

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

**Civil
Case No. 16/1408 SC/CIVL**

BETWEEN: Sam Dan Avock
Claimant

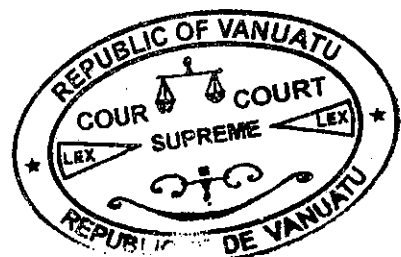
AND: Police Service Commission
First Defendant

The Government of the Republic of
Vanuatu
Second Defendant

Date of Hearing: Friday December 15th, 2017
Date of Judgment: Friday, March 16th, 2018.
Before: JP Geoghegan
In attendance: Less Napuati, for the Claimant
Jelinda Toa (SLO) for the Defendants

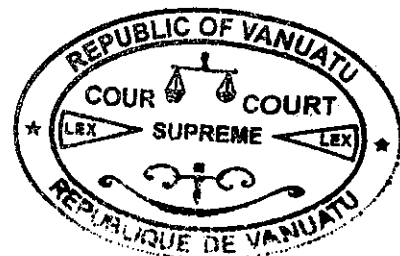
JUDGMENT

1. Mr Avock claims that he was unjustifiably dismissed from his position as the Chairperson of the Police Service Commission on May 6th 2014.
2. He seeks the following orders against the defendants:-



- a) An order for payment of employment entitlements in the sum of Vt 3, 533, 879;
 - b) An order for payment of damages for breach of contract in the amount of Vt 5, 782, 920;
 - c) An order for common law damages in the sum of Vt 100,000;
 - d) Interest on the Judgement debt at the rate of 5% at the date of dismissal to completion of payment of the Judgment amount.
3. The proceedings have a rather unusual history and it is necessary to set out that history to appreciate how the Court is now dealing with this matter.
4. Mr Avock filed a statement of claim on April 22nd 2016. It was supported shortly thereafter by a statement in which Mr Avock deposed that by virtue of an Instrument of Appointment made by the then President of Vanuatu, he was appointed as a member of the Police Service Commission on July 11th 2013. On the same date he was appointed as Chairperson of the Committee.
5. The background to Mr Avock's appointment was somewhat controversial and was referred by Fatiaki J in a related case, Hopkins v. Ministry of Internal Affairs¹. That decision involved a judicial review application by a previous Chairperson of the Police Service Commission challenging a decision terminating his appointment. Fatiaki J had observed in that decision that while Mr Avock had been appointed as Chairperson of the Commission by an Instrument of Appointment dated July 9th 2013, it was two days later namely on July 11th 2013 that he was appointed as a member of the Commission and noted that at the time of Mr Avock's appointment as Chairperson of the Commission, Mr Hopkins had not been lawfully removed from his position. In addition, Mr Avock had not at that time been appointed a member of the Commission and therefore could not have qualified to be appointed as a Chairperson.

¹[2014] VUSC 21



6. In dealing with the judicial review application Fatiaki J stated at paragraph 18 that:-

"Having said that, the position regarding Sam Dan Avock needs to be properly regularized and, accordingly, I quash the appointment of Sam Dan Avock as Chairperson of the Commission on 9 July 2013, and direct the Prime Minister to reconsider the matter and make a new appointment of the Chairperson of the Commission as soon as possible."

7. Those steps were subsequently taken and on May 6th 2014, Mr Avock was appointed as the Chairperson of the Police Service Commission by the then Prime Minister Moana Carcasses Kalosil.

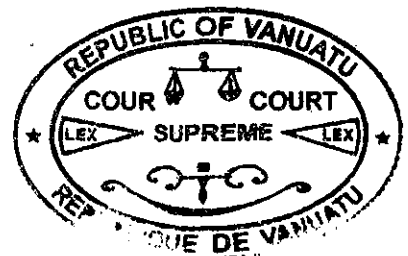
8. Mr Avock continued in his role as Chairperson until July 2015 when he was informed verbally by the Commission's Secretary that he had been terminated from his position. It was not until two weeks later however that he received a copy of the Instrument of his disqualification as a member of the Commission, that Instrument having been signed by the then Prime Minister, Sato Kilman and dated June 23rd 2015. The document, intituled "Disqualification of Membership on the Police Service Commission Order Number 67 of 2015" stated as follows:-

"I, Hounourable Sato Kilman Livtunvanu, Prime Minister and Minister responsible for Police, make the following Order:

1) *Disqualification from being a member of the Police Service Commission.*

For the purposes of paragraph 9C (1)(d) and subsection 9C (2) of the Police Act [Cap. 105], Mr SAM DAN AVOCK ceases as at the date of this Order to be a member of the Police Service Commission."

9. Section 9C of the Police Act, as amended by the Police (Amendment) Act 2010 provides for circumstances in which a person is disqualified for appointment as a member of the Commission. Section 9C (1) (d) provides that:-



"(1) A person is disqualified for appointment as a member of the Commission if he or she:

d) Exercises a position of responsibility within a political party"

10. Section 9C (2) provides that:-

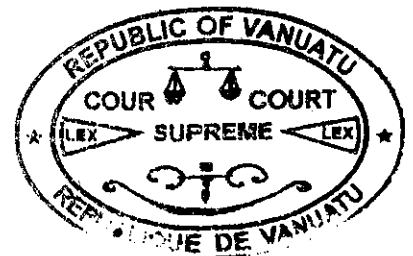
"(2) A person ceases to be a member of the Commission if circumstances under subsection (1) arise that would disqualify him or her appointment (sic) from being a member".

11. Mr Avock's evidence was that the decision came as a complete shock to him, that there was absolutely no warning and that he was not spoken to regarding any alleged exercise of a possession of responsibility within a political party.

12. A statement of defence was filed on behalf of the defendants. No dispute was taken with the fact that the claimant was appointed both as a member and Chairman of the Police Service Commission. No dispute was taken that the appointment of Mr Avock was for a term of 4 years pursuant to sections 9B (1) and (2) of the Police Amendment Act No. 22 of 2010.

13. In its statement of defence however, the defendants contended that the claimant was disqualified pursuant to section 9C (1)(d) from being a member of the Commission. No particulars were provided within the statement of defence as to the details or nature of that alleged position of responsibility. The State has filed no evidence in support of its statement of defence.

14. On October 25th 2017, I made an order debarring the defendants from defending the proceedings and set out the reasons for doing so in a Minute. I recorded that Mr Avock had filed an application that the defendants show cause why Judgment should not be entered against them. The reason for that application was because of the

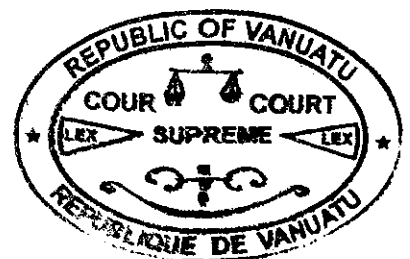


defendants continued non-compliance with timetabling directions which had been made. The defendants had filed no documents in opposition to that application.

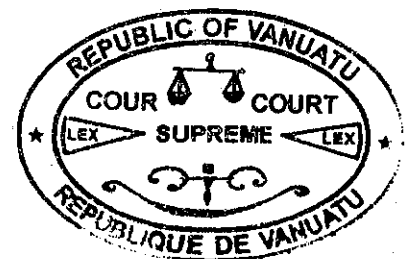
15. I recorded that the defendants had been directed to file sworn statements on May 24th 2016, August 16th 2016, September 19th 2016, October 17th 2016 and November 22nd 2016. In a Minute on September 11th 2017 I had described the defendant's adherence to previous timetabling directions as abysmal and directed a conference to be held on September 29th and recorded that it would be helpful if the defendants had filed their sworn statements prior to that conference. I referred to the fact that Mrs Bani who had appeared as counsel for the defendants on October 25th had advised that there appeared to be difficulty in the defendants obtaining the very evidence that they would need to produce in order to substantiate the disqualification of Mr Avock. At paragraph 16 of my Minute I recorded:-

"16. In view of the history of the matter I consider that it would be completely wrong to permit the defendants to continue to defend the proceedings in view of their appalling non-compliance of timetabling directions. I do not consider that I am in a position to enter judgment at this point against the defendants either in terms of liability or quantum as I consider that Mr Avock needs to file a further sworn statement addressing both the issue of his involvement with any political party and other evidential issues which would enable the Court to determine quantum. Accordingly I have reached the view that the appropriate order to make is an order debarring the State from defending the proceedings. Such an order would not prevent the State from making submissions in respect of quantum but would simply prevent the State from actively defending the proceedings".

16. Accordingly no evidence has been produced by the defendants at any time which substantiated the reasons for the termination of Mr Avock's employment. No sworn statement has ever been filed by anyone on behalf of the defendants. This hearing accordingly proceeded on a submissions only basis.



17. Prior to the hearing Mr Avock filed a sworn statement in which he confirmed that in 2007 he was elected Vice-President of the Vanuaaku Party at Ifira Congress. He deposed that in 2009 he resigned as Vice-President as he was no longer a Member of Parliament. While Mr Avock did not expressly state he was no exercising a position of responsibility within a political party at the time of his appointment for the Commission or anytime subsequently, I think I am entitled to infer from the evidence that at the relevant times he was not engaged in political activity and accordingly was not disqualified by reason of section 9C (1) (d). With reference to that section I consider that the section according to its natural and ordinary meaning clearly applies to the exercising of a position of responsibility within a political party at the same time as an individual is serving as a member of the Commission. Accordingly Mr Avock's previous membership or activity in a political party was irrelevant.
18. Somewhat ironically, it would appear that Mr Avock was replaced in his role as Chairman by Mr Herve Hopkins who was the applicant in Hopkins v. Minister of Internal Affairs and who had been replaced by Mr Avock.
19. In such circumstances, it is clear that the dismissal of Mr Avock as the Chairman of the Police Service Commission was completely unjustified.
20. Mr Avock's position commenced on July 11th 2013 and would have terminated on July 11th 2017. At the time of his dismissal on June 23rd 2015, Mr Avock could reasonably have expected to remain in his role for a further 2 years and 18 days. In a sworn statement dated November 14th 2017 Mr Avock deposed that after the termination of his employment he was unable to pay off his loan with Bred Bank and that his property had been seized. There is no further evidence as to the outcome of the seizure of the property or the cost to Mr Avock of that in financial terms. Mr Avock also deposed at paragraph 15 of his sworn statement that:-



"I was unable to find any further employment elsewhere until as under normal circumstances, my contract with the PSC should have ended this year in July 2017".

21. It is regrettable that Mr Avock's evidence with reference to inability to find any further employment is as brief as it is. Mr Avock does not say what attempts he made to find further employment and I consider his evidence in respect of this matter to be inadequate. The Court would normally expect to receive evidence from a claimant in circumstances such as these which sets out precisely the steps taken by the claimant to mitigate his loss and locate further employment and why that has not been possible. The simply statement contained in Mr Avock's evidence is quite unhelpful as it does not assist the Court in addressing the issue of mitigation.

22. In his sworn statement of November 14th 2017, Mr Avock annexed a calculation of his entitlements under his four year contract as calculated by the Department of Labour. Those entitlements amounted over four years to Vt 8, 509, 240.

23. The entitlements sought by Mr Avock in his statement of claim amount to Vt 9, 319, 799. That appears to have been modified in Mr Napuati's submissions on behalf of Mr Avock to a sum of Vt 8, 509, 240 in line with the calculations of the Department of Labour. For the purposes of this judgment therefore I adopt those calculations.

The calculations of the Department of Labour are as follows:-

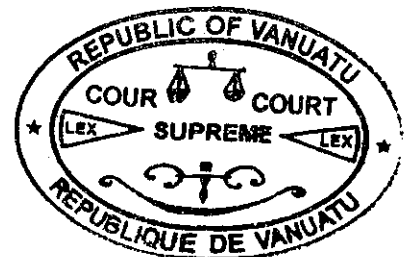
a)	Severance pay	-	Vt 940,800
b)	Annual Leave	-	Vt 987,840
c)	Three months' notice	-	Vt 705, 600
d)	Outstanding salary for remainder of contract - 2 years and one month, calculated at Vt 235, 200		

per month, -

Vt 5,875,000

TOTAL

- Vt 8,509,240



24. The evidence is also defective in terms of the terms and conditions of employment of Mr Avock. Section 9F of the Police Act provides that:-

"9 F Remuneration of Members of the Commission.

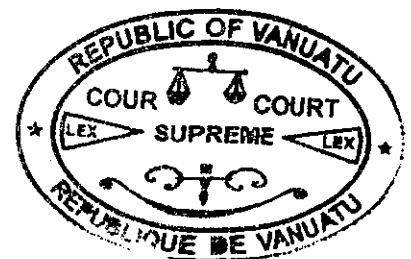
A member of the Commission including the chairperson is entitled to such remuneration and allowances as may be determined in writing by the Minister".

25. Absolutely no evidence has been provided by the claimant as to what those terms and conditions might be and all that is before the Court is a pay slip for the period April 27th to May 2015 which records Mr Avock's fortnightly pay as Vt 108, 182 together with a housing allowance of Vt 16, 099. There is no evidence at all as to entitlement to annual leave, the provision of three months' notice or the payment of severance pay. There is no evidence as to the basis upon which the Department of Labour was requested to calculate Mr Avock's entitlement.

26. In her submissions on quantum of damages, Ms Toa, on behalf of the defendants focused on three issues namely:-

- a) Whether or not the claimant (as a private individual) was entitled to damages for breach of the statutory provisions of the Police Act ;
- b) Whether or not the claimant can claim for damages pursuant to the provisions of the Employment Act ;
- b) Whether or not the claimant should be paid his wages for the remaining period of his employment?

27. As to the issue of whether or not Mr Avock is entitled to damages for the breach of statutory provisions of the Police Act, Ms Toa in her submissions conceded that there was no evidence before the Court to prove that the claimant was exercising a position of responsibility within a political party at the time of his appointment (or it must be said, subsequently) however it was submitted that even if the defendants were in breach of the required procedures under section 9B (4) and (5) (which are



provisions as to termination of the appointment of the Chairperson) such breach did not in itself give rise to a private law right of action for damages.

28. In support of that submission, Ms Toa referred to a decision of the English Court of Appeal in M (a minor) v Newham London Borough Council & others² where the Court stated:-

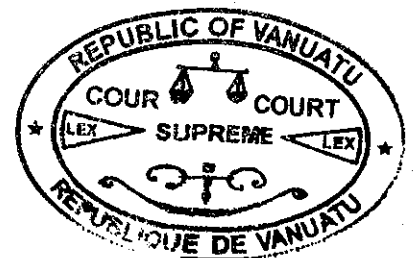
"It must always be a matter for consideration whether the legislature intended that private law rights of action should be conferred upon individuals in respect of breaches of the relevant statutory provision. The fact that a particular provision was intended to protect certain individuals is not in itself sufficient to confer private law rights of action upon them; something more is required to show that the legislature intended such conferment".

29. That case dealt with allegations by the claimant that welfare authorities had breached their statutory duties in respect of the protection of children. The Court held that the duties imposed by the specific legislation on local authorities in relation to the welfare of children were so general and unspecific in their terms and conferred on local authorities such wide scope to exercise subjective judgment that it was to be inferred that Parliament did not intend that there should be direct enforcement of the statutes by individuals nor did it intend to confer a private law remedy for breach of local authority duties under the Act.

30. Ms Toa also referred to the decision of Sey J in Pierre v. Republic of Vanuatu³. That case dealt with a claim by Mr Pierre challenging the process of his suspension as Director of Lands, Survey and Records. Mr Pierre alleged that the defendants had breached his employment agreement by failing to ensure that all appropriate process and conditions of the Public Service Act [Cap. 246] and the Public Service

² [1994] 4 ALLER 602

³ [2014] VUSC 62



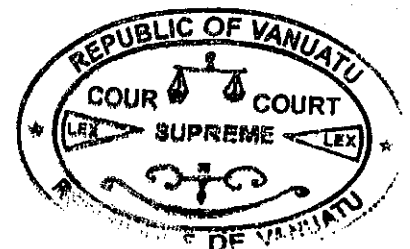
Staff Manual applied in his disciplinary proceeding. He sought damages for alleged negligence of the Public Service Commission in breaching the conditions of his employment agreement with respect to the disciplinary matter.

31. Sey J held that the mere fact that there was a breach of relevant statutory provisions did not vest the right of action in the claimant against the defendants. At paragraphs 25 and 26 she stated:-

“25. In *R v. Deputy Governor of Parkhurst Prison, Ex p. Hague* [1991] 3 ALLER 733, the House of Lords reiterated that the primary question in relation to an action for breach of statutory duty is always whether the legislation intended to create a civil remedy for aggrieved individuals.

26. In this case, whether the breach does or does not give such right of action must depend upon the object and language of the act. When one reads the provisions of sections 19 A and 19B, it can be inferred that neither the Act nor evidence available before this Court shows that Parliament intended that the provision should infer on the claimant a private law right of action sounding in damages. Furthermore, that inference is reinforced by the availability of other remedies, including judicial review under rule 17 (Civil Procedure Rules) to the claimant”.

32. I do not accept the submission that Mr Avock is prevented from suing for damages arising from the termination of his employment as a member of the Commission. While it is correct that another remedy such as judicial review was available to Mr Avock that does not exclude the possibility of suing for damages in breach of contract for wrongful termination of employment. The provisions of the Police Act in providing for appointment of members of the Police Commission expressly contemplate the creation of a contract of service with the duties and obligations that that imposes upon each party. To restrict the only full time “employee” of the Commission to legal remedies which would only contemplate reinstatement would



be to ignore the relationship contemplated by the Act. It would also render it extremely difficult to engage appropriately qualified persons for the role of Chairperson. It is clearly not a position occupied at will I do not consider that it could be the intent of the legislation to deny a private cause of action and to permit such a cause of action does not offend against the provisions of the Act or its purpose.

33. As to the issue of whether or not Mr Avock can claim for damages pursuant to the provisions of the Employment Act, Ms Toa pointed to section 76 (1) and (3) of the Employment Act [Cap. 160] which provides that:-

"76. Application of the Act of Public Service

(1) Except as provided in subsection (3) the provisions of this act shall apply in relation to public servants and to the government and any other public authority in Vanuatu subject to the modification set out in subsection (2).

.....

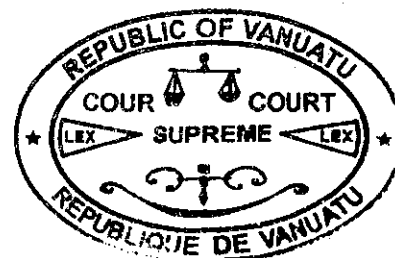
(3) Nothing contained in this Act shall apply in relation to members of the armed forces, police force or prison services".

34. Mr Toa submitted that accordingly Mr Avock is a member of the Police Force and the provisions of the Employment Act do not apply to him.

35. Quite apart from the fact that that would not necessarily prevent Mr Avock from seeking damages for unlawful termination of his position as member of the Commission I do not accept Ms Toa's submissions.

36. Section 3 of the Police Act provides that:-

"3. Composition of the Force



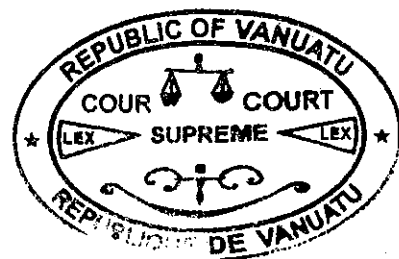
The force shall consist of the Commissioner and such senior and subordinate officers as may from time to time be approved by the Minister”.

37. The functions and powers of the Police Service Commission are set out in section 9A of the Police Act. It is clear from those provisions that the Commission has a general duty to act on matters of appointment of the Commissioner of Police and other senior officers of the Police together with various other matters. More importantly however, section 9C (1) (e) of the Police Act specifically disqualifies “a member of the force” from being a member of the Commission. That is sufficient to dispose of any submission that section 76(1) and (3) of the Employment Act apply to Mr Avock.

38. Turning to the third issue raised by Ms Toa is it submitted by her that on the basis of the authority in Robertsen v. Luganville Municipal Council⁴, Mr Avock cannot claim wages for the remaining period of his employment. Ms Toa’s submissions were based on obiter dicta in that decision where the Court stated:-

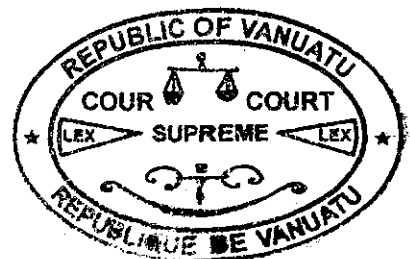
“Although not specifically argued on the appeal, the claims for relief in paragraphs 3 and 5 of the plaintiff’s original claim appear to reflect a common misunderstanding about contracts of employment. Although with other contracts the general rule is that a purported termination that is ineffective in law does not bring an contract to an end, and that rights may continue to accrue under the contract until does lawfully terminated, that rule is modified in contracts of employment. Contracts of employment are subject to an exceptional principle, sometimes referred to as “no work no pay”..... an employee who is wrongfully dismissed cannot recover wages after the date of his dismissal. The employer may have other remedies based on breach of

⁴[2001] VUCA 14

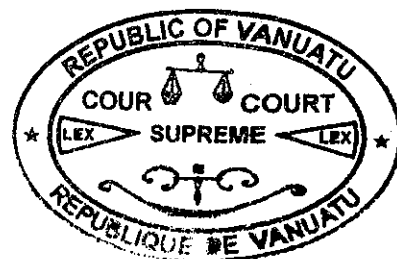


contract, but in the present case the appellant's employment was terminated lawfully, that question does not arise".

39. In this case I have already determined that a private right of action may arise regarding the unlawful termination of Mr Avock's position and in addition I consider that Mr Avock is also entitled to argue that he has a right of action pursuant to the provisions of the Employment Act.
40. Ms Toa contended that in the event that the Court was to consider that Mr Avock had a right to damages then, with regards to the severance claim, the Police Act lacked provisions which could deal with severance and which would otherwise enable the claimant to claim severance entitlements. If the Court took the view that the claimant was entitled to severance then such severance should cover only the period that Mr Avock was offer an office, a period of one year, 11 months and 12 days amounting to severance of Vt 470,000.
41. Ms Toa submitted that regarding annual leave entitlements, as Mr Avock was in office for a term of 1 years 11 months and 12 days he would be entitled to 42 days' annual leave but that as he had already taken 27 days' leave he could be entitled to only the balance of 15 days which amounted to Vt 162, 273. It was submitted that on July 1st 2016, after Mr Avock's employment was terminated he was paid outstanding leave in the amount of Vt 227, 178 for 21 days' leave and that accordingly he was in fact overpaid.
42. The documentation supporting these contentions was simply attached to counsel's submission. That is not the appropriate way to tender such documents to the Court unless there is express agreement on the part of the other party to do so. Where there is such express consent the Court can accept the documentation and rely upon it. In other circumstances, it simply has no status as evidence before the Court.



43. In considering Mr Avock's claim and despite the fact that I had stated earlier that Mr Avock has the right to argue that he has a right of action pursuant to the Employment Act I consider that an issue arises as to whether or not the Employment Act applies in the case of Mr Avock. This requires a consideration of the statutory provisions relating to the establishment of the Police Service Commission.
44. The Police Service Commission is established pursuant to section 9 (1) of the Police Act. Section 9 specifies that the Commission is to consist of 6 members appointed in writing by the President for 4 years. Section 9 (4) provides that:-
- "A member of the Commission is to hold office for the period of his or her appointment unless he or she is removed from, or otherwise vacates, office earlier".*
45. Accordingly the relevant provisions of the Police Act contemplate the "removal" of a member of the Commission as opposed to the termination of a contract of employment.
46. Section 9B provides as follows:-
- "(1) The Minister is to appoint a Chairperson of the Commission after consultation with the Prime Minister from amongst the members of the Commission for a term of 4 years.*
 - (2) The Chairperson is the Chief Executive Officer of the Commission on a full time basis.*
 - (3) The Chairperson holds office for the period of his or her appointment unless he or she is removed in writing by the Minister after consultation with the Prime Minister.*
 - (4) If the Minister proposes to terminate the appointment of the chairperson under subsection (4), the Minister must;*

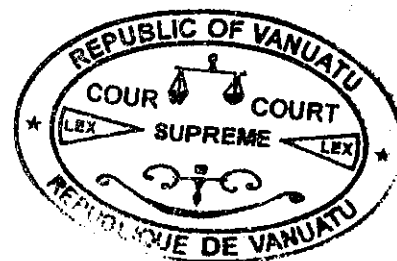


- (a) Inform the chairperson of his or her decision to terminate the appointment; and
 - (b) Set out the reasons for the termination; and
 - (c) Give him or her 7 days to respond to the proposed termination.
- (5) The Minister is to terminate the appointment of the chairperson if he or she is not satisfied with the response for the chairperson given under paragraph (5) (c)."

47. What can be gathered from that statutory provision is the following:-

- a) There is a statutory term of 4 years. This stands in contrast to section 15 of the Employment Act which provides that "the maximum duration of employment that may be stipulated or implied in any contract shall in no case exceed three years".
- b) Section 9B provides a process for the termination of the appointment of a Chairperson. The section does not refer to such matters as misconduct or notice but merely to circumstances where a Minister proposes to terminate an appointment. While a Minister is obliged to set out the reasons for the termination and while as a matter of administrative law there would need to be good reasons for doing so, the Act does not seek to limit in any way a Minister's right to propose termination. Moreover the Minister is entitled to proceed to terminate the appointment simply "if he or she is not satisfied with the response of the chairperson".
- c) The provisions of section 9B stand in stark contrast to the provisions of the Employment Act and specifically those provisions contained in Part 10 of the Act which relate to the termination of an employment contract.

48. Accordingly I do not consider Mr Avock's circumstances to be covered by the provisions of the Employment Act and consider that while he is entitled to take an action for damages in respect of the termination of his appointment, the Court is

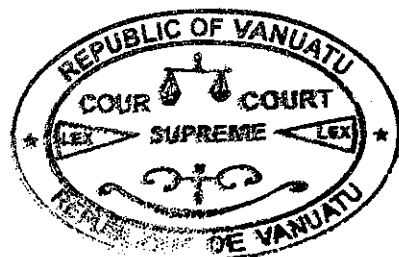


restricted to looking merely at the terms and conditions of his appointment. In that regard I refer to section 9F of the Police Act which provides that:-

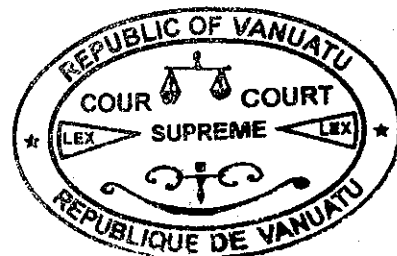
"9 F Remuneration of Members of the Commission

A member of the Commission including the Chairperson is entitled to such remuneration and allowances as may be determined in writing by the Minister".

49. Taking those provisions into account I do not consider the Police Act to contemplate the creation of an employment relationship between the State on the one hand and the Chairman of the Police Commission on the other. That is also confirmed by reference to the functions of the Commission which requires the Commission "to act independently on matters affecting members of the force including matters relating to the appointment, resignation, compulsory retirement, discharge dismissal and discipline of members" (see section 9 A (2)).
50. One of the difficulties presented in this case is that Mr Avock has not made available to the Court any details of the remuneration and allowances as determined by the Minister. There were no details before the Court as to leave entitlement, any entitlement to severance or any provisions as to notice. Given my conclusions regarding the Employment Act and the fact that the provisions of the Act do not apply to Mr Avock, the Court is merely left with what is conceded by the defendants and proof of the fact that Mr Avock's salary entitlement was for Vt 2, 822, 400 per annum. I am satisfied also through the documentation provided by Mr Avock that he was entitled to a housing allowance of Vt 16,099 per fortnight or Vt 418, 574 per annum.
51. In any claim, it is for the claimant to prove his or her loss. In this case the evidence regarding that loss has been sadly lacking and Mr Avock must bear the consequence of that.



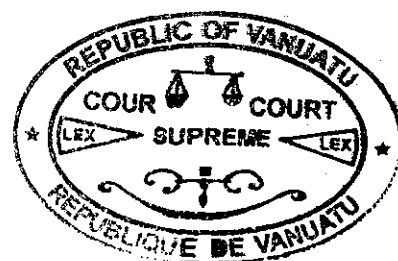
52. Accordingly I conclude that the measure of the claimant's loss over the remaining two years of his contract was Vt 6, 481, 948. For the reasons referred to I consider that to be the maximum sum that Mr Avock can claim in these proceedings, given my conclusions that the provisions of the Employment Act do not apply to Mr Avock and that he has failed to prove his entitlement to any other payments.
53. For the reasons already given I also accept that there has been a breach of contract on the part of the State which gives rise to a right to Mr Avock to sue for the damages in respect of loss suffered.
54. In any claim for damages, a claimant is required to demonstrate that he has endeavored to mitigate his loss. That simply involves the application of the general principle that a claimant must take all reasonable steps to mitigate the loss suffered by him. He cannot recover damages for any such loss which he could have avoided but has failed, through unreasonable actions or inaction, to avoid.
55. In this case, the claimant has not placed any evidence before the Court regarding mitigation of loss other than to say that he has not gained other employment. That is quite insufficient and again in my assessment the claimant must bear the consequences of that.
56. Given the lack of evidence in respect of this matter it is necessary to deal with the issue in a rather arbitrary manner and in my assessment it is reasonable to consider, in the absence of evidence to the contrary, that the claimant should have obtained alternative employment within 12 months of his termination. Accordingly I consider that any award of damages should be restricted to a period of 12 months which amounts to the sum of Vt 3, 240, 974.
57. Mr Avock has also sought common law damages in the sum of Vt 100,000 for "*distress, humiliation and suffering given the manner of dismissal*". The awarding of



common law damages in circumstances of this kind was recognized by the Court of Appeal in Vanuatu in Maritime Authority v. Timbacci⁵, where the Court awarded damages for the manner of dismissal in that case of Vt 50,000.

58. Taking into account the factual circumstances in this case and in particular the fact that there was no discussion with Mr Avock prior to the decision to terminate his appointment and that the advice was communicated to him verbally by the Secretary some two weeks after the instrument of termination had been signed, I consider that the sum of Vt 100,000 is not unreasonable and it is awarded accordingly.
59. As to interest it is appropriate that interest be awarded on the judgment debt and I am satisfied that 5% is a reasonable sum. I am not satisfied however that it should be awarded from the date of termination of Mr Avock's appointment as proceedings were not issued for almost one year after that termination. I consider that in the circumstances it is appropriate to award interest from the date of filing of the proceedings, that date being April 27th 2016.
60. Given the conclusions reached regarding the nature of Mr Avock's appointment and its termination I consider that the appropriate defendant in terms of liability is the second defendant rather than the first defendant. Clearly as Chairman of the Police Service Commission, Mr Avock did not terminate his own appointment and that appointment was terminated by a Minister acting in his Ministerial capacity as part of the Government of the Republic of Vanuatu. For these reasons judgment will be granted against the second defendant.
61. Accordingly judgment is granted against the second defendant as follows:-
- a) Damages for breach of contract Vt 3, 240, 974

⁵ [2005] VUCA 19



- b) Damage for distress, humiliation and suffering Vt 100,000
- c) The claimant is entitled to costs against the second defendant and costs are awarded on a standard basis to be agreed between the parties within 28 days failing which they are to be taxed.
- d) Interest on the damages awarded is to run at 5% from the date of filing of the proceedings namely April 27th 2016 until payment of the damage is awarded.

DATED at Port Vila this 16th day of March 2018

BY THE COURT

.....
James Paul Geoghegan

Judge

