

**BETWEEN: GORDON JOHN ARNHAMBAT**

*Claimant*

**AND: THE REPUBLIC OF VANUATU**

*Defendant*

**Date of Hearing:** 16<sup>th</sup> November 2023

**Date of Decision:** 26<sup>th</sup> March 2024

**Before:** Justice Oliver A Saksak

**Counsel:** Mr Jerry Boe for the Claimant  
Mr Freddie Bong of the State Law Office for the Defendant

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## **JUDGMENT**

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### **Introduction**

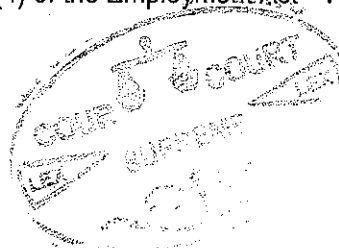
1. This is a claim for damages for unjustified termination of the claimant's contract employment to the position of the National Co-coordinator of the Land Management unit within the Department of Lands under the Ministry of Lands of The Government of the Republic of Vanuatu.

### **Facts**

2. The claimant asserts that he was appointed by the Public Service Commission on 13<sup>th</sup> February 2023 to the position of National Co-ordinator.
3. He was appointed at the salary scale of P8.1 with an annual salary of VT 2,693,000. The appointment was to have been for 3 months from 14<sup>th</sup> February 2023 to 14<sup>th</sup> May 2023.
4. The claimant's appointment was terminated by a letter dated 10<sup>th</sup> March 2023.

### **Claims**

5. The claimants claims his termination was unjustified and claims for-
  - a) Unpaid salaries from 14<sup>th</sup> February 2023 to 14<sup>th</sup> May 2023- VT 673,248 calculated at VT 224,416 per month.
  - b) A multiplier of 6 times pursuant to section 56 (4) of the Employment Act= VT 1,346,248
  - c) 3 months notice – VT 673,248.



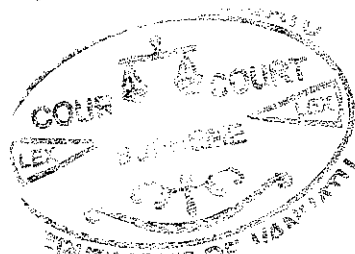
- d) Annual Leave- VT 244,416.
- e) Contributions to the National Provident Fund.
- f) Interest at 10% per annum.
- g) Costs in the sum of VT 100,000.

### Defence

- 6. The defendant filed a defence on 9<sup>th</sup> October 2023. Whilst they acknowledged the letter of 13<sup>th</sup> February 2023, concerning the claimant's appointment to the post of National Co-coordinator with a salary scale of PS 8.1 from 14<sup>th</sup> February to 14 May 2023 with an annual salary of VT 2, 693,000 and that it was an appointment of 3 months, the defendant asserts that the letter was merely an approval by the Public Service Commission ( the PSC). They asserted further that following another letter dated 15<sup>th</sup> February 2023 sent to the claimant informing that a contract of employment would be signed by both parties after the PSC had deliberated on information relating to the claimant's past employment and record of conviction.
- 7. It was the defence of the State also that because the claimant was convicted in the Magistrate's Court in Criminal Case No. 1404 of 2017, the PSC was made aware and took another decision on 9<sup>th</sup> March 2023 to revoke the claimant's appointment to the position of National Co-ordinator.
- 8. The defendant asserted that because the PSC and the claimant never signed any employment contract, the claimant is not entitled to any reliefs that he is claiming for.

### Evidence

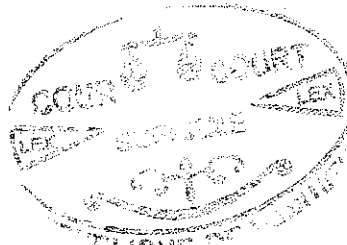
- 9. The claimant filed evidence in support of his claims on 11<sup>th</sup> September 2023. He relied on the letter of 13 February 2023 annexed as "GJA1". He was terminated on 10<sup>th</sup> March 2023 and annexed the letter as "GJA2". He confirms he did not receive any salaries from 14<sup>th</sup> February to 14<sup>th</sup> May 2023.
- 10. The claimant relies also on his reply to the defendant's defence filed on 26<sup>th</sup> October 2023 whereby amongst others the claimant contends that his sentence in Criminal Case No. 17/1404 lapsed on 20<sup>th</sup> September 2020 and as such it could not have been taken and utilized against his appointment, thus making his termination unjustified.



11. The defendant filed evidence in support of their defence on 18<sup>th</sup> December 2023 by sworn statement of Jonathan lavere. He annexes the letter of PSC dated 13<sup>th</sup> February 2023 as " JI2", the verdict Crc 17/1404 in the Magistrates Court as " JI2", the advice by the Attorney General dated 29<sup>th</sup> September 2017 as " JI4", a letter by the Acting Director General of Justice dated 2<sup>nd</sup> October 2017 as ' JI5", the memorandum from the secretary of PSC to the chairman and members of PSC dated 9<sup>th</sup> March 2023 as " JI6", and finally the letter dated 10<sup>th</sup> March 2023 from the secretary of PSC to the claimant as " JI7" by which the claimant was advised his appointment had ceased following the PSC decision made a 9<sup>th</sup> March 2023.
12. At a conference hearing on 16<sup>th</sup> November 2023 Mr Boe and Mr Bong agreed that facts are not undisputed, however subject to Counsel filing responding evidence by sworn statements and submissions, that the Court would determine the legal issues on the papers.
13. The claimant filed his written submissions on 8<sup>th</sup> November 2023 prior to the conference on 16<sup>th</sup> November 2023. He filed supplementary submissions in response to the defendant's submissions on 19<sup>th</sup> February 2024 after the defendant had filed written submissions on 13<sup>th</sup> February 2024.
14. The claimant submitted in his supplementary submissions that the sworn statement of Jonathan lavre should be disallowed because it was filed not in compliance with the orders of the Court. However the documents disclosed in that sworn statement are helpful to the Court to have a full picture and comprehension of the circumstances behind the claimant's case. In any event there has been no formal application made by the claimant for the Court to make an order declaring the evidence to be ineffectual under Rule 18.10 (2) (c) of the Civil Procedure Rules. That submission is therefore rejected.

## Discussion

15. I turn now to deal with the legal issues. First is whether or not the claimant was legally and formally appointed as the National Co-ordinator?
16. The claimant argued and submitted that the appointment of the claimant made on 13<sup>th</sup> February 2023 by the PSC amounted to a contract and that it was a valid appointment. Terminating the contract without giving any reasons on 10<sup>th</sup> March 2023 was a breach of



section 15 of the Public Service Act which requires that the Members of the PSC have a duty to act as a good employer in the performance of their functions, responsibilities and duties.

17. It was submitted by the claimant that the PSC had failed to perform its duties as a good employer to perform its major function under section 8 of the Public Service Act and to give proper notice in accordance with sections 49 and 56 (4) of the Employment Act. As such the termination of the claimant was unjustified thus making the claimant entitle to severance payment of up to 6 times.
18. The defendant submitted that there was no contract and that the appointment made by the PSC was terminated because of the criminal conviction of the claimant and validly made pursuant to section 29A of the Public Service Act ( as awarded).
19. The evidence of the claimant annexed as ' GJA1' and the defendant annexed as "J11" is the contract. It is a latter dated 13<sup>th</sup> February 2023 to the claimant as follows-

*" Mr Gordon John Arnhambat  
C/ - Customary Land Management Officer  
Port Vila*

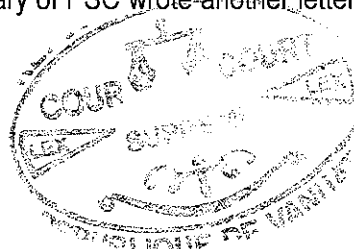
*Dear Mr Arnhambat  
APPROVAL OF CONTRACT (Sic) EMPLOYMENT AS  
NATIONAL CO-ORDINATOR – CLMO  
I am pleased to inform you that the Commission at its meeting No. 2 of 01<sup>st</sup>  
February 2023, decision No. 09 has approved your contract (sic) employment  
as stated below with effect from 14<sup>th</sup> February 2023 to 14<sup>th</sup> February 2023.*

*Post Title: NATIONAL CO-ORDINATOR  
Unit: CUSTOMARY LAND MANAGEMENT OFFICE  
Ministry: JUSTICE  
Salary Scale: Ps. 8.1  
You will be remunerated with an annual salary equivalent to VT 2,693,000.*

*Yours Sincerely,  
James Melteres ( signed)  
Secretary  
Office of the Public Service Commission*

*Copies: DG- Ministry of Justice  
HR- Manager- Justice  
Salary Section- MFEM  
PF/ Chrno..."*

20. Two days later on 15<sup>th</sup> February 2023 the secretary of PSC wrote another letter to the claimant as " J12"



*“ Mr Gordon John Arrhambath  
C/- Customary Land Management Office  
Port Vila*

*Dear Mr Arrhambath,  
CONTRACT (sic) EMPLOYMENT AS NATIONAL CO-ORDINATOR – CLMO*

*In reference to your letter dated 13<sup>th</sup> February 2023, this letter is served to inform you that we have information's about your previous employment in which it is our obligation to provide to the commission as part of our due diligence.*

*Therefore we advise that your contract (sic) employment will only be signed by both parties once the commission ( PSC) deliberates on the information's given.*

*Thankyou for your patience in regards to the above.*

*Yours Sincerely,*

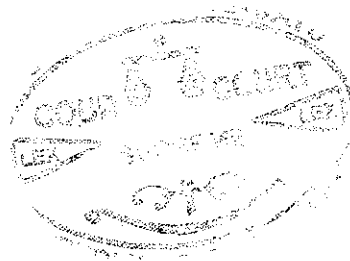
*James Melteres (signed)*

*Secretary*

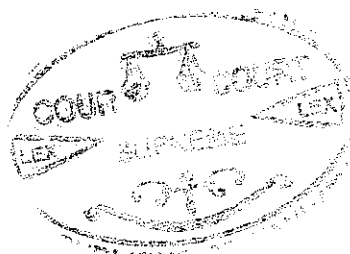
*Office of the Public Service Commission*

*Cc: CLMO- Manager  
Chrono”*

21. Decision No. 9 referred to in the Secretary's letter of approval of contract dated 13<sup>th</sup> February 2023 was not disclosed by the defendant. But what is plain and obvious is that the letter of 13<sup>th</sup> February 2023 was the contract of employment. It stated the PSC's approval of it, its effective date being 14<sup>th</sup> February 2023, its post title, office and Ministry and the salary to be paid. The letter is in all respect a contract of employment.
22. That letter could have informed the claimant what the Secretary purported to do in his letter of 15<sup>th</sup> February 2023. The letter of 15<sup>th</sup> February 2023 refers to "due diligence."
23. Section 15 of the Public Service Act places a duty on the PSC to act as a good employer. That in my view includes the duty to pay due diligence to all relevant information before considering to approve an appointment to a position within the Public Service.
24. In this case the letter written by the Secretary on 15<sup>th</sup> February 2023 indicates clearly that the approval made by PSC on 2<sup>nd</sup> February 2023 was made without the PSC having regard to the claimant's previous conviction in the Magistrate's Court in September 2017. The letter shows the approval for the claimant's contract of employment was made without due diligence and that failure was a breach of PSC's duty to act as a good employer.



25. The second letter by the Secretary dated 15<sup>th</sup> February 2023 is questionable as to its proper basis because it appears the Secretary has included himself as a member of the Commission when he is not. The letter was not copied to all the addressees of the original letter of 13<sup>th</sup> February 2023.
26. I therefore find and I am satisfied that the claimant was validly, legally and formally appointed as the National Co-ordinator to the Lands Management Unit by his letter of 13<sup>th</sup> February 2023. That letter was the contract of employment from 14<sup>th</sup> February 2023 to 14<sup>th</sup> May 2023, a period of 3 months.
27. The second issue. Was the contract properly terminated? The claimant submitted his termination was unjustified. The defendant submitted the termination was lawfully made relying on section 29A (1) of the Public Service Act which states-
- "29A Dismissal for Criminal Conviction  
(1) Subject to subsection (2) the commission may dismiss an employee who is convicted of a criminal offence."*
28. Defence Counsel omitted to refer to subsection (2) which states-
- "A dismissal is to be made in accordance with the provisions of this Act and the Regulations as if the Criminal Offence were a disciplinary offence."*  
( my emphasis)
29. Section 36 of the Act provides for disciplinary matters which a public servant may be charged and brought before the Disciplinary Board for a hearing under section 37 of the Act.
30. In the claimant's case I find no evidence that he was formally charged and summoned to appear before a Disciplinary Board to answer the charge made against him.
31. I therefore find the claimant's termination by the PSC by its Flying Minutes or Decision dated 9<sup>th</sup> March 2023 to be an unjustified termination.
32. The claimant's contract of employment was for a fixed period of 3 months from 14<sup>th</sup> February 2023 to end on 14<sup>th</sup> May 2023. The termination by PSC was unjustified, if not unlawful because of non-compliance with sections 36 and 37 of the Public Service Act.



33. The claimant had been in employment from 14<sup>th</sup> February 2023 and was entitled to his salaries calculated at VT 224,416 per month. He must entitled to his salaries for 3 months. Section 48 of the Employment provides that a contract of employment shall terminate on the last day of the period agreed in the contract. For the claimant the date agreed for the contract to end was 14<sup>th</sup> May 2023. For 3 months he was entitled to VT 673,248.

34. The claimant is entitled to a 14 days notice pursuant to section 49 (3) (i) of the Employment Act. That amount is VT 112,208.

35. For severance and multiplier the claimant is entitled to severance and to a multiplier of 6 times for unjustified termination. His contract was for 3 months therefore section 56 (2) (a) of the Employment excludes him from claiming 56 (2)(a) of the Employment excludes him claiming a 1 month salary but one-twelfth of his monthly salaries which is VT 18,701 x 6 = VT 112,206.

36. I therefore enter judgment in favour of the claimant. His entitlements are-

a) 3 months salaries	VT 673,248
b) 14 days Notice	VT 112,208
c) Severance x 6	VT 112,206
TOTAL	VT 897,662

37. The claimant is entitled to interest on VT 897,662 at 10% per annum from 9<sup>th</sup> March 2023 to date of judgment.

38. Finally the claimant is entitled to his costs fixed at VT 100,000.

**DATED at Port Vila this 26<sup>th</sup> day of March 2024  
BY THE COURT**

.....  
**Hon. Oliver A Saksak  
Judge**

