

(Civil Jurisdiction)

BETWEEN: WILLIE APIA MASSENG

First Claimant

AND: JOHN AMOS

Third Claimant

AND: VANUATU COMMODITIES MARKETING BOARD

Defendant

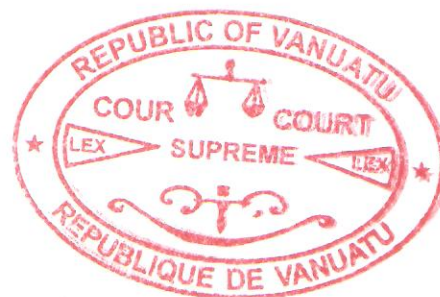
Mr Justice Oliver A. Saksak

**Mr Saling N. Stephens for the Claimants
Mr Godden Avock for the Defendant**

**Date of Hearing: 4th October 2012
Date of Judgment: 17th December 2012**

JUDGMENT

1. The Claimants filed their original claims on 14th March 2012 namely George Boar trading as BOARLAW ATTORNEYS AT LAW as first claimant. On 15th March they filed an Amended Claim. All these claimants deposed to sworn statements in support of their claims which were filed on 14th March 2012 also.
2. At a conference hearing on 17th August, 2012 the first claimant had filed for discontinuance of his claims against the defendant. Accordingly, he was removed as a party to the proceeding on that date.
3. There was no further amendment of the claims thereafter. Mr Stephens filed a notice of beginning to act for both remaining claimants Willie Apia Massing and John Amos.



4. Their claims are basically as follows:-

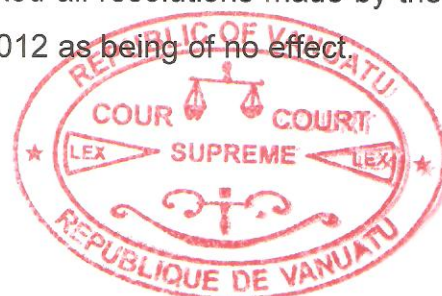
(a) Willie Apia –

- (i) Outstanding salaries – VT280,000
 - (ii) 3 months salaries in lieu of notice – VT840,000
 - (iii) VNPF contributions – VT44,800
- Total – VT1,164,800.

(b) John Amos –

- (i) Outstanding salaries – VT400,000
 - (ii) 3 months salaries in lieu of notice – VT1,200,000
 - (iii) VNPF contributions – VT64,000
- Total VT1,664,000.

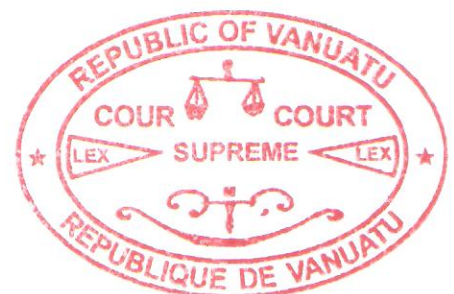
- 5.1. The Claimants alleged that by the Board Minutes of 21st January 2012 and a letter dated 15th February 2012 Willie Apia was appointed as Acting Accountant and John Amos was appointed as Acting General Manager.
- 5.2. They further allege that on 24th February 2012 the defendant terminated their respective appointments without notice. They rely on the Minutes of 24th February 2012.
- 6.1. On 29th June 2012, the Solicitor General filed a defence stating that pursuant to a Ministerial Order No. 3 of 2012 dated 20th January 2012 which removed the Board of the Defendants which purportedly appointed the Claimants. As such, the purported appointments were void and of no effect.
- 6.2. The defendant further contended in its defence that by another Ministerial Order No. 11 of 2012 issued on 10th February 2012 a new Board was appointed. On 24th February 2012, the new Board met and revoked all resolutions made by the outgoing Board dated 19th, 20th, and 21 January 2012 as being of no effect.



- 6.3. The defendant contended that under those given circumstances, they deny that the Claimants are entitled to any of the claims that they are claiming.
7. The defendant filed a sworn statement by Dick Tete on 12th September 2012 in support of their defences. The Claimants have not filed any responses to the statement of Dick Tete.
- 8.1. When the matter was called for hearing on 4th October 2012 both Counsel agreed that the facts are not in dispute and that they would file written submissions within 21 days by the Claimants and within a further 21 days thereafter for responses by the defendant.
- 8.2. Those periods have lapsed and no written submissions have been filed and/or received by the Court. The Court will dispense with those submissions to avoid further delays. Parties have been given ample opportunities to file their submissions upon their own consent. Unfortunately they have chosen not to make use of those opportunities.

DISCUSSIONS

- 9.1. The Claimants have the burden of proving their claims on the balance of probabilities.
- 9.2. In the absence of written submissions the issues which appear from the pleadings, facts and evidence the Court identifies the following issues for determination –
- (a) Whether or not the Claimants were appointed to acting positions of Accountant and General Manager?



- (c) If so, whether or not the Claimants performed in those capacities and when did they?
- (d) Whether they are entitled to three months salaries in lieu of notice?
- (e) Whether or not they are entitled to VNPF contributions is claimed.

10.1. The Claimants claims are badly pleaded and are misconceived. The Claimants have not established any legal basis for all their claims. On these grounds alone, the Court can dismiss the claims in its entirety. However, as a matter of courtesy I will deal with the issues as identified in the following manner –

- (i) Whether or not the Claimants were appointed to acting positions of Accountant and General Manager?

10.2. Both Claimants annex the Board Minutes of 21st January 2012 to their statements of 14th March 2012. This document forms the basis of their pleadings. Under paragraph 4 of their amended claims the Claimants plead a letter dated 15th February 2012. However, the Claimants have not produced that letter in their evidence.

10.3. Under Agenda 4 of the Minutes of 21st January 2012 it provides for appointments in the following terms –

“APPOINTMENT

General Manager:

Motion to appointment John Amos as Acting General Manager and Vice Acting GM was approved unanimously.

Accountant Position



Motion to appoint Apia Masseng as Acting Accountant and was approved unanimously by 6 members present.”

(Emphasis added).

10.4. With respect to the Claimants these were not appointments. Rather these were just decisions or resolutions of the Board to appoint the Claimants. The Claimants have not produced any evidence of their appointments by letter or contracts of employment. The first issue is therefore answered in the negative. As such their claims that they were appointed fail and are dismissed.

(ii) If so, whether or not the Claimants performed in those capacities?

10.5. First, the Claimants had to show their respective letters of appointment and/or contracts of employment stating their terms and conditions. They have not done that. Secondly, they had to show what date they commenced occupying the positions they assert they were appointed into. They have not done so. Thirdly, they had to show what salaries they were paid and when they were so paid. Both have annexed a copy of the VCMB Salary Structure to their sworn statements but these are meaningless and irrelevant without the evidence. For these reasons, this issue is answered in the negative.

(iii) Whether or not the Claimants are entitled to outstanding salaries?

10.6. For the reasons given above, this issue is answered in the negative.

(iv) Whether or not the Claimants are entitled to three months salaries in lieu of notice?



10.7. The Claimants have not proved any legal basis for their claims for three months salaries. They were never employed at all for any period of time. They have not produced any evidence to that effect. As such, this issue is answered in the negative. Their claims for three months salaries in lieu of notice are therefore dismissed.

(v) Whether or not they are entitled to VNPF Contributions?

10.8. The Claimants have not established any legal grounds in support of their claims under this head. For that reason, this issue is answered in the negative. And their claims for VNPF Contributions are dismissed.

Conclusions

11.1. As observed and held under paragraph 10.1 above, the Claimants' claims are badly pleaded and are misconceived. As such, the final conclusion is that the Claimants are unsuccessful in prosecution of their claims and as such the claims are dismissed in its entirety.

11.2. The Claimants have put the defendants to unnecessary legal costs. I Order that the Claimants pay the defendant's costs of and incidental to this proceeding on the standard basis as agreed or be determined by the Court.

DATED at Luganville this 17th day of December 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

