

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

Civil  
Case No. 21/2282 SC/CIVL

**BETWEEN:** Daniel Morris  
Claimant

**AND:** Attorney General  
Defendant

*Date of Trial:* 1 September 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr S. Kalsakau  
Defendant – Mrs E. Blake  
*Date of Decision:* 25 October 2021

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**DECISION AS TO COSTS**

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A. Introduction

1. The Claimant Daniel Morris was employed by the Defendant Attorney General from 2009 to June this year. Mr Morris sued for unlawful termination of his employment, unjustified dismissal and/or constructive dismissal.
2. I delivered judgment dated 23 September 2021 and gave the parties the opportunity to file submissions as to costs. Only the Defendant has done so. I now determine the costs of this proceeding.

B. Discussion

3. Both parties sought costs on an indemnity basis.
4. Rules 15.5(5) and 15.11 of the *Civil Procedure Rules* provides:

15.5(5) *The court may also order a party's costs be paid on an indemnity basis if:*

- (a) *The other party deliberately or without good cause prolonged the proceeding; or*
- (b) *The other party brought the proceeding in circumstances or at a time that amounted to a misuse of the litigation process; or*



(c) The other party otherwise deliberately or without good cause engaged in conduct that resulted in increased costs; or

(d) In other circumstances (including an offer as to a settlement made and rejected) if the court thinks it appropriate.

15.11 When considering the question of costs, the court must take into account any offer to settle that was rejected.

5. Mr Morris was ultimately unsuccessful in all aspects of his Claim. By the judgment, I held that he had failed to prove the Claim on the balance of probabilities and dismissed the Claim.
6. The Attorney General seeks the costs of the proceeding on an indemnity basis on the following grounds:
  - a) That the Claim never had any real prospect of success or that were the claimant properly advised, he should have known that he had no chance of success; OR
  - b) Alternatively, in respect to the failure to accept an offer of compromise which comprised the defendant's costs to the date of the offer.
7. Mrs Blake set out enumerated reasons for her submissions that the Claimant did not have any real prospect of success or that were the claimant properly advised, he should have known that he had no chance of success. She cited *Shamin v QBE Insurance (Vanuatu) Ltd* [2017] VUSC 59. Even so, there was no previous case with similar facts cited to me that showed squarely that if the claimant were properly advised, he should have known that he had no chance of success or that showed that the Claimant had no real prospect of success. I decline therefore to grant indemnity costs on that basis.
8. By letter dated 29 July 2021, the Attorney General made an offer to compromise the proceedings. This was rejected. Mrs Blake cited *Kramer Ausenco (Vanuatu) Ltd v Supercool Vila Ltd* [2018] VUCA 29 for her submission that accordingly, Mr Morris should be liable for the Attorney General's costs on an indemnity basis as from 29 July 2021. I accept that authority and that in the circumstances, Mr Morris should be liable for the Attorney General's costs as from 29 July 2021 on an indemnity basis. I so hold.

C. Result and Decision

9. The Claimant is liable for the Defendant's costs on an indemnity basis as from 29 July 2021 and before that, on a standard basis, as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

DATED at Port Vila this 25<sup>th</sup> day of October 2021  
BY THE COURT

  
Justice Viran Molisa Tjief

