

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

**Civil**  
**Case No. 18/3407 CVL/Civil**

**BETWEEN: Elvira Culwick Bulu and 34 Others**  
Claimants

**AND: Teaching Services Commission**  
First Defendant  
**Republic of Vanuatu**  
Second Defendant

*Date:* 26 August 2021  
*Before:* Justice G.A. Andrée Wiltens  
*In Attendance:* Mr. J. Tari for the Claimant  
Ms J. Toa for the Defendants  
*Date of Decision:* 21 October 2021

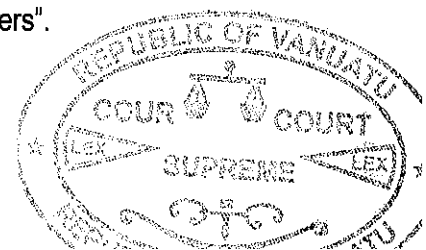
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**JUDGMENT**

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A. Introduction

1. A number of newly qualified teachers (35 named individuals) allege they were engaged to work as primary and secondary school teachers in 2015 and 2016 by the Teachers Service Commission ("TSC"), for which endeavour they were not paid appropriately.
2. The Claim was disputed.
3. The evidence of 18 witnesses for the Claimants and 2 witnesses for the Defendants was filed in Court without the need for any cross-examination. Counsel subsequently filed written submissions, and the Court was invited to deal with the matter "on the papers".



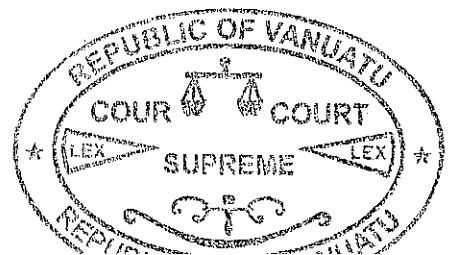
4. This is my decision, and the reasons for it.

B. Claim

5. The Claimants each allege they graduated from the Vanuatu Institute of Teachers Education in 2014 and early 2015 before the TSC arranged teaching positions for them in various primary and secondary schools in Vanuatu. The Claimants maintain they taught in the 2015 and 2016 school years as fully fledged teachers, but alas without any payment for their services by the TSC.
6. The teachers teaching at primary schools say they were due to be paid VT 705,600 each year; the teachers teaching in secondary schools say they were each due to be paid VT 1,234,800 each year. The Claim included an assertion that each claimant was also, while so employed, due an allowance of VT 15,000 per month for housing.
7. The Claimants were formally appointed as teachers by the TSC in early 2017, after which they received their appropriate remuneration according to the Government Remuneration Tribunal ("GRT") award then applicable.
8. Solicitors acting for the Claimants wrote to TSC in October 2018 pointing out their failure to pay for the 2015 and 2016 school years and seeking redress. No reply was received.
9. The Republic of Vanuatu was added as a party to the litigation as the entity ultimately responsible for the actions and obligations of the TSC.

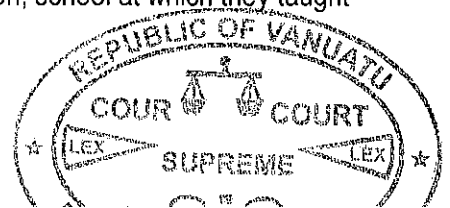
C. Defence

10. It was accepted that the Claimants are all currently in the employ of TSC, following their appointments as teachers in February 2017. Their appointments followed applications by each for a licence to teach in Vanuatu, pursuant to sections 21, 22 and 24 of the Teaching Services Act No. 38 of 2013. Their positions are unaffected by this present litigation.
11. Prior to February 2017, it is maintained the Claimants were not employees of the TSC. Their employment of 2015 and 2016 was not with TSC but with the individual school and/or Head Teachers or Principals of those schools. Further, whenever possible employment enquiries were made of the TSC, the response was that the individuals should not commence to work until there was sufficient budget allocated to pay them. In 2015 and 2016 there was no budget to appoint any of the Claimants.
12. The Solicitor's letter was acknowledged, but time was required to obtain instructions, and before a response could be sent, this litigation had already been commenced.
13. The TSC denied any liability for past wages and disputed all claims for housing allowance.



D. Claimants' Evidence

14. Mahana George, Angela Tokio, Jailes Lini, Qwennie Watas, Caroline John Kasso, Rollanson Tabi, Yvonne Tevi, Tessi Nambit, Linrose Tabi and Morrison Tabi stated in their identical/very similar sworn statements that they were employed to teach at a certain school in 2015 and 2016 and had not been paid their due salary. They each sought either 1 or 2 years' back-pay accordingly.
15. Royal Bulu Bebe, as the outgoing Principal, confirmed that Qwennie Watas had taught at her school in 2015 and 2016.
16. Morine Lapsae stated that she was given specific instruction by her Provincial Education Officer to get a teaching post with her spouse. She did so but was not paid for the 2015 and 2016 school years. She appended a Class time-table for 2015 as evidence of her employment. Stephanie James and Elvira Culwick Bulu gave similar evidence, and asserted it was the TSC Chairman who had told them to find a school at which to teach. They too appended a timetable as evidence of their teaching.
17. Linda Kalonier deposed to the same effect, that she had been advised by a Joseph Tmatau to teach at a certain school. She appended to her sworn statement a letter from her school Principal confirming her employment.
18. Diego Molbah and Elisca Sam Molbah stated they were arranged to teach at a school by "Alexander" from the TSC Commission. They were reluctant to continue teaching there in 2016 due to the lack of salary in 2015. They each appended a copy of a letter ostensibly written by the TSC Chairman, Derek Alexander, which they considered was threatening that if they did not go back and continue to teach, they would be disciplined. I noted that the letters actually used the word "could" rather than "would".
19. Elvie Culwick Bulu provided a second sworn statement. This was largely a cut and paste of the matters adverted to in the Claim, which need no repetition. She confirmed that all the Claimants received letters of appointment on 13 February 2017. She also supplied evidence of the appropriate rates of pay for the 2016 and 2017 years.
20. Paragraphs 27 to 36 of Ms Bulu's second sworn statement are a cut and paste from the sworn statement of Sergio Tari. I do not accept any of this evidence from her, as it is plain had she read the statement prior to signing it she would have realised it was not evidence that she could give.
21. The final witness in support of the Claim was Sergio Tari, a former TSC employee. He was appointed as Secretary General of the TSC in 2017. He maintained that the TSC had made arrangements for the Claimants to find teaching posts even though there was no budget to pay them, but that it was agreed the TSC would pay the Claimants their due salaries following formal appointments. He listed the Claimants by name, year of graduation, school at which they taught

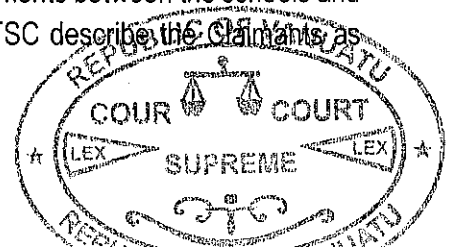


and years of unpaid service. He stated that confirmation of the details could be obtained from the various schools involved. He lastly stated that when he left the TSC he understood the Claimants had all been paid for the 2015 and 2016 school years, and he was surprised to later find that not to be the case.

22. What is apparent is that only 16 of the Claimants have filed any evidence. Sergio Tari's evidence does not fill the gaps in respect of the Claimants who have not given evidence as to their situations or loss. The Claims of 19 of the Claimants cannot therefore be upheld, on the basis that there is no evidence adduced to support their positions.

E. Defendants' Evidence

23. Sussie Homu worked at the Department of Education and Training as the National Secondary Education Coordinator since 2016. One of her tasks is to manage teachers' activities for postings, recruitment, promotions and transfers.
24. She confirmed meeting with a number of the Claimants in 2014 or 2015 with Mr Dick Hopkins at his Office. He was then the Principal Education Officer for the Education Service at the Department of Education. The Claimants had come to enquire about available vacant positions. Ms Homu explained to those Claimants the process involved in appointments, stressing that Financial Visas were a necessity, and that there were no Financial Visas then available.
25. Those Claimants were uninterested in salary, apparently wanting to start their careers, and indicated they would accept whatever the schools could provide by way of remuneration while waiting for TSC appointment.
26. Ms Homu also recalled meeting the mother of 2 of the Claimants who was desperate for her children to start teaching, and not at all interested in salary.
27. Ms Homu stated that the Claimants had secured teaching positions in consultation with the schools, not the TSC. The schools were able to recruit and pay staff from their own resources: the Ministry of Education – Schools Financial Management Manual provided for that.
28. Mr Dick Hopkins confirmed the meeting with several of the Claimants and Ms Homu in 2014 - 2015. He confirmed that the Claimants were told of the recruitment process and the requirement for Financial Visas, of which there were none available at the time. Despite the advice given, the Claimants had indicated that they wanted to commence their teaching careers, regardless of salary. They were content to take the chance that the schools would pay them. The advice given was that they should wait to be appointed by the TSC with the benefit of Financial Visas.
29. Mr Hopkins appended to his sworn statement records obtained from the various schools concerned. In the case of each Claimant, save for Claimants Lynrose Tabi and Angella Tokio, the schools have confirmed the payments were made by arrangements between the schools and the Claimants. The persons supplying the information to the TSC describe the Claimants as

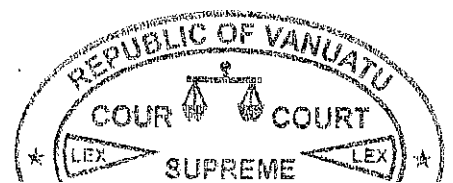


"temporary teachers" being supported by the school out of school funds while waiting for the teacher's name to be entered into the Government payroll system. The amounts paid by the schools is significantly less than the GRT award.

30. On searching TSC records, Mr Hopkins confirmed that all the Claimants were appointed as TSC teachers in February 2017. He stated that prior to that no Claimant was an employee of the TSC. Further, he maintained that the TSC had made no arrangements for any of the Claimants to teach at junior or secondary schools in Vanuatu. It was his evidence that whatever arrangements had been made, they were entered into between the Claimants and the various schools. He confirmed that schools were able to enter into such arrangements by reference to the Ministry's Financial Management Manual.
31. Mr Hopkins was insistent that the TSC had not assured any of the Claimants that they would subsequently be paid for their 2015 and/or 2016 teaching services.
32. Mr Hopkins was aware that on 29 June 2016 the former Chair of the TSC wrote to Mr and Mrs Molbah posting them to a particular school as Simple Class Teachers, effective from 1 January 2016. His evidence is that they have both been paid for their 2015 and 2016 services by the TSC in 2018, less what the school has already paid. That was presumably done due to the fact the TSC had appointed them.
33. Mr Hopkins agreed a letter of demand was received from the Claimants' solicitors. While seeking instructions from all the various schools involved, this litigation commenced. Accordingly, he agreed the solicitors had not received a response.
34. Mr Hopkins considered the sworn statement of Mr Sergio Tari to be self-serving and inaccurate. He reiterated the TSC had not acted in the way described by Mr Tari, which he knew from his own personal experience of interacting with several of the Claimants.

#### F. Submissions

35. The Claimants' submissions appear to have been prepared without reference to the Defendants' witnesses' evidence. There is accordingly repeated the bald submission that the TSC arranged for the teachers' employment in 2015 and 2016, without remunerating the teachers according to the appropriate GRT pay scale and without giving them a housing allowance of VT 15,000 per month. The TSC are accordingly submitted to be in breach of the alleged agreement to sort out the teachers' back pay.
36. In the alternative, it was submitted that the teachers were entitled to *quantum meruit* payments as they fully performed the role of teachers in those years, for which the TSC ought to reimburse them.
37. The Defendants' submissions relied on the evidence produced in contrast to that put forward by the Claimants. The submissions were to the effect that there was no agreement entered into

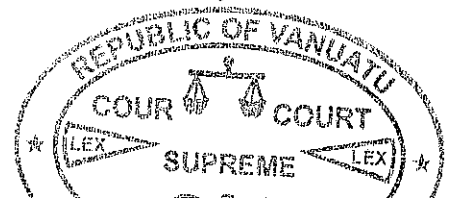


with any of the Claimants by the TSC. The arrangements were made by the Claimants and the respective schools. The TSC accordingly could not be held liable.

38. The alternative proposed avenue for damages to be awarded, namely on the basis of *quantum meruit*, was strongly argued against. It was submitted that the work done, was not done on behalf of the TSC, but for the benefit of the individual schools.

G. Discussion

39. As earlier explained, there is no evidence to support the Claims made by 19 of the 35 Claimants.
40. The evidence before the Court is that an allowance of VT 15,000 for housing is payable by the TSC to teachers under the GRT award. Each of the Claimants received letters from the TSC in February 2017 advising of their appointments, their appropriate salary and their benefits including this allowance for housing. However, that does not settle the issue, as the TSC maintains there was no appointment until 2017; and accordingly, there can be no liability for a housing allowance prior to that.
41. It is not fair for counsel for the Claimants to raise for the first time in closing submissions the issue of *quantum meruit*. There is no reference to this legal concept in the Claim. By making submissions on this, counsel is unfairly catching the defence by surprise, without allowing an opportunity to lead evidence on the point. On that basis alone, there could be no award under this "alternative" head.
42. However, the legal maxim has no application to this case in any event, as the work undertaken by the individual teachers was not done at the behest of, or benefit of the TSC, as will be shortly explained.
43. There is no documentary evidence to show there was any agreement between the Claimants and the TSC. The Claimants rely on oral statements made by certain individuals, one of whom was the previous Chair of the TSC. As against that, there is the documentary evidence of the Claimants being employed in 2017. The difference is stark. There is no explanation why there is no similar evidence for the employment on 2015 and 2016, save in the instances of Mr and Mrs Molbah. The lack of such evidence supports the defence position that the TSC did not employ the Claimants in the 2015 and 2016 years.
44. Further, the evidence adduced to Mr Hopkin's sworn statement from the various schools where the Claimants taught in 2015 and 2016 does not fit with the Claim. The overwhelming evidence is that the Claimants were paid a "supporting" allowance by the schools while waiting for the Claimants to be formally appointed by the TSC and then properly paid their salaries and allowances by the Government in accordance with the GRT award.
45. While difficult to assess credibility due to the decision of counsel to deal with this matter on the basis of the material provided to the Court, I am impressed by the evidence of Mr Hopkins and Ms Homu. Their accounts dovetail, and are consistent with the other documentary evidence.



Their accounts also highlight the significance of the absence of written material on the part of the Claimants.

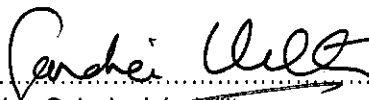
46. On the balance of probabilities, I find that there was no agreement between the Claimants and the TSC for the Claimants to work as teachers in the 2015 and 2016 school years without salary in return for the TSC making up their individual shortfalls once the TSC had available funding to be able to formally appoint them as salaried teachers. There is accordingly no liability for back pay, nor for the claimed housing allowance.

H. Result

47. The Claim fails and is dismissed.

48. Costs are to follow the event. I fix them at VT 200,000. The costs are to paid, on a joint and several basis, within 21 days.

Dated at Port Vila this 21st day of October 2021  
BY THE COURT

  
Justice G.A. Andrée Wiltens

