

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

Civil
Case No. 21/1465 SC/Civil

BETWEEN: Franko Yanko Wilson
Claimant

AND: Milae Vanuatu Limited
Defendant

Before: Justice Oliver A. Saksak

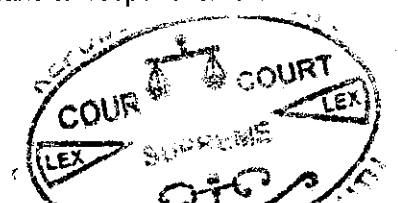
Counsel: Mr Lent Tevi for the Claimant
Mr Sakiusa Kalsakau for the Defendant

Date of Hearing: 4th October 2023
Date of Judgment: 16th August 2024

JUDGMENT

Introduction and Background

1. Judgment is hereby entered in favour of the claimant.
2. The claimant sued the defendant for unlawful termination of his employment. He was employed under a contract of employment dated 9th November 2015. In or about May 2021 the defendant sent an email to the claimant informing him that his employment had been terminated. The reason provided for the termination was first that he had made sworn statements one being in favour of David Russet and the other for Milae (Vanuatu) Ltd (defendant) were inconsistent. Second, that he was given an option to withdraw the statement in support of David Russet but did not do so.
3. The claimant suffered loss and claimed damages as follows:-
 - a) 3 months of his unexpired contract- VT 360,000 at VT 120,000 per month.
 - b) Severance payment at VT 120,000 x 5 years= VT 600,000.
 - c) Annual leave (outstanding for 2020 and 2021) = VT 94,090
 - d) Damages for unjustified termination- VT 4,696,360
 - e) Compensation for use of personal vehicle – VT 5,040,000
 - f) Damages- VT 200,000
 - g) Interest at 10% per annum
4. The defendant filed a defence on 2nd June 2021 denying liability. They admitted termination but said it was done after several opportunities were given to the claimant to respond to the



allegation made against him but he never did. Further the defendant said the termination was made because the claimant had produced a sworn statement in support of David Russet who had sued the defendant in another proceeding without Milai's consent. They denied the termination was unlawful or unjustified.

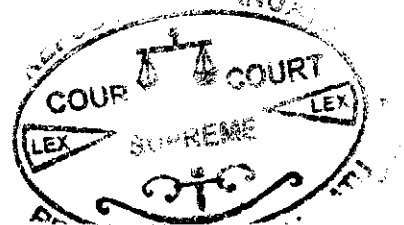
5. At the hearing by video-link on 4th October 2023 the claimant gave oral evidence relying on his two sworn statements dated 31st August 2021 (Exhibit C1) and of 16 February 2022 (Exhibit C2). He was cross-examined by Mr Kalsakau on these.
6. Chang Hoon Lee, also known as Nicholas Lee as owner of the defendant company gave oral evidence and relying on his sworn statement dated 8 December 2021 (Exhibit D1). He was cross-examined by Mr Tevi.

Discussion

7. At the end of the trial hearing on 4th October 2023 Counsel asked for time to file written submissions and agreed to 14 days for the claimant and 14 days thereafter for the defendant.
8. Mr Tevi filed written closing submissions on 31st October 2023. The defendant did not file any written submissions and despite reminders through emails by the Court, Mr Kalsakau in his email dated 12th July 2024 requested a final opportunity be afforded to 19 July 2024. No submissions had been received from the defendant by that date. This judgment is issued without the defendant's submissions.

The Issues

9. First whether or not the claimant's termination by the defendant was unlawful and/ or unjustified? The answer is "Yes",
The defence and evidence by the defendant's witness, Mr Lee that it was due to the claimant making two inconsistent statements without their consent is insufficient and inadequate to be reasons for termination.
10. The first statement is annexure " NL1" dated 22 May 2020 signed by the claimant and witnessed by Joseph Lee. It is not properly titled and is not filed with a Supreme Court stamp. The second statement annexed as " NL2" which is stamped and dated 10 November 2020. It is properly titled in the Supreme Court of Vanuatu in Civil Case No 20/780 naming David Russet as claimant and Chang Hoon Lee and Milae Ltd as first and second defendants. It is Headed " SWORN STATEMENT OF YANGO WILSON.
11. The claimant's statement makes confirmations throughout. He made the statement as Chief Stockman of the defendant company. The Heading does not indicate that it is a statement made by him in " support of David Russet". It is a statement purely making confirmations of information known by him as chief stockman for the company. He made the statement with neutrality not in support of the claimant in CC 20/780. If he did not provide the confirmations, who else would? Taking out the "NL1" statement, there was no inconsistency as alleged by the



defendant's owner Mr Lee. There was no evidence from Mr Lee that he had seen Mr Russet's statement to assist him make the conclusion of consistency. There was no inconsistency.

12. The claimant had in good faith as the chief stockman of the company under David Russet's Management was in the best position to make the confirmative evidence he did in his sworn statement dated 10 November 2020. His action could not be taken or deemed as misconduct contrary to what Mr Lee thought. Section 50 (2) of the Employment Act [CAP 160] specifies three actions which cannot be deemed to constitute misconduct by an employee which are-

" a) trade union membership or participation in trade union activities outside working hours, or with the employer's consent during working orders.

b) Seeking office as, or acting in the capacity of an employee's representative.

c) the making in good faith of a complaint or taking part in any proceedings against an employer"
(my emphasis)

13. The claimant's part in Civil Case 20/780 was only as a witness by being a deponent of a sworn statement making confirmations. By those confirmations the claimant was maintaining a neutral position as Chief Stockman for the company who served as such under Mr Russet as Manager and also under Mr Lee.

14. I accept Mr Tevi's submission that the claimant is protected under section 50(2) (a) of the Employment Act.

15. His termination therefore by the defendant in May 2021 was unlawful and unjustified.

16. Second, whether or not notice should have been given?

The answer is " Yes"

From the evidence the claimant was employed under a contract of 5 years. He had 3 months remaining when he was unlawfully terminated. He was entitled to a notice prior to termination. Section 49 of the Employment states:

"49. Notice of termination of contract

(1) A contract of employment for an unspecified period of time shall terminate on the expiry of notice given by either party to the other of his intention to terminate the contract.

(2) Notice may be verbal or written, and, subject to subsection (3), may be given at any time.

(3) The length of notice to be given under subsection (1) –

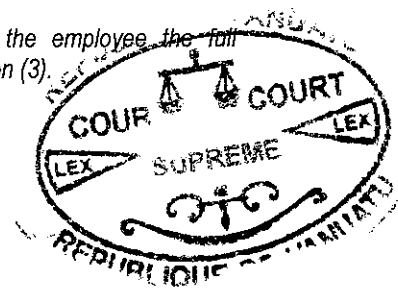
(a) where the employee has been in continuous employment with the same employer for not less than 3 years, shall be not less than 3 months; (emphasis added)

(b) in every other case –

(i) where the employee is remunerated at intervals of not less than 14 days, shall be not less than 14 days before the end of the month in which the notice is given;

(ii) where the employee is remunerated at intervals of less than 14 days, shall be at least equal to the interval.

(4) Notice of termination need not be given if the employer pays the employee the full remuneration for the appropriate period of notice specified in subsection (3).



17. I accept Mr Tevi's submissions that the claimant is entitled to be paid his 3 months in lieu of notice under section 49 (3) (a) of the Employment Act at VT 120,000 per month. The total amount of his entitlement is VT 360,000 as claimed.
18. It was the claimant's claim also that he is still owed a monthly salary of VT 120,000. There is nothing in the defendant's defence and evidence denying those entitlements which included severance at VT 600,000 and annual leave at VT 94,090. These are allowed.
19. Third, whether or not the claimant is entitled to compensation for use of his personal vehicle? The answer is "No". There is no sufficient evidence by the claimant regarding the agreement or arrangement about the use of the vehicle. This part of the claim is disallowed.
20. Fourth, whether or not the defendant breached the contract of employment? The answer is "Yes". The claimant is therefore entitled to damages for unlawful and unjustified termination. The claimant is entitled to a multiplier of three times his severance allowance which is VT 600,000 x 4 = VT 2.400.000.

The Result

21. The claimant is successful in his claims and judgment is accordingly entered in his favour for the following amounts-

a) 3 month's notice	VT 360,000
b) Damages for unexpired term of contract	VT 360,000
c) Outstanding wages	VT 120,000
d) Annual leave outstanding	VT 94,090
e) Severance allowance x 4	VT 2,400,000
TOTAL	VT 3,334,090
22. The claimant is entitled to interest on VT 3, 334,090 at 5% per annum from the date of filing of the proceeding on 7th May 2021 until the judgment is settled in full.
23. Finally the claimant is entitled to his costs of and incidental to the action on the standard basis as agreed or taxed.

DATED at Port Vila this 16th day of August 2024

BY THE COURT



Hon. OLIVER A SAKSAK

Judge

