

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

Civil
Case No. 20/2949 SC/CIVL

BETWEEN: Marie Pia Palo
Claimant

AND: Republic of Vanuatu
Defendant

Coram: Justice Aru
Counsel: Mrs. P. Malites for the Claimant
Mr. H. Tabi for the Defendant

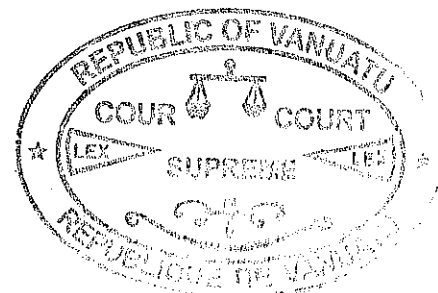
JUDGMENT

Introduction

1. This is an application to strike out the claimant's claim.

Background

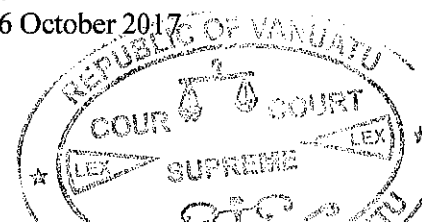
2. Marie Pia Palo (Mrs Palo) is a teacher by profession who until her retirement on 27 January 2018 was teaching at Saint Anne Primary School at Port Olry, Santo.
3. Following her retirement by the Teaching Service Commission (TSC), she claims some of her entitlements are yet to be settled by the defendant. Despite her attempts to resolve these outstanding matters, the defendant has done nothing resulting in the claim being filed to seek redress through the Courts.
4. At the hearing of the application, the claimant withdrew her claims for salary and severance differences backdated to 1980. Secondly, she withdrew her claims for salary difference from 1 February 2001 to 30 June 2006. The only claim being pursued was salary difference from 2006 to the date of retirement and her claim for three months' notice.
5. From the 2006 GRT determination the claimant's salary scale was EO2.6 with an annual salary of VT 917,280.



Discussion

6. It was submitted by the defendant that the claimant was paid all her salary differences with her severance and the TSC confirmed there was nothing owing to the claimant hence the application to strike out the claim.
7. The claimant accepts that under the 2006 GRT determination her salary scale was EO 2.6 with an annual salary of VT917,280. She submitted that this was the scale applied to primary school teachers. However, she submitted that she was performing duties of a primary teacher and supervising other teachers as *maitresse d'application* up to the date of her retirement. Her promotion to that position was confirmed by letter dated 22 March 2001 signed by George Andrew the Director General of Education [Annexure MP 2 of claimant's sworn statement filed on 20 May 2021]. She submitted that she was entitled to the difference in salary for the two positions. The defendant submitted that they were not aware of the promotion.
8. The claimant also claims payment of the three months' notice as she deposes in her sworn statement filed on 20 May 2021 that she received her retirement letter on 27 January 2018 informing her of her retirement on the same day but not earlier as asserted by the defendant.
9. Her retirement letter was dated *26 October 2017* informing her of the TSC decision on *27 October 2017* (a day later). The same letter gave her three months' notice informing her to serve two months and the final month will be paid out. The defendant asserts that the one-month notice was paid out with her severance.
10. No evidence was offered to challenge the claimant that she received her retirement letter on the date of her retirement except to say that the one-month notice was paid.
11. The power to strike out a proceeding has been held to exist in **Noel v Champagne Beach Working Committee** [2006] VUCA 18. However, the Court of Appeal in its decision cautioned that:

“..... it has always been recognised that the jurisdiction should be exercised sparingly and only in a clear case where the Court is satisfied it has the requisite material; the claimant's case must be so clearly untenable that it cannot possibly succeed: *Electricity Corp Ltd v Geothermal Energy Ltd* [1992] 2 NZLR 641.”
12. The defendant seeks to strike out the claim however on the evidence before me I am not satisfied that the claimant's annual salary as per the 2006 GRT determination took into account her promotion as '*maitresse d'application*'. Similarly, there is no evidence that the claimant's letter of retirement was served on her on 26 October 2017.



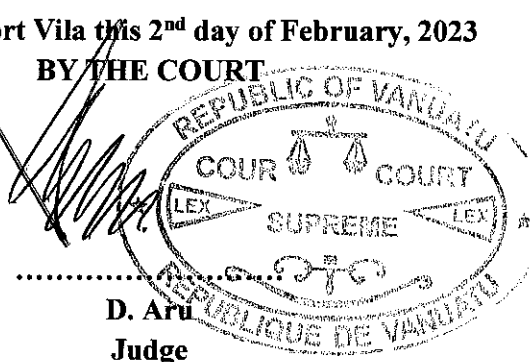
giving her the required notice. Secondly her retirement letter of 26 October 2017 could not have been issued prior to the TSC decision on 27 October 2017.

Result

13. I am of the view that this is a case which requires a proper trial to consider all the evidence therefore the application to strike out is dismissed. The following directions are now issued: -

- 1) Leave is granted to the claimant to file and serve a further amended claim by 22 February 2023.
- 2) A further conference is listed for 9.00 am on 23 February 2023.
- 3) No order as to costs.

**DATED at Port Vila this 2nd day of February, 2023
BY THE COURT**



D. Aru
Judge