



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

Judicial Review
Case No. 21/3707 SC/JUDR

BETWEEN: Harkinson Garae

Claimant

AND: Public Service Commission

First Defendant

AND: Republic of Vanuatu

Second Defendant

Date of HEARING and

Oral Decision :

13th July 2022

Date of Written Decision

Published:

15th July 2022

Before:

Justice Oliver A Saksak

In Attendance:

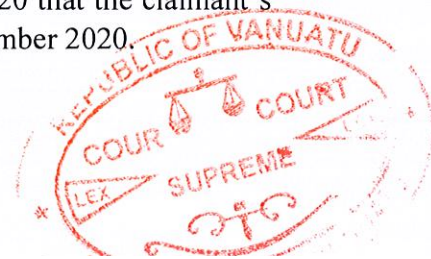
***Mr Philip Fiuka Agent for Mr James Tari for the
Claimant***

Mr Julian Wells for the Defendants

JUDGMENT

Background

1. The claimant filed a Supreme Court claim on 9th November 2021 claiming for severance and a multiplier under the Employment Act [Cap.160]
2. In his reliefs he sought an order for reinstatement, arrears of salaries, interests at 5% and costs.
3. On 17th December 2021 Andrée Wiltens J recorded in the Minute that Mr Tari had reconsidered and that he wished to amend the case to reflect a Judicial Review. The Judge then directed the amended pleadings be filed by 31st January 2022.
4. On 31st January 2022 Mr Tari filed the “ *Amended Judicial Review claim.* ”
5. His client’s complaint is about his resignation on 30th September 2020 to be effective on 30th December 2020.
6. However before the effective date was due, the Director of Finance Mrs Dorothy Erickson had informed the client by letter dated 11th November 2020 that the claimant’s resignation was received and accepted to take effect from 30th December 2020.



7. Subsequently on 17th November 2020 the claimant replied to Mrs Erickson acknowledging receipt of her letter of confirmation and acceptance of resignation of 11th November 2020 but went further to inform the Director that he was revoking his resignation as of 17th November 202.
8. On 26th January 2021 the Public Service Commission (the PSC) wrote to the claimant informing him that his voluntary resignation had been approved by the Commission by its Decision No.53 of meeting held on 26th November 2020.
9. On 17th February 2021 the PSC informed the claimant again about its Decision No.4 of 10th February 2021 meeting that the PSC did not accept his revocation of resignation as per his letter of 17th November 2020.
10. Finally on 13th July 2021 the PSC decided in its Decision No.49 to accept the claimant's resignation.

Reliefs sought

11. The claimant sought a quashing order against that decision together with an order for reinstatement, an order for payments of arrears of salaries, interest of 5% costs.

Discussion

12. I gave oral decision dismissing the claimant's claim on 13th July 2022. I now publish the reasons.
13. This is a very confusing claim. What started as a Supreme Court in November 2021 turned out to be an Amended Judicial Review claim in January 2022. That could not possibly be done as the original claim filed was not a Judicial Review claim. Therefore there was an abuse of process evident.
14. Even if it was correctly filed as a Judicial Review claim from the beginning, it was out of time and leave should have been sought. That did not occur and again that is an abuse of process.
15. The hearing today was pursuant to Rule 17.8 of the Civil Procedure Rules No. 49 of 2002. It states:

"Court to be satisfied of claimant's case

17.8 (1) *As soon as practicable after the defence has been filed and served, the judge must call a conference.*

(2) *At the conference, the judge must consider the matters in subrule (3).*

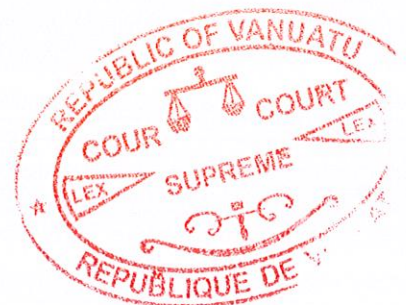
(3) *The judge will not hear the claim unless he or she is satisfied that:*

(a) *the claimant has an arguable case; and*

(b) *the claimant is directly affected by the enactment or decision; and*

(c) *there has been no undue delay in making the claim; and*

(d) *there is no other remedy that resolves the matter fully and directly.*



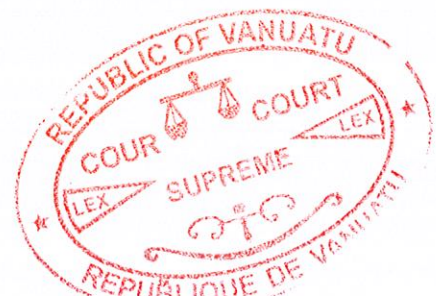
(4) To be satisfied, the judge may at the conference:

(a) consider the papers filed in the proceeding; and

(b) hear argument from the parties.

(5) If the judge is not satisfied about the matters in subrule (3), the judge must decline to hear the claim and strike it out."


16. Rule 17.8 (3) requires the claimant to show to the satisfaction of the Court that:
- He has an arguable case;
 - He is directly affected by the decision;
 - There was no undue delay; and
 - There was no other remedy to resolve the matter fully and directly.
17. From the facts in evidence from both the claimant, Mrs Erickson and Mr James Melteres the claimant voluntarily resigned on 30th September 2020 to be effective from 30th December 2020, 3 months later.
18. That decision to resign was confirmed and accepted on 11th November 2020. The Public Service Commission endorsed that Decision on 26th January 2021. The revocation was declined on 10th February 2021. By this date the resignation had taken effect on 30th December 2020. There was therefore no arguable case.
19. The Republic conceded the claimant had been directly affected by the decision, but there was undue delay on the claimant's part to take appropriate action.
20. Judicial Review claims should be filed within 6 months from the date of decisions sought to be reviewed. In this case the claimant seeks to review decisions of the PSC of 10th February 2021 and 13th July 2021. He filed his Amended JR claim on 31st January 2022, well outside the 6 months requirement of the Rules. And he had not sought leave for an extension of time to do so.
21. The claimant had other remedies. He initially filed a Supreme Court claim claiming for his arrears. However that was overtaken by the fact he filed his Amended Judicial Review claim.
22. Evidence by the Republic shows the claimant has been paid in full the sum of VT 2.500.426 being severance for 9 years 3 months and 24 days.
23. The claimant has no evidence that he has arrears of salaries which have not been paid. He has no arguable case or a cause of action.
24. Accordingly I declined to hear this case further and ordered that the claim and proceeding be dismissed.



25. The claimant has put the defendants to costs. The defendants claim for VT 50.000 costs which are very reasonable. I order the claimant to pay VT 50.000 to the defendants within 28 days from the date hereof.

DATED at Port Vila this 15th day of July, 2022

BY THE COURT


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Oliver Saksak
Judge

