

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

Civil Case  
No. 23/2968 SC/CIVL

**BETWEEN: Badley Antony Tarry**  
Claimant

**AND: Republic of Vanuatu**  
Defendant

Date: 22 July 2024  
Before: Justice V.M. Trief  
Counsel: Claimant – Mr J. Tari  
Defendant – Attorney General

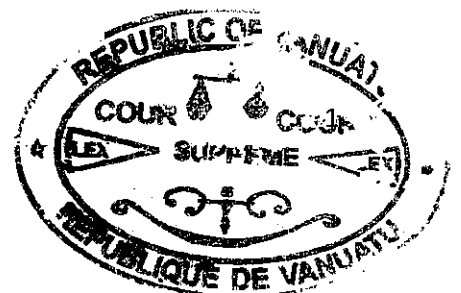
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**DECISION AS TO QUANTUM**

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A. Introduction

1. The Claim filed on 31 October 2023 sought payment of arrears of salary. As no response or defence was filed, default judgment was entered on 21 December 2023 in favour of the Claimant Badley Antony Tarry.
2. The Defendant State's Application to Set Aside Default Judgment was unsuccessful: *Tarry v Republic of Vanuatu* [2024] VUSC 169.
3. I then made directions for the filing of sworn statements as to assessment of quantum. Mr Tarry is relying on his Sworn statement filed on 2 November 2023. Despite an extension of time by the Orders dated 15 May 2024, the State has not filed sworn statements as to quantum.
4. This is the decision as to quantum.



B. Pleadings

5. It was alleged in the Claim that:

- a) Mr Tarry was employed by the State as an officer of the Department of Customs and Inland Revenue ('DCIR');
- b) Mr Tarry was suspended on half pay from 29 April 2019 to 28 May 2020 pending investigation into some allegations against him, and then reinstated;
- c) The Public Service Commission ('PSC') stated in its reinstatement letter that Mr Tarry is not entitled to his half salary withheld during the period of his suspension;
- d) Even after Mr Tarry was reinstated, the State continued to deduct his salary totalling VT1,897,419; and
- e) Despite demand, the State has not paid Mr Tarry VT1,897,419 deducted from his salary and as a result, he has suffered loss.

6. The orders sought were for the payment of the salary deducted, interest and costs.

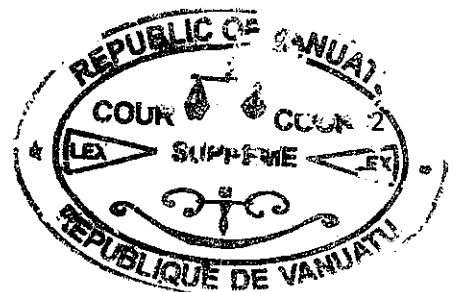
C. The Evidence

7. **Mr Tarry** deposed in his Sworn statement filed on 2 November 2023 that he was suspended from 29 April 2019 to 28 May 2020 pending investigation into some allegations against him. The PSC stated in its reinstatement letter that Mr Tarry was not entitled to his half salary withheld during his suspension [**Attachment "BAT2"**]. The DCIR calculated the amount of his salary withheld in 2019 as VT709,493 and in 2020 as VT444,081, totalling VT1,150,574 [**Attachment "BAT3"**]. After his reinstatement, a further VT746,845 was deducted from 2020 to 2022 [**Attachment "BAT4"**] (total of VT1,897,419). Despite demand [**Attachments "BAT5" and "BAT6"**], the State has not repaid the salary deducted, causing him loss.

D. Consideration

8. It was alleged in the State's application to set aside the default judgment that Mr Tarry was suspended on half pay but half of his salary was not actually deducted during his suspension so it was deducted after his reinstatement from 20 February 2020 to 23 December 2022 by deducting VT10,000 each pay day: *Tarry v Republic of Vanuatu* [2024] VUSC 169 at [3].

9. I accept and find from Mr Tarry's evidence that a total of VT1,897,419 was deducted from his salary between 2020 and 2022 following the PSC's decision communicated to him on his reinstatement that he was not entitled to his half salary withheld during his suspension.



10. However, the State did not have a lawful basis to make such deductions: *Tarry v Republic of Vanuatu* [2024] VUSC 169 at [20] –[22]:

20. *There is no mention anywhere in the [State's] draft defence of any disciplinary process undertaken against Mr Tarry. It is envisaged in the Act that the [Disciplinary] Board hears and determines disciplinary offences. There is no mention that the Board ever heard and determined disciplinary offences against Mr Tarry.*

21. *Presumably if the Board found Mr Tarry guilty of a disciplinary offence, then it might decide as part of the punishment imposed that Mr Tarry would not be paid the half of his salary deducted whilst he was suspended. However, if the Board did not find Mr Tarry guilty of a disciplinary offence, the half of his salary which Mr Tarry was not paid during the period of his suspension must be immediately paid to him. There is no power otherwise in the Act for the Board or the PSC to decide that an employee is not to be paid the half salary withheld during his or her suspension.*

22. *As there is no mention of any disciplinary process undertaken against Mr Tarry, the Defendant has not shown any legal basis for the PSC's decision on his reinstatement that he is not entitled to his half salary withheld during his suspension.*

*(my underlining)*

11. As there was no legal basis to deduct half of Mr Tarry's salary, the State must pay him back the amount deducted. Accordingly, I find that Mr Tarry has proved his loss of VT1,897,419 and that the State must pay him this amount as well as interest and costs.

E. Result and Decision

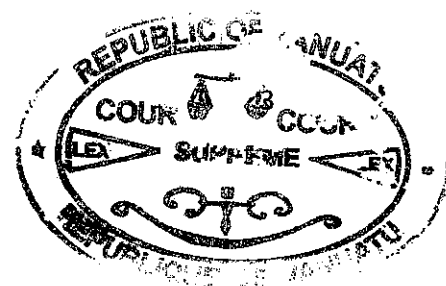
12. The Defendant is to pay the Claimant VT1,897,419 (the 'judgment sum') which it deducted unlawfully from his salary.

13. The Defendant is to pay the Claimant interest of 5% per annum on the judgment sum until fully paid.

14. Costs must follow the event. The Defendant is to pay the Claimant the costs of the proceeding fixed at VT200,000 within 28 days.


F. Enforcement

15. This matter is listed for Conference **at 1.10pm on 27 August 2024** for the Defendant to inform the Court: (i) that it has paid the judgment sum or (ii) to explain how it intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.



16. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

DATED at Port Vila this 22<sup>nd</sup> day of July 2024  
BY THE COURT

  
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Justice Viran Molisa Trief

