

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

Civil Appeal
Case No. 24/1305 COA/CIVA

BETWEEN: **REPUBLIC OF VANUATU**
Appellant

AND: **GORDON JOHN ARNHAMBAT**
Respondent

Date of Hearing: 6 August 2024

Coram: *Hon. Chief Justice V. Lunabek*
Hon. Justice J. Mansfield
Hon. Justice R. Young
Hon. Justice D. Aru
Hon. Justice V.M. Trief
Hon. Justice E.P. Goldsbrough

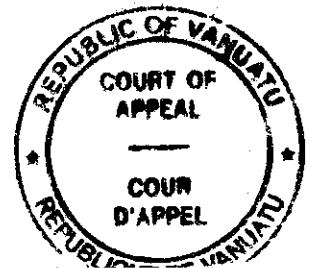
Counsel: *F. Bong for the Appellant*
J. Boe for the Respondent

Date of Judgment: 16 August 2024

JUDGMENT OF THE COURT

A. Introduction

1. On 13 February 2023, the Public Service Commission ('PSC') appointed the respondent Gordon John Arnhambat to the position of National Coordinator of the Custom Land Management Office ('CLMO') for a fixed term of 3 months (14 February 2023 to 14 May 2023).
2. Two days later, the PSC informed Mr Arnhambat that it had received some information about his previous employment therefore his contract of employment would only be signed after the PSC had deliberated on the information received. That information related to Mr Arnhambat's two criminal convictions in 2017 and his suspended sentences of 3 years 3 months imprisonment and 2 years imprisonment.
3. By letter dated 10 March 2023, the PSC terminated Mr Arnhambat's employment with effect from 9 March 2023. The PSC said that because there was no signed contract between the parties, no contract of employment had been completed.



4. Mr Arnhambat subsequently sued the appellant State for outstanding salary, annual leave, payment in lieu of notice of termination, VNPF contributions, damages for his unjustified termination, interest and costs. The parties filed sworn statements after which counsel agreed that the facts were undisputed therefore the Court should determine the legal issues on the papers.
5. By judgment dated 26 March 2024, the Supreme Court found that Mr Arnhambat's termination was unjustified and entered judgment in his favour for VT673,248 three months' salary, VT112,208 14 days' notice of termination and VT112,206 severance multiplier (total VT897,662) as well as interest and costs: *Arnhambat v Republic of Vanuatu* [2024] VUSC 42.

B. Appeal Grounds and Submissions

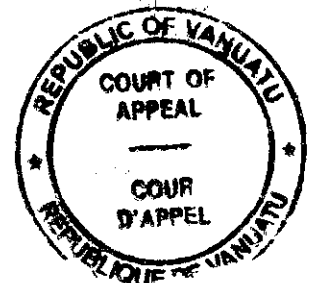
6. The State submitted the primary Judge erred in awarding Mr Arnhambat 3 months' salary, 14 days' notice and severance multiplier. The PSC and Mr Arnhambat did not have a completed contract because the contract had to be signed by both parties. This had not occurred. Mr Bong also submitted that notice of termination of contract applied only to contracts for an unspecified period of time: s. 49 of the *Employment Act* [CAP. 160] therefore no payment in lieu of notice was payable. Finally, that Mr Arnhambat had not carried out any work therefore he was not entitled to salary or notice of termination. He was never remunerated therefore he was not entitled to notice of termination or severance.
7. Mr Boe submitted that there was a contract between the parties and that the Supreme Court was correct to find that Mr Arnhambat's contract had been unjustifiably terminated. He submitted that Mr Arnhambat was entitled to salary for the duration of the contract, citing *Vanuatu Maritime Authority v Timbacci* [2005] VUCA 19 and *Republic of Vanuatu v Watson* [2023] VUCA 31. He submitted that given the circumstances of the termination, the primary Judge was correct to have awarded a six-times multiplier in respect of severance payment and payment in lieu of notice of termination.

C. Discussion

8. The PSC stated the following in its letter to Mr Arnhambat dated 13 February 2023:

I am pleased to inform you that the Commission at its meeting No. 02 of 1st February 2023, decision No. 09 has approved your contract employment as stated below with effect from 14th February 2023 to 14th May 2023.

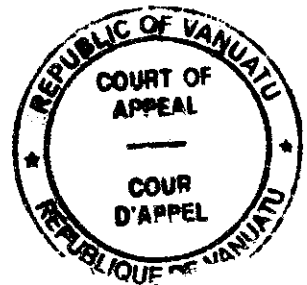
Post Title: NATIONAL COORDINATOR
Unit: CUSTOMARY LAND MANAGEMENT OFFICE
Ministry: JUSTICE



Salary Grade: PS. 8.1

You will be remunerated with an annual salary equivalent to VT2,693,000.

9. By its letter, the PSC informed Mr Arnhambat of his appointment as National Coordinator of the CLMO, the 3-month term of his contract and his salary grade. This was accepted by Mr Arnhambat. Therefore, the parties had a binding contract. When the PSC wrote 2 days later that it had just received new information and that Mr Arnhambat's contract of employment would only be signed after the PSC had deliberated on the information received, it was unilaterally attempting to change the terms of the contract by imposing a requirement for the parties to sign a contract before it came into force. It could not do so.
10. We are satisfied therefore there was a binding contract between the parties in terms of the letter dated 13 February 2023. Mr Arnhambat was therefore entitled to be paid for his contracted period of 3 months. The letter dated 10 March 2023 from the PSC which said that the Commission, "approved to cease your contract appointment with effect from 09th March, 2023," had no lawful effect. The PSC had no lawful basis to end the contract of employment they had entered into with Mr Arnhambat. Accordingly, there is no merit to the first ground of appeal.
11. As to notice of termination, s. 49 of the *Employment Act* provides as follows:
49. (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;*
- (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).

(5) If an employee fails to give the employer appropriate notice under this section, the employer may deduct from the employee's entitlements the sum required for the period of notice.

(our emphasis)

12. It is clear from subs. 49(1) of the *Employment Act* that notice of termination of contract applies only to contracts for an unspecified period of time. Mr Arnhambat's contract was for a 3-month fixed term therefore s. 49 did not apply. Mr Arnhambat was not entitled to 14 days' notice of termination or payment in lieu of notice. Accordingly, the primary Judge erred in awarding payment in lieu of 14 days' notice. The award of VT112,208 14 days' notice cannot stand.

13. As to severance allowance, para. 54(1)(a) of the of the *Employment Act* provides as follows:

"54. (1) Subject to section 55, where an employee has been in the continuous employment of an employer for a period of not less than 12 months commencing before, on or after the date of commencement of this Act, and –
(a) the employer terminates his employment; or
...

the employer shall pay severance allowance to the employee under section 56 of this Act.

(our emphasis)

14. Section 56 of the *Employment Act* provides as follows:

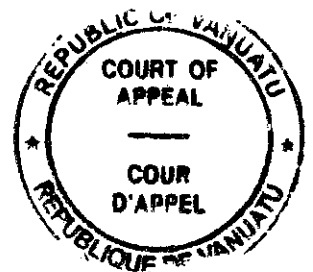
56. (1) Subject to the provisions of this Part, the amount of severance allowance payable to an employee shall be calculated in accordance with subsection (2);

(2) Subject to subsection (4) the amount of severance allowance payable to an employee shall be –

(a) for every period of 12 months – 1 months remuneration;

(b) for every period less than 12 months, a sum equal to one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the employee was in continuous employment.

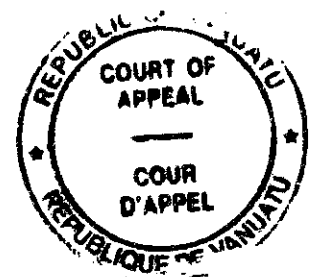
(3) Where remuneration is fixed at a rate calculated on work done or includes any sum paid by way of commission in return for services, the remuneration shall, for the purposes of this section, be



computed in the manner best calculated to give the rate at which the employee was being remunerated over a period not exceeding 12 months prior to the termination of his employment;

- (4) The court shall, where it finds that the termination of the employment of an employee was unjustified, order that he be paid a sum up to 6 times the amount of severance allowance specified in subsection (2);
- (5) Any severance allowance payable under this Act shall be paid on the termination of the employment;
- (6) The court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest, at a rate not exceeding 12 per cent per annum from the date of the termination of the employment to the date of payment;
- (7) For the purposes of this section the remuneration which shall be taken into account in calculating the severance allowance shall be the remuneration payable to the employee at the time of the termination of his employment.

15. A severance allowance is only payable where an employee has been in the continuous employment of an employer for a period of not less than 12 months and the employer terminates his employment: para. 54(1)(a) of the *Employment Act*. Mr Arnhambat was employed on a 3-month contract therefore s. 54 did not apply. Therefore he did not have any entitlement to severance allowance or to the multiplier pursuant to subs. 56(4) of the *Employment Act*. Accordingly, the primary Judge erred in awarding a six-times multiplier in respect of severance payment. That award also cannot stand.
16. We have found that this fixed-term contract was brought to an unjustified end. In such a situation, an employee can recover the balance of his or her contractual entitlements as set out in this Court's judgment in *Republic of Vanuatu v Watson* [2023] VUCA 31 at [36]-[38].
17. Mr Bong submitted that Mr Arnhambat had not carried out any work therefore he was not entitled to salary. As set out in the *Watson* case referred to above, the principle of no work, no pay was discussed and applied in the judgment of this Court in *Robertson v Luganville Municipal Council* [2001] VUCA 14. However, that case is distinguishable on its facts as it was not a fixed-term contract case. Accordingly, there is no merit to this ground of appeal and the primary Judge was correct to award payment of 3 months salary.
18. In the result, [34]-[37] of the judgment dated 26 March 2024 in respect of 14 days' notice and the six-times severance multiplier must be set aside but for different reasons than those contended by the State.



D. **Result**

19. The appeal is allowed in part.
20. Paragraphs 34-37 of the judgment dated 26 March 2024 are set aside and substituted by an order that judgment is entered in favour of the Respondent for VT673,248 (the 'judgment sum') and an order that the Appellant is to pay interest of 5% per annum on the judgment sum from 9 March 2023 until fully paid.
21. Even though the Appellant was partly successful on this appeal, it succeeded on matters of law that it should have raised with the primary Judge but did not. Accordingly, the Appellant is to pay the Respondent's costs of the appeal fixed at VT50,000 within 28 days.

DATED at Port Vila this 16th day of August 2024

BY THE COURT



Hon. Chief Justice Vincent Lunabek

