

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

**Civil
Case No. 22/1722 SC/CIVL**

BETWEEN: Moses Naupat
Claimant

AND: The Republic of Vanuatu
First Defendant

AND: Van2017 Pacific Mini Games Organizing Committee
Second Defendant

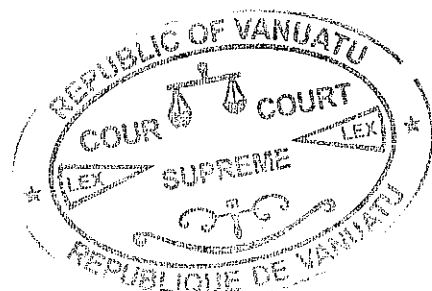
Date of HEARING OF APPLICATION: *24th day of August, 2022 at 2:00 PM*

Before: *Justice Oliver Saksak*

In Attendance: *Ms Nadia Robert for applicants/ defendants*
Mr Justin Ngwele for respondent/ claimant

DECISION

1. The defendant's application for strike out of the claimant's claim is dismissed.
2. I am satisfied from the sworn statement of Niki Valiu filed at 11:45am today 24/08/2022 that the letter dated 23rd November 2021 annexed as " NV1" amounted to the Notice required by section 6 of the State Proceedings Act.
3. The Notice was received on 23rd November 2021 by one Elise B.
4. The claim was filed on 12th July 2022. The State argues that was some 6 months later. The State relied on the case of Republic v Kwang Sing CAC 21/2013 in support of their argument that failure to give notice operates as a complete prohibition.



5. There is a distinction here. In this case there was a specific notice dated 23rd November 2022. A copy of the claim was enclosed. That indicates the Notice and Claim were received on the same date. The 14 days requirement was therefore met.
6. What the State is doing is arguing over form. I accept Mr Ngwele' submissions based on the Fujitsu case [1998] VUCA 13 CAC 1/88 and Michel v PSC [1998] VUCA 10, substance must prevail over form.
7. The application is an obstacle to dealing with the substance of the claimant's claim to bring about finality.
8. For those reasons the application is dismissed. The claimant is entitled to his costs of defending the application on the standard basis, but are to be costs in the event.
9. The following directions are necessary to advance the case further-
 - a) Within 14 days from today (by 6/9/22) the claimant shall file and serve further sworn statements.
 - b) Within 21 days from today (by 27/09/2022) the defendants are to file and serve their defence and sworn statements.
 - c) There be a further conference on 29th September 2022 at 8:15am.

DATED at Port Vila this 24th day of August, 2022.

BY THE COURT

.....
Oliver Saksak

Judge

