

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

**Civil**  
**Case No. 24/861 SC/CIVL**

**BETWEEN: Nalau Siaka**  
Claimant

**AND: George Regenvanu**  
Defendant

*Date of Trial:* 9 October 2024  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr R. Rongo  
Defendant – Mr K.T. Tari  
*Date of Decision:* 10 October 2024

---

**JUDGMENT**

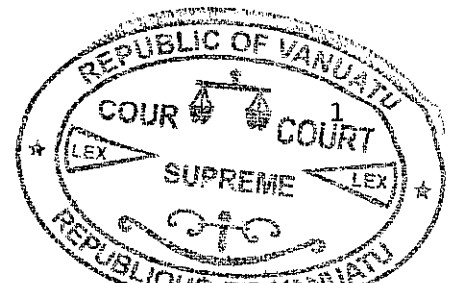
---

A. Introduction

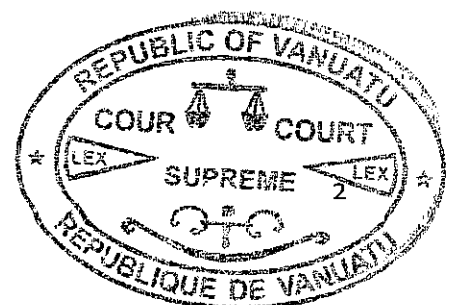
1. From November 2018 to November 2023, the Defendant George Regenvanu employed the Claimant Nalau Siaka under an oral agreement to work at Mr Regenvanu's leasehold property at Klems Hill on Efate. In November 2023, Mr Regenvanu terminated Mr Siaka's employment.
2. By the Claim, Mr Siaka is seeking payment of severance allowance, 3 months' notice and outstanding annual leave for the period of his employment. The terms of the oral agreement are disputed, as well as whether or not Mr Siaka's employment was terminated for serious misconduct.

B. Consideration

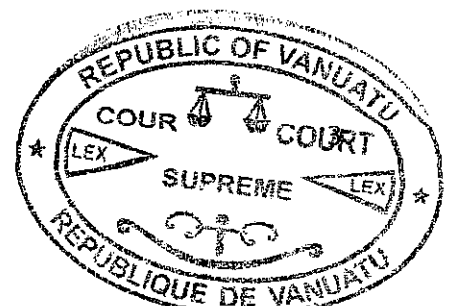
3. It is common ground between the parties that Mr Siaka was employed pursuant to an oral agreement with Mr Regenvanu.



4. What were the terms of that oral agreement?
5. Mr Siaka's case is that he was employed on a full-time basis. He deposed in his sworn statement [**Exhibit C1**] and in cross-examination that he worked day and night 7 days a week as a gardener to look after the land and Mr Regenvanu's poultry farm. However, there is no claim for *quantum meruit* pleaded in the Claim. That is, that Mr Siaka has provided services for which he should now be paid. Accordingly, Mr Siaka's evidence is directed to the amount of time that he worked for Mr Regenvanu but does not address what the terms were of their oral agreement.
6. Mr Regenvanu's case as set out in the Defence is that sometime in 2019, he and Mr Siaka agreed that Mr Siaka reside on part of his Klems Hill property and that he employ Mr Siaka at VT300 per hour for 2 and a half hours per day, from Monday-Friday, totalling VT15,000 per month.
7. Mr Regenvanu deposed in his sworn statement [**Exhibit D1**] that he has a poultry and vegetable farm at his Klems Hill property. He deposed that when he purchased the property in April 2019 [copy of transfer of lease in **Exhibit D1 – Attachment "GR1"**], Mr Siaka was already living there in his semi-permanent iron roofed house built on an old existing cement slab. Mr Regenvanu deposed that he has a family from Malekula living in a separate house looking after the poultry farm; Mr Siaka worked as a casual worker in the garden areas and their verbal agreement was that Mr Siaka work at an hourly rate for 2 and a half hours per day (5 days a week), totalling VT15,000 per month. Further, that Mr Siaka could continue to live on the property and make his own gardens on the land to feed his family and from which he could sell produce at the market to earn income.
8. In cross-examination, Mr Regenvanu agreed that his oral agreement with Mr Siaka was that Mr Siaka could plant crops and vegetables to sell at the market to earn income. The question put and Mr Regenvanu's answer was consistent with Mr Regenvanu's evidence in-chief that Mr Siaka could continue to live on the property and make his own gardens from which he could sell produce to earn income. There was no other question in cross-examination about the terms of the parties' oral agreement.
9. Accordingly, there is no evidence which contradicts Mr Regenvanu's evidence as to the terms of his and Mr Siaka's oral agreement. I therefore accept Mr Regenvanu's evidence as to the terms of the parties' oral agreement and find as follows:
  - a) In April 2019, following Mr Regenvanu's purchase of the Klems Hill property, he and Mr Siaka entered into an oral agreement;



- b) The terms of Mr Siaka and Mr Regenvanu's oral agreement included that Mr Siaka work in Mr Regenvanu's garden areas at an hourly rate of VT300 per hour for 2 and a half hours per day for 5 days a week, totalling VT15,000 per month;
- c) Hence Mr Siaka's daily rate was VT750; and
- d) Another term of the parties' oral agreement was that Mr Siaka could continue to live on the property and make his own gardens on the land to feed his family and that he could sell market produce from his (Mr Siaka's) own gardens to earn income.
10. Mr Siaka is seeking payment of severance allowance and of 3 months' notice. On the other hand, Mr Regenvanu's case is that he terminated Mr Siaka's employment for serious misconduct therefore Mr Siaka is not entitled to the relief sought.
11. Severance allowance is payable where an employee has been in the continuous employment of an employer for not less than 12 months and the employer terminates his employment pursuant to para. 54(1)(a) of the *Employment Act* [CAP. 160] (the 'Act') which provides as follows:
54. (1) *Subject to section 55, where an employee has been in the continuous employment of an employer for a period of not less than 12 months commencing before, on or after the date of commencement of this Act, and –*
- (a) *the employer terminates his employment; or*
- ...
- the employer shall pay severance allowance to the employee under section 56 of this Act.*
- (my emphasis)*
12. Was Mr Siaka in the continuous employment of Mr Regenvanu?
13. An employee is deemed to have been in the continuous employment of the employer in any week in which he has worked for his employer on 4 or more days pursuant to para. 54(2)(a) of the Act which provides as follows:
54. (2) *For the purposes of subsection (1) –*
- (a) *an employee who works for his employer on 4 or more days in any week shall be deemed, in respect of that week, to have been in continuous employment;*
14. Given Mr Siaka's employment 5 days a week, albeit for only 2 and a half hours on each of those days, he is deemed to have been in Mr Regenvanu's continuous employment pursuant to para. 54(2)(a) of the Act.



15. Section 50 of the Act, relevantly provides that in the case of a serious misconduct by an employee, it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice:

50. (1) *In the case of a serious misconduct by an employee it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice.*

...

(3) *Dismissal for serious misconduct may take place only in cases where the employer cannot in good faith be expected to take any other course.*

(4) *No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in contravention of this subsection shall be deemed to be an unjustified dismissal.*

...

16. In addition, subs. 55(2) of the Act provides that an employee shall not be entitled to severance allowance if he is dismissed for serious misconduct:

55. ...

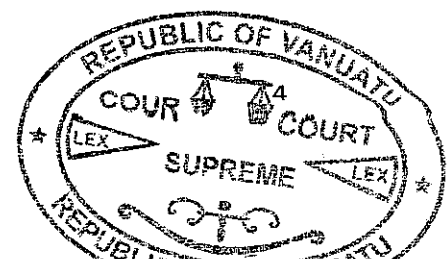
(2) *An employee shall not be entitled to severance allowance if he is dismissed for serious misconduct as provided in section 50.*

17. Was Mr Siaka's employment terminated for serious misconduct or not?

18. Mr Regenvanu's case pleaded in the Defence is that in November 2023, his wife found Mr Siaka and his wife selling Tahitian limes at the main market in Port Vila which had been stolen from Mr Regenvanu's Klems Hill property. It was not the first time that Mr Siaka had stolen from him. It was also alleged that on 5 November 2023, Mr Regenvanu and his wife met with Mr Siaka, his wife, his son David, Chief David and his wife Nicky at the Klems Hill property and gave Mr Siaka and his wife an opportunity to respond to the allegation of theft, and Mr Siaka admitted his theft of the Tahitian limes belonging to Mr Regenvanu. It was further alleged that Mr Regevanu considered that there was no other course to take but termination for serious misconduct and informed Mr Siaka of that. Mr Siaka agreed and Mr Regenvanu terminated Mr Siaka's employment with immediate effect.

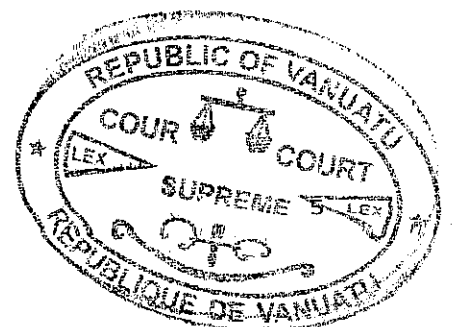
19. Mr Regenvanu's evidence in his sworn statement [**Exhibit D1**], in cross-examination and in re-examination mirrored the Defence as pleaded.

20. Mr Siaka did not file any sworn statement in reply to contradict Mr Regenvanu's evidence. In cross-examination, Mr Siaka agreed that in November 2023, Mr Regenvanu terminated his employment following an allegation that Mr Regenvanu's wife found him and his wife selling limes stolen from Mr Regenvanu's farm. He also agreed that Mr Regenvanu held a meeting with him



at the Klems Hill property to discuss the allegation of theft, and that he (Mr Siaka) agreed at the meeting that he stole the limes. Finally, he agreed that based on what he said, Mr Regenvanu decided to terminate his employment. Mr Siaka's evidence in cross-examination confirms Mr Regenvanu's account. I therefore find that Mr Regenvanu terminated Mr Siaka's employment for the allegation of theft and following the steps described in Mr Regenvanu's evidence.

21. Mr Siaka also stated in cross-examination that he did not harvest limes from up in the trees but only collected limes which had fallen to the ground ("*ol toti lemon*"). That may be so but a term of his and Mr Regevanu's oral agreement was that he (Mr Siaka) could plant his own gardens and sell the market produce from his own gardens to earn income. On the other hand, Tahitian limes are a commercial crop. Further, in Mr Siaka's own evidence, he collected limes which had fallen from Mr Regenvanu's trees. Accordingly, I find that by doing so, Mr Siaka breached the parties' oral agreement and committed serious misconduct, and that his employment was terminated for serious misconduct.
22. Is Mr Siaka entitled to payment of severance allowance and 3 months' notice?
23. Given Mr Siaka's termination for serious misconduct, Mr Siaka is not entitled to severance allowance pursuant to subs. 55(2) of the Act. In addition, he is not entitled to 3 months' notice pursuant to subs. 50(1) of the Act.
24. Is Mr Siaka entitled to annual leave?
25. Paragraph 29(1)(a) of the Act provides as follows:
  29. (1) *Every employer shall grant to an employee who has been in continuous employment with the same employer for;*
    - (a) *a period of 1 to 6 years annual - leave on full pay at the rate of 1.25 working days per month for each year of employment; ...*
26. Mr Siaka was employed from April 2019 to November 2023, a period of 4 years and 7 months. As I have already found, Mr Siaka was in Mr Regenvanu's continuous employment during that period because he worked for more than 4 days each week.
27. Accordingly, Mr Siaka is entitled to annual leave on full pay at the rate of 1.25 working days per month for each year of employment. That totals 15 working days per month for each year of employment hence for the 4 years 7 months period of Mr Siaka's employment, he is entitled to annual leave of 68 working days. Given Mr Siaka's daily rate of VT750, he is entitled to payment of annual leave of VT750 x 68 days = VT51,000.



28. For the reasons given, the only aspect of the Claim that Mr Siaka has proved on the balance of probabilities is his claim for payment of annual leave. Judgment will be entered for him for payment of annual leave.

C. Result and Decision

29. For the reasons given, judgment is entered for the Claimant in the sum of VT51,000 (the 'judgment sum').

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

31. Mr Siaka succeeded on only one aspect of the Claim. Mr Regenvanu successfully defended the balance of the Claim. Accordingly, the costs are to lie where they fall.

D. Enforcement

32. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, I now schedule a conference **at 4pm on 8 November 2024** to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 10<sup>th</sup> day of October 2024  
BY THE COURT**

  
Justice Viran Molisa Trief

