of VT 3.5 million paid to Mr Hopkins from both Mr Hopkins and Ms Silyath, most likely on the basis that they co-habit. However, there is no evidence before the Court that any of those funds found their way to Ms Silyath's possession or control. Accordingly, I will consider the counter claim against Mr Hopkins only.
37. My consideration of this part of the case was not assisted by Mr Boe admitting that he was unaware of the counter claim during his final submissions. He did not adduce any evidence in opposition to the counter claim and made no submissions. Nevertheless the counterclaim requires to be dealt with. It was put on the basis of unjust enrichment. As previously mentioned, the reason for the payments being made are unclear, although it is apparent that they were made after the approach by the Minister.
38. There is evidence that request was made for Mr Hopkins to reimburse VCMB for his overpaid salary. Mr Hopkins gave an explanation in relation to that to the Board that he considered it was part of the consultancy arrangements, which it appears the Board ultimately could not argue against. In any event, even though Mr Aron sought to include this in the counter claim in his final submissions, the actual counter claim is limited to what is in the pleadings, namely VT 3.5 million.
39. Clearly Mr Hopkins has been enriched by receipt of these two sums, and that has been at VCMB's expense. The third element that must be established is that it would be unjust for Mr Hopkins to retain the benefit of the payments. In that regard, I struggle to see on what basis Mr Hopkins is entitled to retain the payments. He did nothing to warrant the payments being made, other than continuously demand greater compensation for his dismissal. I also consider it more likely than not that the payments would not have been made but for the improper interference by the then Minister. Accordingly, I am of the view that VCMB is entitled to restitution.

G. Decision

40. The Claim by Mr Hopkins fails and is dismissed.
41. The Claim by Ms Silyath succeeds. She is entitled to payment of VT 240,000 for the lack of 3 months notice, and VT 750,000 damages for her unlawful dismissal. She is further entitled to interest on those sums from the date of the Claim namely 11 May 2017 to 21 January 2021 at



5% per annum. By my calculations that amounts to VT 183,218. Ms Silyath is also entitled to her costs, which I set at VT 100,000.

42. The counter claim succeeds as against Mr Hopkins. VCMB is entitled to interest on the sum of VT 2 million at 5% per annum as from 22 December 2015 until the full amount owing is repaid. VCMB is further entitled to interest at 5% per annum on the sum of VT 1.5 million as from 4 January 2016 until the full amount owing is repaid. VCMB is also entitled to costs from Mr Hopkins.
43. Given that the counter-claim succeeds, and taking into account that the Claimants have been living together as a couple since 2013, it does not seem appropriate that this case be settled by VCMB expending yet further funds to pay Ms Silyath and then attempting to recover restitution from Mr Hopkins. One debt ought to be off-set by the other.
44. Accordingly, I order that Mr Hopkins pay VT 1,273,218 to Ms Silyath on behalf of VCMB. Further, Mr Hopkins is to reimburse VCMB the sum of VT 2,326,782, which sum includes the costs of this action which I set at VT 100,000. Interest is payable on that sum at the rate of 5% per annum as from 28 March 2019, the date of the filing of the counter claim, until paid in full.
45. A further conference is scheduled for 8am on 18 February 2021 for Mr Hopkins to advise the Court: (i) that he has paid the judgment sums and costs awarded, or (ii) to explain how he intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for immediate enforcement action to be pursued.
46. In order for this to occur, a copy of this judgment must be served on Mr Hopkins, with a proof of service provided.

**Dated at Port Vila this 25th day of January 2021**

**BY THE COURT**

*Jendri Uell*  
Justice G.A. Andree Wiltens\*

