

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

Civil Case No. 46 of 2012

**BETWEEN:**      **ASSIAL ROLLAND & ORS**  
*First Claimants*

**AND:**            **PIO LETINE & ORS.**  
*Second Claimants*

**AND:**            **TEACHING SERVICE COMMISSION**  
*First Defendant*

**AND:**            **THE REPUBLIC OF VANUATU**  
*Second Defendant*

**AND:**            **THE SCHOOL COUNCIL OF LYCEE LAB**  
*Third Defendant*

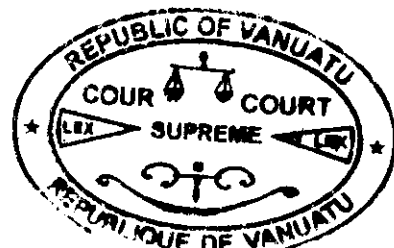
*Date of Hearing:*            *Friday, 2<sup>nd</sup> December 2016 at 10 am*  
*Date of Judgment:*        *Friday, February 3<sup>rd</sup>, 2017.*  
*Before:*                      *Justice JP Geoghegan*  
*In attendance:*            *Mr E Molbaleh for Claimants*  
                                      *Lennon Huri (SLO) for Defendants*  
                                      *Mr Willie Kapalu for Third Defendant*

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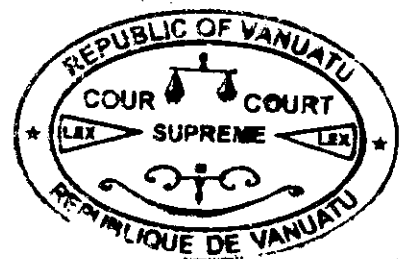
**RESERVE JUDGMENT**

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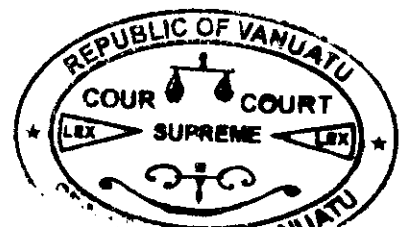
1. This judgment determines a summary judgment application issued in these proceedings by the first and second claimants against the defendants. The application is opposed by the defendants.



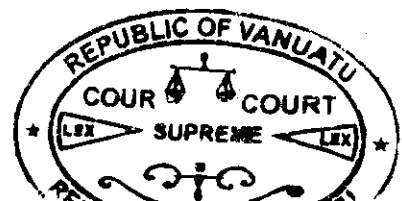
2. This application is unusual in the sense that the proceedings were first issued in 2012. The claimant's application was originally dismissed in the Supreme Court and then reinstated by the Court of Appeal. The proceedings are already the subject of copious documentation and a significant number of conferences. It is unusual for a summary judgment application to be made in such circumstances.
  
3. The summary judgment application itself has not been straight forward. It was originally set down for hearing on April 25<sup>th</sup> but could not proceed as no submissions in respect of the matter had been filed by Mr Molbaleh for the claimants. It was adjourned to a further summary judgment hearing on June 9<sup>th</sup>. At the hearing on June 9<sup>th</sup> it became apparent that there may be a degree of confusion around the participation of the third defendant ("Lycee LAB"). While it appeared that Lycee LAB had been earlier added to the proceedings as a defendant there were deficiencies regarding service of the proceedings which led me to make further directions in respect of the matter. This hearing was directed only after an attendance at a conference on August 29<sup>th</sup> by the President of the Lycee LAB School Council together with the Principal and Deputy Principal of Lycee LAB. It was apparent at that conference that the position of the school was that the school council did not employ the claimants and that the responsibility for employment of the teachers rests with the Teaching Service Commission.
  
4. The broad background of the matter is that the claimants who number 47 in total are all current or former teachers at Lycee Louis Antoine De Bouganville (Lycee LAB) School. That is a school which provides both junior and senior secondary education.



5. The first claimants, who constitute 44 of the 47 claimants allege that they have been teaching the senior classes at Lycee LAB but that rather than having been paid as senior secondary teachers in accordance with the Government Remuneration Tribunal ( GRT ) determination of 2005 they have been paid simply as secondary school teachers. Their claim is for the difference in salary between the two salary grades backdated to the date that the GRT determination came into force. They allege that sum to amount to Vt 44,661,526.
6. The second claimants allege that they were hired by the School Council of Lycee LAB in 2011. At that time they were University students and were employed to teach at a senior level when recruited. Their claim relates to the 2011 year only as it is accepted that since 2012 the State has paid their salary.
7. The position of the first and second defendants with reference to the position of the claimants is as follows:-
  - a) There is an applicable salary scale for secondary school teachers ranging from E03.5 to E04.0. Similarly there is a salary scale for senior secondary teachers ranging from E04.1 to E04.6.
  - b) The first claimants are entitled to the salary scale which is allocated to them based on their qualifications and pursuant to the GRT determination.
  - c) The second claimants had never been appointed by the first defendant pursuant to section 4 of the Teaching Service Act No. 38 of 2013 until 2012.



- d) As to the claim by the first claimants section 20 of the Employment Act [Cap. 160] provides that no proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates. Accordingly the only part of the first claimant's claim that is not statute barred by section 20 of the Employment Act are the claims for payments made after 2008 but that in any event such entitlements are denied.
- e) Despite the fact that the first claimants may have been teaching senior classes at different years at Lycee LAB they are not entitled to be paid at a higher salary scale as their qualifications do not meet the qualifications of that scale.
8. In a sworn statement in support of the first and second defendants, Mr Alexander Derek, the Chairman of the Teaching Service Commission acknowledged that the claimants have been teaching at Lycee LAB. He deposed that the first claimants have been paid according to the revised GRT determination of 2005 and in accordance with the regrading of their posts consequent upon that revised determination.
9. It is clear from the evidence that the first claimants are not all paid at the same salary scale, some being paid more than others. It is asserted by Mr Derek in his sworn statement that a number of the claimants are paid at senior level. Others are not.
10. Mr Derek deposed that:-
- ".....although the first claimants are entitled to their increments there was no recommendation made from the school management to the Teaching Service Commission in regards to the performances of the*

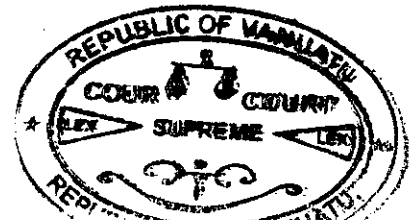


*first claimants because the increments can only be paid if the management is satisfied with work and performances of the first claimants”.*

11. A sworn statement was filed by the Chairman of the Lycee LAB School, Mr Jean Metmetsan outlining the position of Lycee LAB. The essential points raised in that sworn statement and asserted by Lycee LAB are as follows:

- a) The School Council is established to assist the Principal of the school in the administration and management of the school.
- b) The School Council has no power to recruit teachers and that is a function which can be performed only by the Teaching Service Commission and the Ministry of Education. Accordingly Lycee did not pay for the Teacher's salary and in any event is not in a position to do so.
- c) With reference to the second claimants it is normal practice in school administration to have teachers teaching in their schools and for them to advise the Teaching Service Commission of that fact in order that formal appointment can be made.
- d) The School Council has nothing to do with the fixing or payment of teacher's salaries.

12. In support of this position Mr Metmetsan annexed to his sworn statement a letter dated February 13<sup>th</sup> 2012 from the Director General of the Ministry of Education to the Chairman of the School Council with reference to the second claimants in these proceedings the letter records the following:-



*“(b) The following teacher taught at Lycee LAB last year (2011) but were paid by the School Council. The Teaching Service Commission will shortly make the formal appointments and be on Government payrolls. Any outstanding funds paid by the School Council to the teachers in 2011 would be reimbursed by the teachers once they are paid their outstanding salaries by the MOE.*

*(1) Cedrique Yalita*

*(2) Nirua Joel*

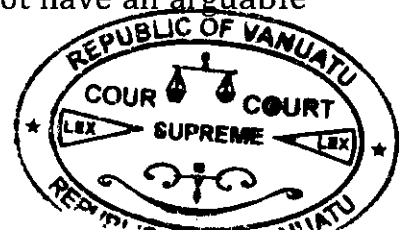
*(3) Lino Letine”*

13. It is conceded by Mr Molbaleh on behalf of the second claimants that there is no written contract between them and Lycee LAB. Mr Molbaleh submitted that one of the second claimant Cedrique Yalita has received no payment for the 2011 year while the other two claimants referred to above had “borrowed” money from the school council. There is no evidence that at any stage the school accepted any liability as employer of the second claimants.

14. An application for summary judgment is governed by rule 9.6 of the Civil Procedure rules. The Court may only grant summary judgment if pursuant to rule 9.6 (7) the Court is satisfied that:-

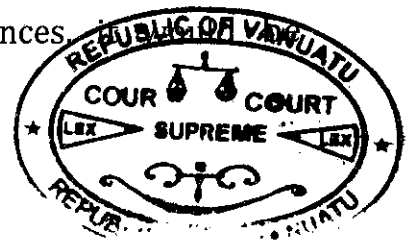
- a) The defendant has no real prospect of defending the claimant’s claim or part of the claim; and
- b) There is no need for a trial of the claim or that part of the claim.

15. With reference to the position of the first claimants I simply cannot be satisfied that the first and second defendants do not have an arguable



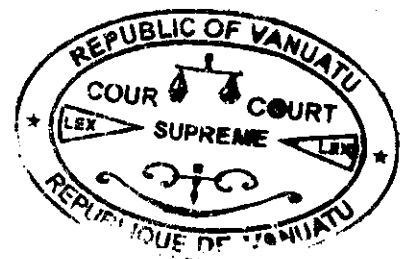
defence to this claim. It would appear that the allocation of various salary scales is not a simple mathematical exercise or one that is triggered by length of service alone. It also appears that there may need to be further information provided to the Commission by Lycee LAB to trigger any salary increase. These are matters properly explored at trial and it is appropriate that both the claim and defence are the subject of evidence, appropriate cross examination and submission.

16. In addition, as regards the first claimants there is the issue of the Limitation Act. That is very much a live issue and impacts upon different claimants in different ways.
17. Regarding the position of the second claimants I do not consider that the granting of summary judgment would be appropriate in these proceedings. Lycee LAB would certainly appear to have a clear defence in respect of the claim brought against it and there is a lack of clarity regarding the formal appointment of the second claimants by the first defendant which casts doubt on the liability of both the first and second defendants. The circumstances of the second claimant's appointment and the manner in which formal appointments of teachers are made would need to be the subject of cross examination and further submission. For these reasons the application for summary judgment in respect of the second claimants is dismissed.
18. In this case it could not be said that the defendants do not have an arguable defence. That should have been obvious in itself in the fact that these proceedings have now been before the Court for 4 years in some way shape or form. In such circumstances,



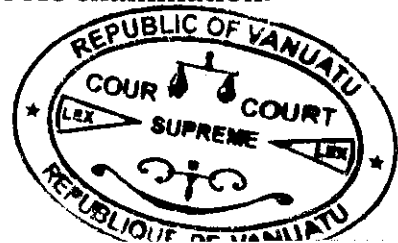
completely inappropriate for the Court to contemplate the entry of summary judgment against the defendants. If anything, the only thing that has been achieved is an unnecessary delay in progressing the matter.

19. For these reasons the application for summary judgment is dismissed.
20. That does not mean, however, that the claimants do not have a good claim. In the case of Mr Yalida there appears to be an undisputed position that he has taught for a period of 12 months without remuneration of any kind. That position does not reflect well upon any of the defendants in these proceedings. That does not mean however that summary judgment should be entered against them.
21. These proceedings have been on foot since 2012. They have no doubt involved all parties in very considerable cost without any progress having been made. These are not proceedings which lend themselves to easy resolution in the context of a Court hearing and there is no doubt in my view that there will be significant further delay and costs to all parties if urgent consideration is not given by them to the prospect of resolving these proceedings in another simpler and more cost effective way. I would strongly urge the parties and their counsel to consider the possibility of mediation. Such a process would not necessary mean that all 47 claimants would have to be present and it may well be that the claimants are prepared to provide authority to some of their number to settle the proceedings on their behalf. I would strongly urge the parties to give that serious consideration.






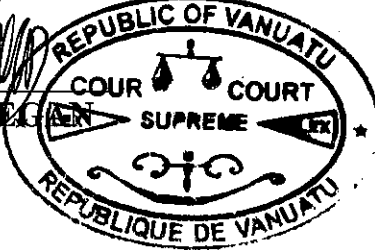
22. By way of observation some aspects of this case are very clear. No issue appears to be taken with the fact that the claimants have actually been engaged in teaching at a senior level. Putting aside the issue of appropriate qualifications, what seems clear is that the claimants, at the specific request of one or more of the defendants have undertaken teaching at a senior level. Looking at the overall justice of the matter one might therefore wonder why a responsible employer might request its staff to teach at a senior level but then decline to pay a salary of that level.
23. While these are matters which will ultimately have to be determined by the Court it seems to me that the State has some responsibility to endeavour to resolve this matter in a manner which brings the proceedings to an end and enables the claimants to focus on their teaching duties rather than litigation. I would urge the parties and in particular the first and second respondent to do what they can and to endeavour to resolve the matter by way of agreement.
24. As to costs, I would normally direct that the unsuccessful party pay costs however this is an unusual case and I am therefore inclined to simply reserve costs pending the final outcome of the proceedings. I am prepared to hear further from counsel regarding this issue if they require.
25. In the meantime and in order to progress this matter to a hearing I adjourn the proceedings to a pre-trial conference in my chambers at 2 pm on Monday April 10<sup>th</sup>. All counsel are to be in a position to advise me as to the estimated length of the trial, any further interlocutory direction sought and the witnesses required for cross examination.



Dated at Port Vila, this 3<sup>rd</sup> day of February 2017

BY THE COURT

  
JP GEOGHEGAN  
Judge



The seal is circular with the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. In the center, it features a scale of justice and the word "SUPREME" flanked by two triangles containing the letters "COUR" and "COUR".