

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 23/3499 COA/CIVA

BETWEEN: **CHARLEY KALOMALA**
First Appellant

AND: **MARTHA SAMUEL CHARLEY**
Second Appellant

AND: **ANNIE RUBIE KALOMALA**
Third Appellant

AND: **ANGELA JAMES KALOMALA**
Fourth Appellant

AND: **TEOUMA HOLDINGS LIMITED**
First Respondent

AND: **MOALA FARM LIMITED**
Second Respondent

AND: **TERRENCE JOHN KERR** also known as Terry Kerr
Third Respondent

AND: **CLARENCE LAVINIYA NGWELE**
Fourth Respondent

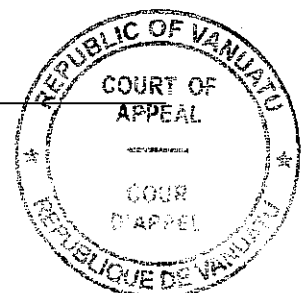
Date of Hearing: 7th May 2024

Before: *Hon Chief Justice V. Lunabek*
Hon. Justice J.W. von Doussa
Hon. Justice R. Asher
Hon. Justice O.A. Saksak
Hon. Justice D. Aru
Hon. Justice E.P. Goldsbrough

Counsel: *E. Molbaleh for the Appellants*
A.E. Bal for the Respondents

Date of Judgment: 17th May 2024

JUDGMENT OF THE COURT



Introduction

1. This is an appeal from a decision of the Court below of 4 December 2013 determining quantum of damages on a claim for termination of employment.

Background

2. Charley Kalomala , Martha Samuel Charley, Annie Rubbie Kalomala and Angela James Kalomala now the appellants are all residents of Takara area at North Efate. They were employed by the respondents and allocated certain tasks to look after a property at the Takara area bought by the first respondent, Teouma Holdings Limited.
3. After some time due to financial difficulties, Ms C Ngwele, the fourth respondent ceased paying them in 2013, but the appellants allege that their employment continued until September 2017 when Ms Ngwele told them they might be called back to work when the First Respondent's financial situation improved. The appellants challenged their termination and filed a claim on 19 July 2018 claiming non-payment of their entitlements under their contracts of employment and their VNPf benefits up to September 2017. The claim was later amended and an amended claim was filed on 24 February 2022.
4. The relief sought in the amended claim was for payment of the appellants' severance entitlements; outstanding salaries, damages for unlawful termination, annual leave and general damages.
5. No defence was filed within the required time frame after service of the claim. Hence a default judgment was entered on application for damages to be assessed.

The Decision

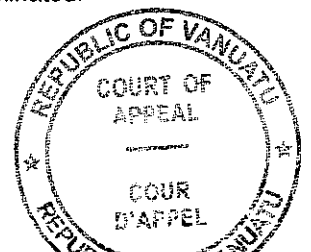
6. The primary judge found and accepted that the appellants were all employed by Ms Ngwele alone and not the other respondents and that the appellants did not resign but were terminated by Ms Ngwele in 2013 when she ceased paying them wages.
7. Judgement was then entered in favour of the first, second and third appellants in respect of their claims for severance in the following amounts:

C. Kalomala - VT 374,963

M. S. Charley - VT 57,200

A.R. Kalomala - VT 19,067

8. The fourth appellant, A J Kalomala was not awarded any severance entitlement as the Court found she had only worked for less than 12 months before her employment was terminated.



9. The claims for outstanding salaries, annual leave and damages were dismissed.

The Appeal

10. In their notice of appeal filed on 20 December 2023, the appellants assert that they were appealing part of the decision in relation to quantum namely that the amounts of severance awarded were too low; that the fourth appellant was not awarded her claim for severance; and that their claims for outstanding salary, outstanding leave and damages were not granted.

Discussion

11. The primary judge considered and accepted evidence filed by the parties where there was common ground. Ms Ngwele filed evidence on behalf of the respondents on 3 November 2022. Her evidence was unchallenged. No evidence was filed in reply and Mr Molbaleh confirmed in his oral submissions that Ms Ngwele was not cross examined. Ms Ngwele gave detailed evidence relating to each appellant's period of employment and how they were paid and provided copies of all their pay roll from the date they began their employment up to the date of their termination.
12. In accepting Ms Ngwele's unchallenged evidence, the primary judge found in relation to each appellant as follows:

C Kalomala

13. He was employed from 1 June 2007 to February 2009 on a daily rate of VT1,000 per day .From March 2009 to November 2012 he was receiving a monthly salary of VT 60,000. From December 2012 to August 2013 he was on a daily rate basis of VT2,727 per day. He was not employed after August 2013. Although he was around the Takana property after that time he was not employed to be there. His total period of employment from 1 June 2007 to 31 August 2013 was 6 years 3 months. At the date of termination he was paid on a daily rate of VT2,727 per day.

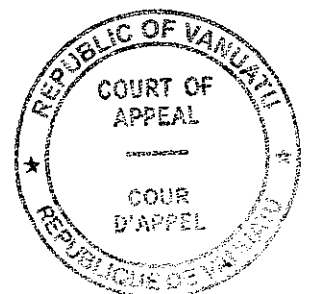
M S Charley

14. She was employed from 1 June 2010 to 31 August 2013. Her total period of employment was 3 years 3 months on a daily rate basis of VT 800 per day until her employment was terminated.

A R Kalomala

15. She was employed from 1 August 2012 to 31 August 2013. Her total period of employment was 1 year 1 month on a daily rate basis of VT 800 per day until her employment was terminated.

A J Kalomala



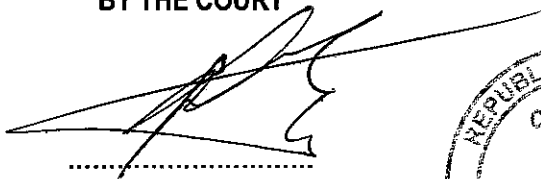
16. She was employed from 1 September 2011 to 31 July 2012. Her total period of employment was 10 months at a daily rate of VT 800 per day until her employment was terminated.
17. We agree with the primary judge that A J Kalomala was not entitled to any severance under s54 (1) a) of the Employment Act [CAP 160] as she only worked for a period of 10 months. Her employment was terminated in 2012.
18. On the findings made as to the rates of pay when the employment of the other appellants came to an end in 2013, the calculation of the severance payments due to these appellants was correct.
19. The first, second and third appellants were terminated in 2013. When the claim was initially filed, some 5 years had lapsed. The amended claim which specifically sought payment of outstanding salaries and annual leave was filed some 9 years later. Even if the appellant's employment had continued until September 2017 their claims were still made outside the 3 years time limit for claiming unpaid remuneration. We agree with the primary judge that the claims for outstanding salaries and annual leave were statute barred. The primary judge also found that there was no evidence that the appellants' terminations were unjustified, and therefore there was no basis for an award of damages. We agree.

Result

20. The appeal is therefore dismissed.
21. The respondents are entitled to costs fixed in the sum of VT 50,000.

DATED at Port Vila this 17th day of May 2024

BY THE COURT


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Hon. Chief Justice Vincent Lunabek

