

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

Civil
Case No. 18/2461 SC/CIVL

BETWEEN: Dorianne Naliupis
Claimant

AND: Prosper Buletare
First Defendant

AND: Silas Rocroc
Second Defendant

AND: Sanma Provincial Council
Third Defendant

Date of Trial: 21 May 2021

Before: Justice V.M. Trief

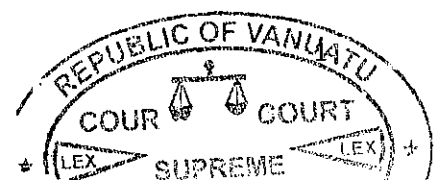
In Attendance: Claimant – Mrs C.T. Gesa, by video link from Port Vila Registry Conference Room
First Defendant – Mr J. Garae
Second Defendant – in person
Third Defendant – Mr H. Tabi

Date of Decision: 17 September 2021

JUDGMENT

A. Introduction

1. The Claimant Dorianne Naliupis was employed by the Third Defendant Sanma Provincial Council (the 'Council') from 2010 to 2018.
2. By the Claim, Mrs Naliupis seeks damages in relation to alleged sexual harassment and defamation, and payment of her salary which was withheld during the period of her suspension of employment and payment of outstanding annual leave and overtime. The



First Defendant Prosper Buletare and Second Defendant Silas Rocroc were then officers of the Council and are alleged to have sexually harassed Mrs Naliupis.

B. Preliminary Matter

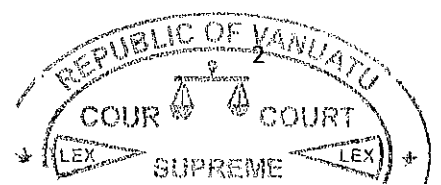
3. The Trial occurred on 21 May 2021. On 24 May 2021, Ms Naliupis filed a document titled, "Sworn statement of Dorianne Naliupis in regards to Delivery of Hand Written Resignation Letter dated 24 May 2018 and Typed Resignation Letter dated 24 May 2018 received by Sanma Provincial Council". I declare that document ineffectual pursuant to r. 18.10(2)(c) of the *Civil Procedure Rules*. I have not considered it for this judgment.

C. Background

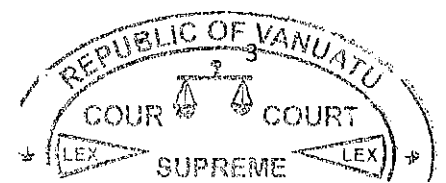
4. Mrs Naliupis is a resident of Luganville, Santo.
5. From 2010 to 2018, she was employed by the Council as the Sanma Province Disability Officer.
6. At the material times, Mr Buletare was the Senior Planning Officer and/or Acting Secretary General for the Council and Mr Rocroc an elected councillor of the Council.
7. On 20 November 2017, Mr Buletare as Acting Secretary General of the Council informed Mrs Naliupis of the Council's decision to suspend her on half pay effective from that date.
8. By letter dated 24 May 2018, Mrs Naliupis resigned as Sanma Province Disability Officer.
9. By letter dated 11 June 2018, Mr Buletare as the Council's Acting Secretary General informed Mrs Naliupis that at its May Administrative Sitting, the Council had resolved to reinstate Mrs Naliupis as Sanma Province Disability Officer.
10. Mrs Naliupis did not return to work.
11. The Council then paid Mrs Naliupis her severance allowance but not the balance of her salary for the 6 month period she was suspended nor her annual leave.

D. Pleadings

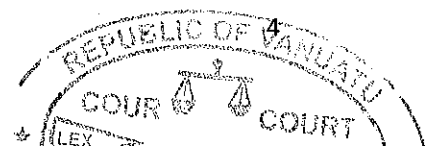
12. It is alleged in the Claim that:
 - a) From 2015-2017, Mr Buletare and Mr Rocroc sexually harassed Mrs Naliupis causing her continual distress and emotional breakdown which affected her work and affected her relationship with her husband and children;
 - b) The November 2017 suspension was in revenge for Mrs Naliupis' failure to give in to Mr Buletare and Mr Rocroc's sexual advances and harassment;
 - c) Despite many requests, no reasons were ever given for her suspension;



- d) That the Defendants slandered and thereby damaged Mrs Naliupis' professional reputation by telling third parties that:
- i. By Mr Buletare and Mr Rocroc, that she was their mistress therefore they were entitled to sexually harass her; and
 - ii. By all Defendants, that she misappropriated funds allocated to disabled people of Sanma province and the evacuees from Ambae to Santo; and
- e) As a result of the defamation as alleged, Mrs Naliupis suffered loss and damage to her professional reputation.
13. The Claim was opposed.
14. In his Defence, Mr Buletare admitted only the acts of indecency without consent in 2015 that he was convicted of in 2019. He otherwise denied sexual harassment as alleged. Mr Buletare alleged that Mrs Naliupis' suspension was the decision of the Council in relation to fraudulent actions, not his own individual decision. He denied that it occurred in revenge for her reluctance to participate in sexual relations. Mr Buletare alleged that Mrs Naliupis was given the opportunity to be reinstated but she resigned and chose not to continue working for the Council. He denied any defamation as alleged.
15. In his Defence, Mr Rocroc denied sexual harassing Mrs Naliupis. He did not know and did not admit any defamation as alleged.
16. In its Defence, the Council alleged that reasons were given for Mrs Naliupis' suspension and she responded. She was given the opportunity to be reinstated but she resigned and chose not to continue working for the Council. It alleged that it is clear from the terms of Mrs Naliupis' letter dated 24 May 2018 that it was in response to the Council's letter dated 11 June 2018 although incorrectly dated 24 May 2018. The Council denied being vicariously liable for Mr Buletare and Mr Rocroc's actions. Finally, the Council alleged that on 13 May 2020, the Secretary General of the Council offered to pay the balance of Mrs Naliupis' salary during her suspension and annual leave but had not received any response to the offer.
17. In Reply to the First Defendant's Defence, Mrs Naliupis alleged that she was unlawfully terminated as she suspended for over 6 months which was contrary to the Council's Staff Manual Regulations and was not given reasons for her suspension during the 6 month period that a Council employee is to be suspended for; she was given reasons 8 months later on 8 August 2018 to which she responded. She alleged that she resigned on 11 June 2018 as she was convinced that the Council had effectively terminated her by her prolonged suspension which went beyond the 6 month period provided in the Staff Manual.
18. The issues between the parties are:
- a) Was it the Council or Mr Buletare's decision to suspend Mrs Naliupis? **[Issue 1]**
 - b) Is the Council liable to pay Mrs Naliupis her salary which was withheld during the period of her suspension of employment and payment of outstanding annual leave and overtime? **[Issue 2]**



- c) Was Mrs Naliupis' employment unlawfully terminated? **[Issue 3]**
- d) Are Mr Buletare and Mr Rocroc liable to Mrs Naliupis for damages for sexual harassment? **[Issue 4]**
- e) Are the Defendants liable to Mrs Naliupis for damages for defamation? **[Issue 5]**
- f) Is the Council vicariously liable for Mr Buletare and Mr Rocroc's actions? **[Issue 6]**
- E. Issue 1: Was it the Council or Mr Buletare's decision to suspend Mrs Naliupis?
19. A copy of the suspension letter dated 20 November 2017 from Mr Buletare as Acting Secretary General of the Council was attached to the Sworn statement of Johnson Vuti, the Compliance Officer of the Council, [Annexure "JV2", "**Exhibit D6**"]. The letter stated that following Resolution No. 16 of the November Full Council Session, Mrs Naliupis was suspended with effect from 20 November 2017.
20. Mrs Naliupis conceded in cross-examination that the decision to suspend was made by the Council and not by Mr Buletare alone.
21. For the reasons given, my answer to Issue 1 is, "**It was the Council's decision to suspend Mrs Naliupis.**"
- F. Issue 2: Is the Council liable to pay Mrs Naliupis her salary which was withheld during the period of her suspension of employment and payment of outstanding annual leave and overtime?
22. Mr Vuti evidenced in [**Exhibit D6**] that by letter dated 13 May 2020, Albert Ruddley, the Secretary General of the Council offered to pay the balance of Mrs Naliupis' salary during her suspension, annual leave for 3 and a half years and 15 days of work totalling VT220,220. Further, that by email dated 25 May 2020 from Mrs Naliupis' consultant, Boarlaw Attorneys At Law, accepted the offer and demanded payment by 26 May 2020. On 26 May 2020, the Council made payment of VT220,220 to Mrs Naliupis' bank account at the National Bank of Vanuatu.
23. Mrs Naliupis confirmed in her sworn statement filed on 30 March 2021, [**Exhibit C8**], that she received this payment.
24. Accordingly my answer to Issue 2 is, "**No as these have been paid.**"
- G. Issue 3: Was Mrs Naliupis' employment unlawfully terminated?
25. The Claimant's closing submissions filed on 10 June 2021 stated that Mrs Naliupis claimed damages for unjustified and/or constructive dismissal of her employment. However, she has not pleaded either of those in the Claim or the Reply to the First Defendant's Defence.
26. It was pleaded in the Reply to the First Defendant's Defence that Mrs Naliupis resigned on 11 June 2018 as she was convinced that the Council had effectively terminated her by her prolonged suspension which went beyond the 6 month period provided in the

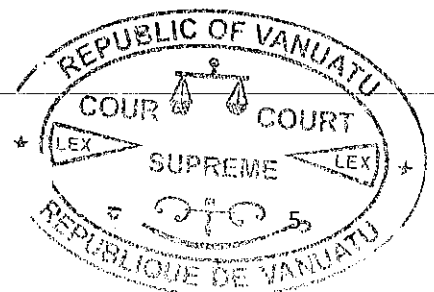


Staff Manual. This may have been intended to raise constructive dismissal however it is an insufficient pleading of that cause of action. I hold therefore that constructive dismissal was not pleaded such that there was any claim for Mrs Naliupis for constructive dismissal.

27. What is pleaded for Mrs Naliupis is that she was unlawfully terminated as she suspended for over 6 months which was contrary to the Council's Staff Manual Regulations and she was not given reasons for her suspension during the 6 month period that a Council employee is to be suspended. However, a complaint about the period of suspension being longer than the period prescribed in the Staff Manual or failure to give reasons are valid grounds for judicial review. Importantly, this matter is not a claim for judicial review. I fail to see how these allegations disclose any cause of action for unlawful termination.
28. Finally, the cessation of Mrs Naliupis' employment was due to her resignation from her employment with the Council. Mr Vuti evidenced in ["**Exhibit D6**"] that on 12 June 2018, the Council received Mrs Naliupis' resignation letter (which was dated 24 May 2018). The opening paragraph of the letter stated as follows:

Thank you for the response of the re-instatement as Sanma Disability desk officer, but please accept this letter as formal notice of my resignation as Sanma Disability Desk officer at Sanma Provincial Government Council.

29. It was suggested for Mrs Naliupis that the letter was correctly dated 24 May 2018. However, that cannot be as it was undisputed that by letter dated 11 June 2018, Mr Buletare as Acting Secretary General of the Council informed Mrs Naliupis that at its May Administrative Sitting, the Council had resolved to reinstate Mrs Naliupis as Sanma Province Disability Officer. By referring to that re-instatement in her letter, it follows that Mrs Naliupis received the 11 June 2018 and then wrote her letter in response. It was obviously incorrectly dated 24 May 2021. In cross-examination, Mr Buletare confirmed that this was the resignation letter that he received.
30. It was suggested by Mrs Naliupis that she had written an earlier hand-written resignation letter dated 24 May 2021. Mr Buletare denied receiving such letter. Even if Mrs Naliupis had written an earlier resignation letter, it remains unchanged that she resigned thus ending her employment with the Council; the Council did not terminate her employment.
31. Mrs Naliupis evidenced in her sworn statement filed on 5 February 2019, ["**Exhibit C1**"], on 8 August 2018 she was provided 6 reasons for her suspension on 20 November 2017. Even so, Mrs Naliupis had already resigned from her employment with the Council.
32. For the reasons given, my answer to Issue 3 is, "**No.**"



H. Issue 4: Are Mr Buletare and Mr Rocroc liable to Mrs Naliupis for damages for sexual harassment?

33. Mrs Naliupis alleged that Mr Buletare and Mr Rocroc sexually harassed her and sought damages. However, there is no known cause of action for sexual harassment. In his Defence, Mr Buletare admitted his acts of indecency without consent against Mrs Naliupis in 2015 that he was convicted of in 2019. Even so, sexual harassment not being a known cause of action, I must answer Issue 4 as, “No.”

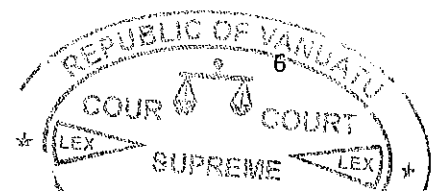
I. Issue 5: Are the Defendants liable to Mrs Naliupis for damages for defamation?

34. It is alleged in the Claim that Mr Buletare and Mr Rocroc defamed Mrs Naliupis by telling third parties that she was their mistress therefore they were entitled to sexually harass her, and that all 3 Defendants defamed Mrs Naliupis by telling third parties that she misappropriated funds allocated to disabled people of Sanma province and the evacuees from Ambae to Santo. The name of the persons to whom the words were spoken must be set out in the statement of claim: *Bullen & Leake & Jacobs' Precedents of Pleadings* (13th ed.), Sweet & Maxwell at p. 624. The Claim does not name any of the alleged third parties spoken to by any of the Defendants.

35. Further, proof of publication by the Claimant is essential to establish a cause of action in libel or slander: *Bullen & Leake & Jacobs' Precedents of Pleadings* (13th ed.), Sweet & Maxwell at p. 622. Mrs Naliupis relied on 8 of her own sworn statements, [**“Exhibits C1 to C8”**] and 8 sworn statements by others, [**“Exhibits C9 to C16”**]. None of the sworn statements contain any evidence that Mr Buletare and Mr Rocroc told third parties that Mrs Naliupis was their mistress therefore they were entitled to sexually harass her. Mrs Naliupis has failed to prove publication as alleged by Mr Buletare and Mr Rocroc.

36. In cross-examination, Mr Buletari accepted that he spoke with his wife Gina Buletare about the allegations against Mrs Naliupis. He denied that he spoke about Council business with other members of his family. No action lies if words defamatory of the Claimant are published by a man only to his own wife: *Wennhak v Morgan* (1980) 20 Q.B.D. 635. Accordingly, Mr Buletare is not liable in defamation for words spoken to his wife about Mrs Naliupis.

37. Mrs Naliupis relied on the sworn statements of Caroline Bani Hilton [**“Exhibit C11”**], Merelyn Potines [**“Exhibit C13”**] and Abel Frank [**“Exhibit C14”**] to prove that the Defendants told third parties that she misappropriated funds allocated to disabled people of Sanma province and the evacuees from Ambae to Santo. None of them evidenced that they had heard statements made by any of the 3 Defendants. They had effectively heard information about Mrs Naliupis from unnamed other persons. Mr Tabi objected to their evidence on the basis of hearsay. He submitted that the persons who heard statements by a Defendant should have been called to give evidence. In cross-examination, Mrs Naliupis agreed that she had not called any such persons. Mrs Gesa submitted that hearsay is an exception in defamation because it constitutes proof of the publication by the Defendants of false information. I can find no such exception to the hearsay rule. Accordingly, I rule that the statements that Ms Hilton, Ms Potines and



- Mr Frank heard from others about Mrs Naliupis are inadmissible. In the circumstances, Mrs Naliupis has failed to prove publication as alleged by the Defendants.
38. For the reasons given, my answer to Issue 5 is, **"No."**
- J. Issue 6: Is the Council vicariously liable for Mr Buletare and Mr Rocroc's actions?
39. Mr Buletare and Mr Rocroc not being liable for any damages, I need not determine this issue.
- K. Result and Decision
40. In conclusion, I answer the issues as follows:
- a) Issue 1: Was it the Council or Mr Buletare's decision to suspend Mrs Naliupis? **"It was the Council's decision to suspend Mrs Naliupis."**
 - b) Issue 2: Is the Council liable to pay Mrs Naliupis her salary which was withheld during the period of her suspension of employment and payment of outstanding annual leave and overtime? **"No as these have been paid."**
 - c) Issue 3: Was Mrs Naliupis' employment unlawfully terminated? **"No."**
 - d) Issue 4: Are Mr Buletare and Mr Rocroc liable to Mrs Naliupis for damages for sexual harassment? **"No."**
 - e) Issue 5: Are the Defendants liable to Mrs Naliupis for damages for defamation? **"No."**
 - f) Issue 6: Is the Council vicariously liable for Mr Buletare and Mr Rocroc's actions? **"Mr Buletare and Mr Rocroc not being liable for any damages, I need not determine this issue."**
41. For the reasons given, the Claimant has failed to prove the Claim on the balance of probabilities.
42. The Claim is **dismissed**.
43. The Claimant is to pay the Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

DATED at Port Vila this 17th day of September 2021
BY THE COURT


Justice Viran Molisa Trief

