

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

**Civil
Case No. 24/1624 SC/CIVL**

BETWEEN: Daud Hassan
Claimant/Applicant

AND: University of the South Pacific
Defendant/Respondent

Date of Hearing: *14th day of June, 2024*

Date of Decision: *14th day of June, 2024*

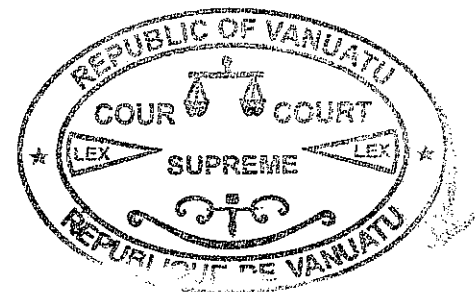
Reasons Published: *21st day of June, 2024*

Before: *Justice E.P. Goldsbrough*

In Attendance: *Kaukare, J for Applicant
Blake, G for Respondent*

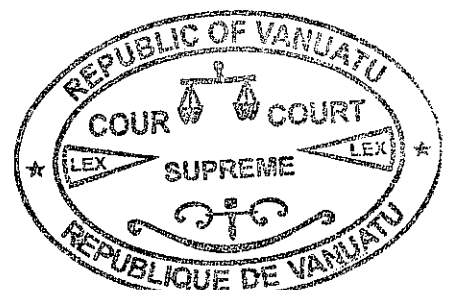
DECISION ON APPLICATION

1. This is an opposed application for interim relief. With a claim for unlawful dismissal from employment, an *ex parte* application for interim relief was filed together with an undertaking for damages, a statement of urgency and a sworn statement in support of the relief.
2. The application for the matter to be heard *ex parte* was refused. Counsel filing the application had received a notice from counsel for the Respondent of his beginning to act and he had asked to be informed of the hearing. The fact that counsel was waiting to be heard and could attend at short notice together with the lack of any reasons why the matter should be heard *ex parte*, made that decision a simple one.
3. The matter was listed first on 12 June 2024 and thereafter for 3.30pm on Friday 14 June 2024. Both counsel attended the hearing. The application was supported by sworn statements of the applicant filed 28 May 2024 and 13 June 2024. The relief sought is to



stop the Respondent to the application from proceeding to appoint a replacement to the applicant's former position as Professor/Associate Professor and Head of USP Law Programme. In the substantive claim, the applicant seeks to be re-instated to the position he held prior to his resignation.

4. The resignation from office was on 31 May 2023 following disagreement over a Probationary Report. That resignation was subsequently withdrawn by the Applicant in November 2023. The recruitment process now sought to be stopped began in July 2023.
5. The applicant took no step to bring this application to Court until 28 May 2024 at a time when the recruitment process was about to be brought to an end by the acceptance of an offer made to the successful candidate. It is thus disingenuous to suggest, as contained in the grounds for an *ex parte* order, that the respondent is "trying to quickly appoint a candidate". That does not fairly describe a process begun in July 2023.
6. In submissions, it is said that the applicant was awaiting a response from the respondent regarding his appeal that prevented him from taking action sooner. That is not an acceptable reason for delay when the applicant was well aware of the advertisement and recruitment process from its inception. The intervention has come too late for an order by way of interlocutory relief.
7. Given the material sworn by the applicant, it is curious to think that he seeks re-instatement to an institution that, according to him, has acted with malicious intent, unethically, unfairly unprofessionally and with the sole aim of forcing him to resign. The withdrawal of his resignation followed, according to the claim in paragraph 13, a request by USP for a refund (it is not stated for what). It remains an issue as to whether, absent that demand, the resignation would have been withdrawn at all. In that regard, reference should be had to an unnumbered paragraph of page 4 of Annexure DH beginning "I said if I need to pay backthen I was withdrawing my resignation."
8. That fact, together with the delay in seeking the recruitment process to be halted, does not present the applicant in the best light. The claim is at an early stage, no findings have been made or even required, but on its face, given the breakdown of relations between what



would be two senior officers within the Law Faculty at USP, the likelihood of an order for re-instatement, given the *dicta* from the Court of Appeal in *Republic of Vanuatu v Letlet* 2016 VUCA 36, looks distant. In particular see paragraph 21 of Annexure DH to the sworn statement of the applicant

9. The application for relief is refused with costs ordered to be paid the Applicant of VT 60,000.

DATED at Port Vila this 21st day of June, 2021

BY THE COURT

E.P. Goldsbrough

E.P. Goldsbrough

Judge of the Supreme Court

