

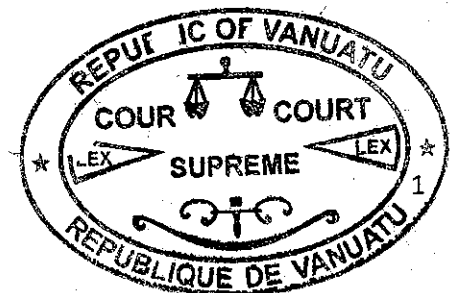
BETWEEN: Noah Patrick Kouback
Claimant
AND: Republic of Vanuatu
Defendant

Dates of Trial: 29 January 2026, 16 February 2026 & 20 February 2026
Before: Justice V.M. Trief
In Attendance: Claimant – Mrs B. Emelee, for Mrs M.N. Ferrieux Patterson
Defendant – Ms J. Toa Tari
Date of Decision: 9 March 2026

JUDGMENT

A. Introduction

1. The Claimant Noah Patrick Kouback served in Vanuatu's Foreign Service at Vanuatu's overseas missions for a number of years before resigning to take up other employment.
2. By the Claim, Mr Kouback is seeking payment of severance allowance for the period 26 October 2011-10 February 2020; housing and transport allowances for the period 2 May 2015 to 21 April 2016; repatriation costs; and VNPF employer contributions in relation to a 23 July 2012-22 July 2015 contract and a 2 January 2015-1 May 2015 contract. The total claimed is VT17,006,400.
3. The Claimant also relies on his Memorandum filed on 1 April 2025 adding a new para. 18 to the Claim relying on subs. 50(5) of the *Employment Act* [CAP. 160] and adding to the prayer for relief in the Claim.



4. The Claim is disputed: Amended Defence and Counter Claim filed on 7 June 2021. The State denied that Mr Kouback was in its continuous employment from 2011 to 2020 as alleged. It alleged that Mr Kouback was employed by the State under several agreements and that it has paid all his employment entitlements. It invited the Court to dismiss the Claim with an order for VT200,000 costs.
5. By its Counter Claim, the State alleged that Mr Kouback breached his 11 May 2018 employment agreement in that he failed to serve three months' notice, that he has not returned a diplomatic passport and has failed to disclose a bank statement of a bank account that he opened in his own name to collect donations towards Cyclone Pam relief.
6. The relief sought in the Counter Claim includes an order that Mr Kouback pay 3 months in lieu of notice; that Mr Kouback return the diplomatic passport or compensate the market value of the passport; and that Mr Kouback provide the bank statement of the bank account he created and return any residue of monies in that account.
7. On 1 April 2025, the Claimant filed Amended Reply to Defence and Defence to Counter Claim.
8. The issues between the parties include the following:
 - i. Whether or not Mr Kouback was in continuous employment with the State from 26 October 2011 to 10 February 2020?
 - ii. Whether or not the Mr Kouback is entitled to payment of severance, housing and transport allowances, repatriation costs and VNPF employer contributions? If yes, how much?
 - iii. Whether or not the State has proved its Counter Claim on the balance of probabilities?

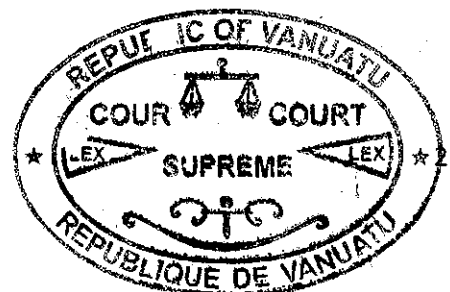
B. The Law

9. The terms, "Head of Mission" and "Letter of Credence" are defined in s. 1 of the *Foreign Services Act* No. 20 of 2013 (the '*Foreign Services Act*') as follows:

1. *In this Act, unless the contrary intention appears:*

...

"Head of Mission" means a person appointed as a Head of Mission under section 13 and who is issued with a letter of credentials to be:



- (a) a High Commissioner of Vanuatu and who is resident or not resident in the State he or she is appointed to; or
- (b) an Ambassador of Vanuatu who is resident or not resident in Vanuatu; or
- (c) a Roving Ambassador of Vanuatu; or
- (d) a permanent representative of Vanuatu to the United Nations or any other international organization;

“Letter of Credence” means a formal letter or document that is issued by the President under subsection 13(2) to accredit a Head of Mission to a State or international organization;

[emphasis added]

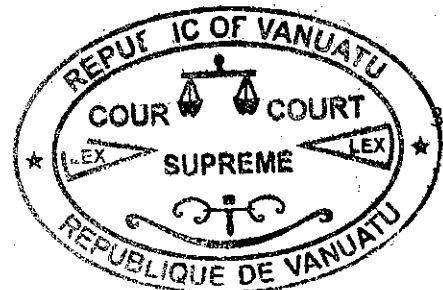
10. Section 13 of the Foreign Services Act provides as follows:

13. (1) The Minister on the advice of the Board and on the approval of the Council is to appoint by Order a person to be a Head of a Mission in a State.
- (1A) The Board must, in providing the advice to the Minister under subsection (1), state 2 names being for the applicant who has been recommended by the Board and the applicant whom the Board is satisfied is eligible, to be appointed as a Head of Mission.
- (1B) The Minister is to submit both names that have been provided to him or her by the Board, to the Council.
- (1C) The Minister must not appoint a Head of Mission under subsection (1), unless the Minister has received the Agrément from the receiving State.
- (2) The President is to issue a letter of credence to a Head of Mission after his or her appointment by the Minister.
- (3) The Head of Mission must sign a performance agreement with the Minister after being appointed to the post.
- (4) The appointment of a Head of Mission and the letter of credence issued by the President is to be published in the Official Gazette.
- (5) For the purpose of this section, “Agrément” means the approval of a diplomatic representative by the State to which he or she is to be accredited.

[emphasis added]

11. Section 30 of the Foreign Services Act provides as follows:

30. (1) A Head of Mission and a Consul General is entitled to receive from the Government a severance payment calculated at the rate of 2 months by the number of years specified in the terms of their contract.
- (2) If a Head of Mission is transferred to a new post prior to the expiry of his or her contractual terms, his or her severance payment must be calculated at the rate of



2 months by the number of years under the terms and conditions of the contract served in their previous post.

[emphasis added]

12. Section 9 of the *Employment Act* provides as follows:

9. A contract of employment may be made in any form, whether written or oral:

Provided that a contract of employment for a fixed term exceeding 6 months or making it necessary for the employee to reside away from his ordinary place of residence shall be in writing and shall state the names of the parties, the nature of employment, the amount and the mode of payment of remuneration, and, where appropriate, any other terms and conditions of employment including housing, rations, transport and repatriation.

[emphasis added]

13. Paragraph 54(1)(d) of the *Employment Act* provides as follows:

54. (1) Subject to section 55, where an employee has been in the continuous employment of an employer for a period of not less than 12 months commencing before, on or after the date of commencement of this Act, and –

(d) where the employee has been in continuous employment with the same employer for a continuous period of not less than 6 consecutive years and the employee resigns in good faith; or

the employer shall pay severance allowance to the employee under section 56 of this Act.

[emphasis added]

14. The *Statute Law (Miscellaneous Provisions) Act* No. 3 of 2022 amended para. 54(1)(d) of the *Employment Act* by deleting, “6 consecutive years” and substituting, “12 consecutive months.” However, this amendment does not apply in the present case as Mr Kouback’s employment ceased in 2020, prior to this legislative change.

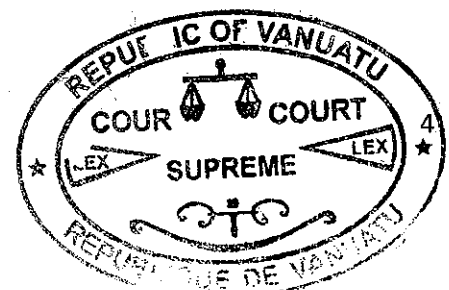
15. Subsections 56(1) and (2) of the *Employment Act* provide as follows:

56. (1) Subject to the provisions of this Part, the amount of severance allowance payable to an employee shall be calculated in accordance with subsection (2).

(2) Subject to subsection (4) the amount of severance allowance payable to an employee shall be –

(a) for every period of 12 months – 1 months remuneration;

(b) for every period less than 12 months, a sum equal to one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the employee was in continuous employment.



16. Severance allowance is payable at the rate of 1 month's remuneration for each year of service pursuant to para. 54(1)(d) and subs. 56(2) of the *Employment Act*.

C. Evidence

17. Mr Kouback relied on his Sworn statement filed on 18 May 2022 [**Exhibit C1**].

18. The State relied on the Sworn statement of Yvon Basil, Director of the Department of Foreign Affairs, International Cooperation and External Trade filed 2 August 2022 [**Exhibit D1**].

19. Both witnesses were cross-examined.

D. Issue 1: Whether or not Mr Kouback was in continuous employment with the State from 26 October 2011 to 10 February 2020, and if not, for what period(s)?

20. It is alleged in the Claim that Mr Kouback was continuously employed by the State from 26 October 2011 to 10 February 2020 (a period of 8.67 years) under a number of written contracts of employment, a Note Verbale and Letters of Credence:

(a) Note Verbale dated 26 October 2011 for Mr Kouback's appointment as Attaché to the Vanuatu Embassy in Brussels, Belgium for a three year period as of October 2011;

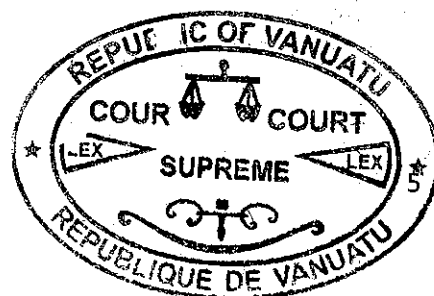
(b) Contract of employment dated 23 July 2012 for three-year term as Minister Counsellor of the Vanuatu Permanent Mission to the European Union, the Kingdom of Belgium, the Republic of France and the United Kingdom and the ACP Group of States (at Brussels, Belgium);

(c) Contract of employment dated 2 January 2015 for four-month term as Counsellor for the Vanuatu Embassy in Brussels, Belgium;

(d) Letter of Credence dated 22 June 2015 of Mr Kouback's appointment as Head of Delegation to the 13th Session of the State Parties to the Rome Statute on 24-25 June 2015;

(e) Letter of Credence dated 27 October 2015 of Mr Kouback's appointment as Counsellor as part of the Vanuatu Government's delegation to the 38th session of the United Nations Educational, Scientific and Cultural Organisation General Conference on 3-18 November 2015;

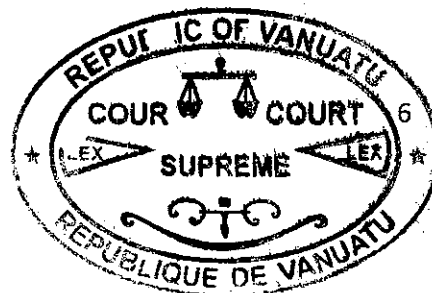
(f) Contract of employment dated 22 April 2016 for two-year term as Counsellor for the Vanuatu Embassy in Brussels, Belgium; and



- (g) Contract of employment dated 11 May 2018 for three-year term as Counsellor/Deputy Permanent Representative for Vanuatu's Permanent Mission to the Office of the United Nations in Geneva, Switzerland.
21. The State denied that Mr Kouback was continuously employed from 26 October 2011 to 10 February 2020. Both the starting and ending dates of employment are disputed.
22. I will deal with each of the Note Verbale, Letters of Credence and written contracts of employment in turn.

The Note Verbale dated 26 October 2011

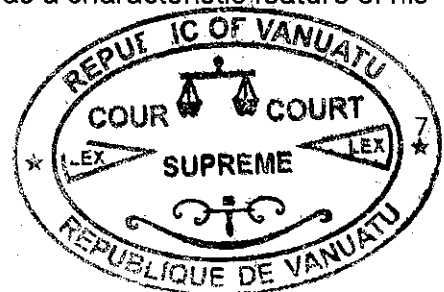
23. Mr Kouback adduced a copy of the Note Verbale dated 26 October 2011 into evidence [Exhibit C1, Attachment "NPK03"]. The Note Verbale attested to Mr Kouback's appointment as Attaché to the Vanuatu Embassy in Brussels, Belgium for a three year period as of October 2011.
24. It is undisputed that there was no written contract of employment for the period of the Note Verbale (26 October 2011 to 25 October 2014).
25. Mr Kouback deposed that he completed his Master's program at the University of Bordeaux in France in 2010, prior to being engaged as Attaché under the Note Verbale. He had previously worked as an Intern at the Embassy in Brussels from September-October 2009. On 27 January 2012, he was issued a diplomatic passport, which was renewed in September 2016 [Exhibit C1, Attachment "NPK02"]. In cross-examination, he stated that after his appointment as Attaché, he expected a written contract of employment to be signed but none was signed, so he lived off his savings.
26. Mrs Emelee submitted that even though there is no written contract of employment for the period of the Note Verbale, that Mr Kouback nevertheless worked throughout that period and rendered services which the State accepted and benefited from.
27. The State's case is that at the time of the appointment, Mr Kouback was not a public servant but was given the title, "Attaché" to enable him to undertake an attachment at the Brussels embassy for work experience to complete his Master's studies program at a French university. It alleged that as an Attaché, it was not obliged to pay the Claimant any salaries or allowance pursuant to subs. 20(1) of the *Foreign Service Act* at the time.
28. Subsection 20(1) of the *Foreign Service Act* at the time provided as follows:



20. (1) *An officer of the Department of Foreign Affairs or another relevant Government Department or Agency may be seconded to a mission by the relevant Director General, the Public Service Commission or the relevant authority (as the case may be), on the recommendation of the Director General.*
29. Subsection 20(1) of the *Foreign Service Act* at the time provided for secondment of public servants therefore does not support the State's case.
30. I also find that Mr Kouback undertook his Master's degree program at the University of Bordeaux from 2009-2010, and graduated on 17 January 2011 [Exhibit C1, Attachment "NPK01"]. I therefore reject the State's case that Mr Kouback served at the Vanuatu Embassy under the Note Verbale for the purposes of student work experience.
31. I accept and find that Mr Kouback was issued a diplomatic passport during the period of the Note Verbale, on 27 January 2012.
32. I also accept Mr Kouback's evidence that he was employed as an Attaché and expected a written contract of employment to follow, but which did not. In any event, he provided services as an employee albeit was not paid by the State. I find that similar to Mr Arnhambat's case in *Republic of Vanuatu v Arnhambat* [2024] VUCA 29, there was a binding contract between Mr Kouback and the State from 26 October 2011, evidenced by the Note Verbale of that date. By the Note Verbale, the State informed Mr Kouback of his appointment as Attaché to the Vanuatu Embassy in Brussels for a three-year period as of October 2011. This was accepted by Mr Kouback. Therefore, the parties had a binding contract such that I should now find that Mr Kouback was employed by the State starting from 26 October 2011. I so find.

Contract of employment dated 23 July 2012

33. Mr Kouback adduced a copy of the contract of employment dated 23 July 2012 for three-year term as Minister Counsellor of the Vanuatu Permanent Mission to the European Union, the Kingdom of Belgium, the Republic of France and the United Kingdom and the ACP Group of States (at Brussels, Belgium) into evidence [Exhibit C1, Attachment "NPK04"].
34. Mr Kouback deposed that despite the parties' signing of employment contracts, there was not consistent payment of his salaries and allowances during some of the contract periods. For example, at the end of his 2015 contract, the State owed him VT925,034 which was paid to him in arrears. He stated that this was a characteristic feature of his

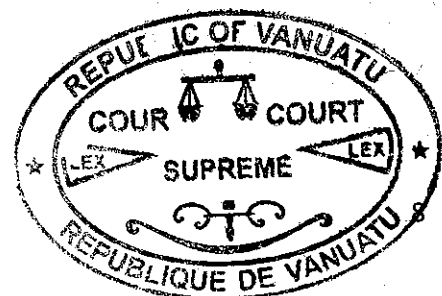


employment where he was paid in arrears after the periods in which the remuneration fell due [**Exhibit C1** at p.5].

35. In cross-examination, Mr Kouback accepted that he began work then at the mission in Brussels, Belgium in October 2011 but that he did not sign a contract of employment with the State until 23 July 2012. By Mr Kouback's own admission, there was no written contract of employment with the State until the contract dated 23 July 2012. He accepted that this contract superseded the Note Verbale dated 26 October 2011.
36. Mr Kouback also stated that he was not paid under the contract of employment dated 23 July 2012. That he raised his grievances about the lack of payment with the Ambassador, which grievances the Ambassador relayed directly to the Ministry, but he has no evidence of that as he was not privy to those communications. He denied receiving any letter from the Director General of the Ministry that his employment agreement was void.
37. Mr Basil's evidence as to the written contract of employment dated 23 July 2012 was that it was executed between Mr Kouback and the Minister of Foreign Affairs without the Ministry's prior approval and without the clearance of the State Law Office hence there was no payment made under that contract by the Ministry, but all payments were made by the Embassy.
38. There is no provision of the law cited as to clearance by the State Law Office affecting the validity of a contract. Nor has the State cited a provision of the law as to the Ministry's prior approval being required for a valid contract. Given the payments made by the Vanuatu Embassy to Mr Kouback in respect of this agreement, I find that Mr Kouback was employed by the State under the contract of employment dated 23 July 2012.
39. Mr Kouback was therefore continuously employed by the State from 26 October 2011 to 22 July 2012, and under a written contract of employment for a three-year term commencing on 23 July 2012.

Contract of employment dated 2 January 2015

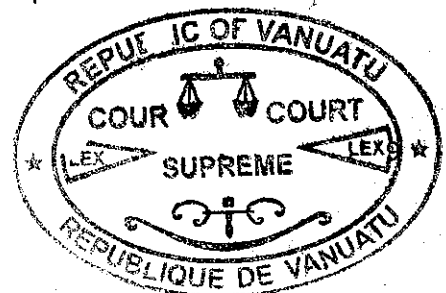
40. Mr Kouback adduced a copy of the contract of employment dated 2 January 2015 for a four-month term as Counsellor for the Vanuatu Embassy in Brussels, Belgium into evidence [**Exhibit C1**, Attachment "NPK05"].



41. The State accepts that it employed Mr Kouback from 2 January 2015 to 1 May 2015 under this contract of employment. Both parties gave evidence about payments to Mr Kouback under this contract.
42. This contract superseded the contract dated 23 July 2012. I find therefore that Mr Kouback was continuously employed by the State from 26 October 2011 to 1 May 2015.

Letters of Credence dated 22 June 2015 and 27 October 2015

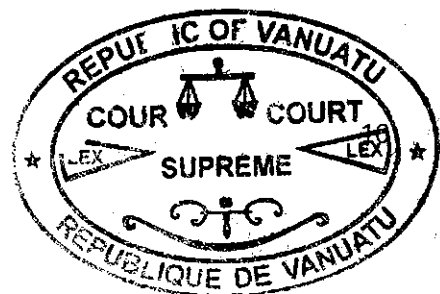
43. It is undisputed that there was no written contract of employment for the period 2 May 2015 to 21 April 2016, during which two Letters of Credence dated 22 June 2015 [Exhibit C1, Attachment "NPK06"] and 27 October 2015 [Exhibit C1, Attachment "NPK07"] were issued. Mr Kouback also adduced into evidence the Brussel's 2015 Annual Report and many emails to show that he continued to be employed at the Embassy in the period 2 May 2015 to 21 April 2016 [Exhibit C1, Attachments "NPK08" and "NPK09"].
44. Mr Basil accepted in cross-examination that he was copied into many of those emails. It was put to him that Mr Kouback would not have signed off on those emails as an officer of the Embassy unless he was one. Mr Basil replied that it was not his job to check; it was for Mr Kouback to know for himself what entitlement he had to sign off as an officer of the Embassy in any email.
45. Mrs Emelee submitted that even though there is no written contract of employment for the period 2 May 2015 to 21 April 2016, that Mr Kouback nevertheless worked throughout this period and rendered services which the State accepted and benefited from. She submitted that there was no lawful termination for misconduct hence the Court should find that during this period, Mr Kouback was employed under implied contracts or alternatively, oral contracts.
46. Ms Toa Tari submitted in response that the Claimant is bound by his pleadings. That is, that he has not pleaded any implied contract of employment nor oral contract of employment in the Claim. Hence the Defendant has not been given notice that these were part of the Claimant's Claim. She submitted that Mrs Emelee's submissions as to oral contracts and implied contracts should therefore be rejected as these were not pleaded in the Claim. I agree.
47. Unlike the Note Verbale evidencing an appointment for a three-year period, the Letters of Credence were for appointments for the following fixed periods:



- i. The Letter of Credence dated 22 June 2015 related to Mr Kouback's appointment as Head of Delegation to the 13th Session of the State Parties to the Rome Statute on 24-25 June 2015 – a two-day period; and
 - ii. The Letter of Credence dated 27 October 2015 related to Mr Kouback's appointment as Counsellor as part of the Vanuatu Government's delegation to the 38th session of the United Nations Educational, Scientific and Cultural Organisation General Conference on 3-18 November 2015 – a 16-day period.
48. Accordingly, I reject Mrs Emelee's submissions that Mr Kouback was employed by the State under implied contracts or oral contracts of employment during the period 2 May 2015 to 21 April 2016, during which the two Letters of Credence dated 22 June 2015 and 27 October 2015 were issued.
49. In addition, Mr Kouback's employment as a diplomat serving at a Vanuatu overseas mission required him to reside away from his ordinary place of residence, Vanuatu (which explains Mr Kouback's claim for repatriation costs). Consequently, for Mr Kouback to have been employed in the periods outside of those covered by the Letters of Credence (24-25 June 2015 and 3-18 November 2015), that could only have occurred under a written contract of employment or some written appointment (which is not in evidence). Such written contract of employment was required to state the names of the parties, the nature of employment, the amount and mode of payment of remuneration, and where, appropriate, any other terms and conditions of employment including housing, rations, transport and repatriation: s. 9 of the *Employment Act*.
50. For the foregoing reasons, I find that Mr Kouback was not employed by the State during the period 2 May 2015 to 21 April 2016 except for the two periods covered by the Letter of Credence dated 22 June 2015 (24-25 June 2015) and the Letter of Credence dated 27 October 2015 (3-18 November 2015).

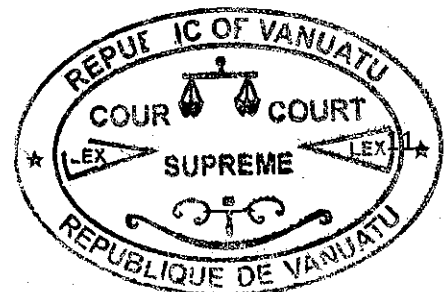
Contract of employment dated 22 April 2016

51. Mr Kouback adduced into evidence a copy of the contract of employment dated 22 April 2016 for a two-year term as Counsellor for the Vanuatu Embassy in Brussels, Belgium [**Exhibit C1**, Attachment "NPK10"].
52. The State accepts that it employed Mr Kouback from 22 April 2016 to 21 April 2018 under this contract of employment.
53. I find therefore that Mr Kouback was continuously employed by the State from 22 April 2016 to 21 April 2018.



Contract of employment dated 11 May 2018

54. Mr Kouback adduced into evidence a copy of the contract of employment dated 11 May 2018 for a three-year term as Counsellor/Deputy Permanent Representative for Vanuatu's Permanent Mission to the Office of the United Nations in Geneva, Switzerland [**Exhibit C1**, Attachment "NPK12"].
55. The State accepts that it employed Mr Kouback from 22 April 2016 under this contract of employment.
56. However, it is disputed between the parties what date Mr Kouback's employment ended on.
57. On 11 November 2019, Mr Kouback resigned from the Foreign Service. In the resignation letter, Mr Kouback gave three months' notice of the cessation of his employment [**Exhibit C1**, Attachment "NPK15"]. By letter dated 3 January 2020, the Director General of the MOFA acknowledged his resignation [**Exhibit D1**, Attachment "YB11"].
58. Mr Kouback also stated in his resignation letter that he would take his annual leave in January 2020. In cross-examination, Mr Kouback stated that despite giving that notice, he did not take any annual leave but continued worked up until he left Geneva on 17 January 2020 for Suva, Fiji. He arrived in Suva on 19 January 2020 for his new employment with the Pacific Islands Forum Secretariat. He therefore took his annual leave from 17 January 2020-10 February 2020; that is, from the date that he left Geneva, for Suva, Fiji to the date on which his three months' notice expired (totalling 25 days). In Mr Kouback's submission, the end date of his employment with the State was 10 February 2020.
59. On the other hand, the State's case is that Mr Kouback was not on approved annual leave from 17 January 2020 to 10 February 2020 or alternatively, has received payment in lieu of his annual leave therefore he owes the State a sum for the three months' period of notice which was not served, as sought in the Counter Claim.
60. It is undisputed that at the time of Mr Kouback's resignation on 11 November 2019, he had accrued annual leave. Mr Kouback agreed in cross-examination that his last pay slip (dated 10 January 2020) showed that he had accrued annual leave of 26.01 days [**Exhibit D1**, Attachment "YB8"]. I find that Mr Kouback was entitled to take annual

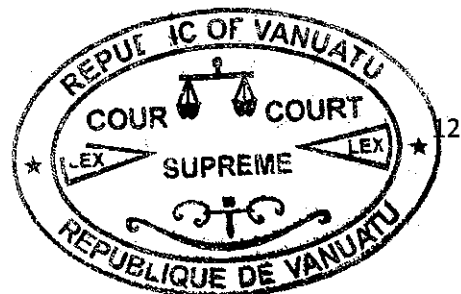


leave from 17 January 2020 to 10 February 2020 (totalling 25 days) as he had accrued 26 days of annual leave.

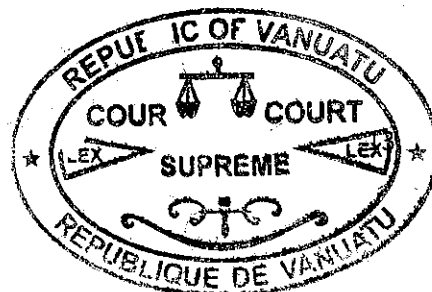
61. Accordingly, I find that Mr Kouback was on annual leave from 17 January 2020 to 10 February 2020, therefore that his employment with the State ended on 10 February 2020.
62. It follows from the findings set out above that Mr Kouback has not proved on the balance of probabilities the aspect of the Claim that he was continuously employed from 26 October 2011 to 10 February 2020.
63. What were the periods of Mr Kouback's continuous employment with the State?
64. Consequent to the findings set out above, Mr Kouback was continuously employed by the State in the following periods:
 - (i) Mr Kouback's first period of continuous employment with the State was from 26 October 2011 to 1 May 2015 (3 years 6 months);
 - (ii) The second period of continuous employment with the State was from 24-25 June 2015 (2 days);
 - (iii) The third period of continuous employment with the State was from 3-18 November 2015 (16 days);
 - (iv) The fourth period of continuous employment with the State was from 22 April 2016 to 21 April 2018 (2 years); and
 - (v) The final and fifth period of continuous employment with the State was from 11 May 2018 to 10 February 2020 (1 year 9 months).

E. Issue 2: Whether or not Mr Kouback is entitled to severance allowance payment?

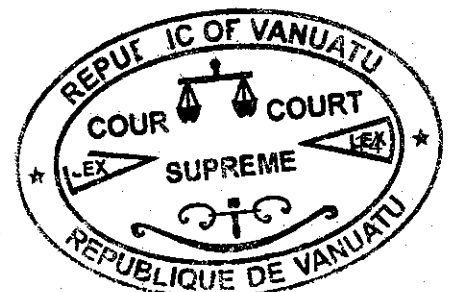
65. Mr Kouback's claim for severance allowance is made under s. 54 of the *Employment Act* or alternatively, under s. 30 of the *Foreign Service Act*.
66. An employee is entitled to severance allowance pursuant to para. 54(1)(d) of the *Employment Act* if the employee has been in continuous employment with the same employer for a continuous period of not less than 6 consecutive years and the employee resigns in good faith.
67. On the findings above, Mr Kouback has not been in continuous employment with the State for 6 consecutive years. He is, therefore, not entitled to payment of severance allowance under s. 54(1) of the *Employment Act*.



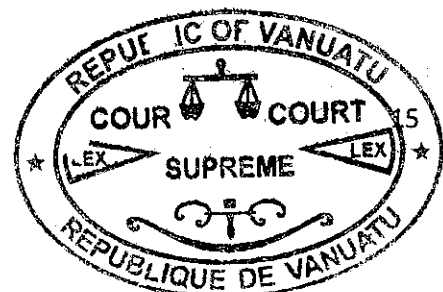
68. A Head of Mission is entitled to severance payment pursuant to s. 30 of the *Foreign Services Act* at the rate of 2 months "by the number of years specified in the terms of their contract."
69. Does Mr Kouback fall within the term, "Head of Mission" used in s. 30 of the *Foreign Services Act*?
70. "Head of Mission" is defined in s. 1 of the *Foreign Services Act* to mean a person appointed as a Head of Mission under s. 13 of that Act and who is issued with a letter of credentials to be, relevantly, a permanent representative of Vanuatu to an international organization (at para. (d) of that definition).
71. Mr Kouback's final written contract of employment was as Counsellor/Deputy Permanent Representative for the Permanent Mission of the Republic of Vanuatu to the Office of the United Nations in Geneva, Switzerland. This appears to be a position as a deputy permanent representative of Vanuatu to an international organization, in this case, the Office of the United Nations in Geneva, Switzerland.
72. However, was Mr Kouback appointed as a Head of Mission under s. 13 of *Foreign Services Act*?
73. Subsection 13(1) of the *Foreign Services Act* provides for the Minister to appoint by Order a person to be a head of mission. There is no evidence that there was any Order by a Minister appointing Mr Kouback to be a head of mission.
74. Subsection 13(2) of that Act provides for the President to issue a letter of credence to a head of mission after his or her appointment by the Minister. There is no evidence that the President issued a letter of credence or a letter of credentials to Mr Kouback in accordance with subs. 13(2) of that Act to be a deputy permanent representative of Vanuatu to the Office of the United Nations in Geneva, Switzerland.
75. In addition, subs. 13(4) of that Act provides that the appointment of a Head of Mission and the letter of credence issued by the President is to be published in the *Official Gazette*. The Statutory Orders Index issued by the Office of the Attorney General does not show that any appointment of Mr Kouback as a Head of Mission or any letter of credence issued by the President to Mr Kouback has ever been published in the *Official Gazette*.
76. Accordingly, I find that there has not been any appointment of Mr Kouback as a Head of Mission in accordance with s. 13 of the *Foreign Services Act*.



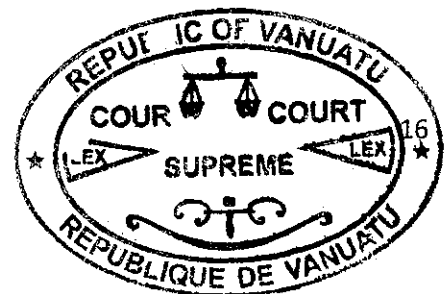
77. For the foregoing reasons, Mr Kouback is not entitled to payment of severance allowance under s. 30 of the *Foreign Services Act*. This aspect of the Claim fails.
- F. Issue 3: Whether or not Mr Kouback is entitled to housing and transport allowances for the period 2 May 2015 to 21 April 2016?
78. As set out above, Mr Kouback did not have a written contract of employment in the period 2 May 2015 to 21 April 2016. He therefore did not have any entitlement to housing and transport allowances during that period. This aspect of the Claim fails.
- G. Issue 4: Whether or not Mr Kouback is entitled to repatriation costs?
79. Mr Kouback adduced into evidence a copy of his contract of employment dated 11 May 2018 [**Exhibit C1**, Attachment "NPK12"].
80. There is no term anywhere in that contract for repatriation costs. Accordingly, Mr Kouback did not have any entitlement to repatriation costs. This aspect of the Claim fails.
- H. Issue 5: Whether or not Mr Kouback is entitled to VNPf employer contributions in relation to his 2012 and 2015 contracts?
81. Mr Kouback's case is that he is entitled to employer VNPf contributions pursuant to s. 25 of the *Vanuatu National Provident Fund Act* [CAP. 189] (the '*VNPf Act*'), which provided in 2012 and 2015 (pursuant to Act No. 29 of 2003) as follows:
25. (1) Subject to subsections (2) and (3), on each occasion when remuneration is paid to any employee under this Act, a contribution to the Fund is to be paid at the rate of 8 percent of that remuneration of which half is to be paid by the employer and half by the employee;
- (2) No contribution shall be payable in respect of an employee in any month in which the total amount of the remuneration paid to that employee by any one employer is less than Vt3,000.
- (3) Notwithstanding the provisions of any other law or any agreement to the contrary, the employer shall deduct the employee's share of the contribution from the remuneration on which liability for the contribution arises at the time that such remuneration is paid and if he fails to make such deduction at that time the liability for the employee's share of contribution shall pass to the employer who shall then be liable to pay the whole of the contribution due.
82. Mr Kouback was employed from 23 July 2012 to 1 January 2015 under his 2012 contract. There is no evidence that the State deducted Mr Kouback's VNPf employee contributions during that period. Accordingly, I find that Mr Kouback is entitled to VNPf contributions for the period 23 July 2012 to 1 January 2015.



83. Mr Kouback agreed in cross-examination that the first two pages of Attachment "YB8" [Exhibit D1] showed the breakdown of the payments made to him pursuant to his 2 January 2015-1 May 2015 contract of employment. Those payment calculations did not include any amount for VNPF contributions.
84. Accordingly, I find that Mr Kouback is entitled to VNPF contributions for the period 2 January 2015-1 May 2015 (four months).
85. The total period for which Mr Kouback is entitled to VNPF contributions is 23 July 2012 to 1 May 2015 (2 years 9 months).
86. The State did not deduct Mr Kouback's employee contributions at the time hence it must pay the entire 8% contribution including both its and Mr Kouback's contributions, in accordance with subs. 25(3) of the VNPF Act.
87. The 2015 payment calculations show that Mr Kouback's monthly salary was VT224,440. Eight percent (8%) of that monthly salary is VT17,955. The VNPF contributions for 2 years 9 months is $(VT17,955 \times 24) + (VT17,955 \times 9) = VT430,920 + VT161,595 = VT592,515$.
88. Accordingly, judgment will be entered on the Claim for VT592,515 VNPF contributions.
- I. Issue 6: Whether or not the State has proved its Counter Claim on the balance of probabilities?
89. There are three aspects to the Counter Claim: (i) alleged failure to serve three months' notice; (ii) alleged failure to surrender a diplomatic passport; and (iii) failure to provide bank statements for a bank account that Mr Kouback created in his own name in Brussels to collect donations towards Cyclone Pam relief.
90. These were expressed to be breaches of the terms of the contract of employment dated 11 May 2018. In response, Mr Kouback pleaded subs. 50(5) of the *Employment Act* which prohibits an employer from raising allegations of misconduct if they were not raised with the employee contemporaneously or at the least, at the time of his cessation of employment.
91. However, this misunderstands the Counter Claim. The three aspects of the Counter Claim were expressed to constitute breaches of the terms of the contract, but I understand that pleading to be that each of the three aspects of the Counter Claim are being pursued for being breaches of the relevant terms of the contract.
92. I now deal with each of the three aspects of the Counter Claim in turn.



93. As already stated above, Mr Kouback served the full three months' notice that he gave. He worked during that period and then took annual leave from 17 January 2020 to 10 February 2020. This aspect of the Counter Claim has not been proved and fails.
94. The second aspect of the Counter Claim is the alleged failure to surrender a diplomatic passport following Mr Kouback's resignation and cessation of employment in January 2020. However, only Mr Basil gave evidence. He did not give evidence as to which officer(s) within the Ministry of Foreign Affairs or the Department of Foreign Affairs are the custodians of diplomatic passports and/or who keep the records of diplomatic passports. Mr Basil asserted generally that Mr Kouback did not return his diplomatic passport. But the more persuasive evidence would have been from the actual custodians/record-keepers of diplomatic passports. Accordingly, I reject Mr Basil's evidence that that Mr Kouback never returned his diplomatic passport. I find that this aspect of the Counter Claim has not been proved and fails.
95. As an aside, the relief sought for this aspect of the Counter Claim was an order that Mr Kouback pay the State the market value of his diplomatic passport. However, there was no evidence adduced as to what the market value of his passport could possibly be.
96. The State had also sought in the Counter Claim as pleaded the return of an iPhone and an Apple Macbook. The parties resolved the Counter Claim in relation to these two items and counsel requested that I note that in this judgment.
97. The final aspect of the Counter Claim is Mr Kouback's alleged failure to provide bank statements for a bank account that he created in his own name in Brussels to collect donations towards Cyclone Pam relief. However, Mr Kouback's evidence is that he responded to the initial requests for that information in 2015 and 2016. In addition, an audit team conducted an investigation in July 2017, to which he provided information.
98. As for the State's case, no particulars were provided in the Counter Claim as to circumstances in which the bank account was set up and the details of that account, so that Mr Kouback has notice of exactly what is being sought. In similar vein, there is no evidence of the details for the bank account for which information is being sought. Mr Basil's evidence is in general terms simply stating that Mr Kouback failed to provide the bank account information sought.
99. I prefer Mr Kouback's evidence as to his responses to the State's requests for information about a bank account over that of Mr Basil which amounts to a general denial only. This final aspect of the Counter Claim also had not been proved and fails.



100. The State has failed to prove the Counter Claim on the balance of probabilities. The Counter Claim must be dismissed.

J. Result and Decision

101. Judgment is **entered** for the Claimant and it is ordered that the Defendant is to pay to the Claimant VNPF contributions of VT592,515 (the 'judgment sum').

102. The Defendant is to pay interest of 5% per annum on the judgment sum until fully paid.

103. The Counter Claim is **dismissed**.

104. Costs must follow the event. The Defendant is to pay the Claimant's costs on a standard basis as agreed or taxed by the Master. Once settled, the costs are to be paid within 28 days.

K. Enforcement

105. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, this matter is listed for Conference **at 1.30pm on 27 April 2026** to ensure the judgment has been executed or for the Defendant to explain how it is intended to comply with the Court's Orders. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

DATED at Luganville this 9th day of March, 2026

BY THE COURT


Justice Viran Molisa Trief

