

BETWEEN: ALICK KALMELU
Claimant

AND: IFIRA LAND CORPORATION LIMITED
Defendant

Date of HEARING: 7th July 2023
Date of Judgment: 15th December 2023
Before: Judge Oliver A Saksak
In Attendance: Mr Stephen T Joel for the Claimant
Mr Sakiusa Kalsakau for the Defendant

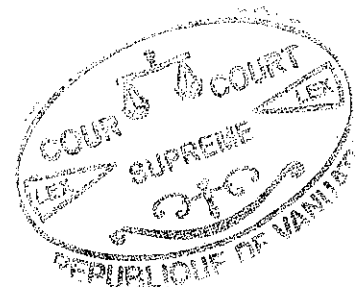
JUDGMENT

Introduction

1. This is a reserved judgment.
2. On 7th July 2023 Counsel for the parties agreed that all the sworn statement filed by the claimant in support of his claims and by the defendant in support of the defence be tendered into evidence without the need for trial and cross-examination. Counsel further agreed that the Court formulate its decision on the papers.

Claim and Reliefs

3. The claim is for damages for unjustified termination of his construct of employment, payment in lieu of notice, unpaid salary, leave not taken and severance as alternative claims.
4. In the main the claimant seeks orders that he be reinstated to his position and that he be paid all salaries, allowances and VNPF contributions from January 2021 to date.



Defence

5. The defendant denies the claim relying on the contract and the Quit Claim and submits that it should be dismissed with costs.

The Issues

6. The issues for determination are-
 - a) Whether or not the letter of termination dated 22nd December 2020 was lawful?
 - b) Whether or not the claimant is entitled to be reinstated?
 - c) Whether or not the claimant is entitled to his entitlements under the contract?
 - d) Whether or not the claimant is bound by the Quit claim?

Considerations

7. Issue 1.

The purported letter of termination dated 22nd December 2020 was unlawful. By paragraph 1 of the said letter the defendant had informed that the contract ended back in June 2020 and that he had served another 6 months without a legal contract which must be renewed to continue.

8. The defendant should have terminated the contract on June 2020 but did not do so. They allowed it to run for 6 months. By doing so the defendant had by tacit act accepted that the contract would run for another 12 months to June 2021 and to renew when the new Board would be formed in 2021 (not in 2020) as stated in paragraph 2 of the letter.
9. Therefore when the defendant terminated the employment in December 2020, it was a premature termination. They should have waited until June 2021 to terminate the employment. From the tone expressed in paragraphs 2 and 3 of the letter, the defendant was giving legitimate expectation of a renewal of his contract of employment after a new ILC Board was formed in 2021. Contrary to those expectations the defendant acted prematurely and unlawfully terminated the claimant's contract.



10. Issue 2

The issue here is whether or not the claimant is entitled to be reinstated? The answer is "NO" . Although this was the main relief sought by the claimant the Court declines to allow it based on the principles established in Virelala v Air Vanuatu [2005] VUSC 14 and Ridge v Baldwin [1963] UKHL 2.

The claimant's entitlement is for damages instead which were his alternative claims.

11. Issue 3

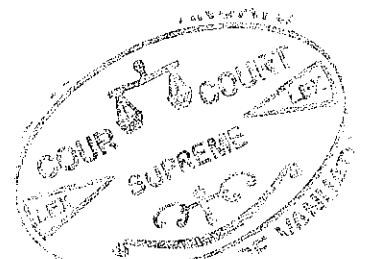
The issue is whether or not the claimant is entitled to his entitlements under the contract? The answer is " Yes". He is entitled to the following-

- a) Payment in lieu of notice. The period of notice is not one week as per the contract. It would instead be 3 months notice in my view. From 2018 when the claimant initially started employment with the defendant through to 2021, he was with the same employer continuously for 3 years, therefore he was entitled to 3 months payment in lieu of notice. His entitled was therefore VT 102, 000 per month x 3= VT 306,000
- b) For unexpired term of the contract as damages for breach of his legitimate expectation (from the terms of the termination letter n paragraphs 2 and 3) he was entitled to 6 months salaries from January 2021 to June 2021 at VT 102,000 per month x 6 = VT 612,000.
- c) Payment of leave not taken- VT 82, 450
- d) Severance = VT 350, 000

Total = VT 1, 350,450

12. Issue 4

Whether or not the claimant is bound by the Quit Claim? The answer is " No" . He denied being the signatory to the document. It was the defendant who raised it and they had the onus to prove it was signed by the claimant. The deponents of statements who annexed the Quit Claim were not tested in cross-examination.



13. In any event I accept the submissions by Mr Joel that pursuant to section 18 of the Employment Act that document if indeed valid, has no effect of waiving the rights of the claimant under his contract of employment.

Payments Already Made

14. The defendant's defence raised the point that the claimant has been paid off and there is nothing more to pay to him. The statement of Josina Robert is evidence of the allegation. Further the defendant through Ms Robert claims that the claimant has an outstanding debt due to the defendant. Unfortunately the amounts are not altogether clear to me. Therefore it is sufficient for the Court on the evidence and on the balance of probabilities. I accept the claimant has been paid some money and that he had an outstanding debt. These need to be clarified and be off-set or deducted from the total sum of VT 1,350,450 adjudged in favour of the claimant under the judgment.

Interest

15. The claimant is entitled to interest of 5% on the balance (after deduction) from the date of filing his claim to the date of judgment.

Costs

16. The claimant is further entitled to his costs of and incidental to this action on the standard basis, as agreed or taxed.

DATED at Port Vila this 15th day of December 2023.

BY THE COURT


Hon. Oliver A Saksak
Judge

