

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

(Civil Jurisdiction)

Civil

Case No. 24/3919 SC/Civil

**BETWEEN:** Tawaketolu Isoa  
Claimant

**AND:** University of the South Pacific  
Defendant

**Before:** Justice Oliver A. Saksak

**Counsel:** Jona Mesao for the Claimant/ Respondent  
Garry Blake for the Defendant/ Applicant

**Date of Hearing:** 10<sup>th</sup> April 2026

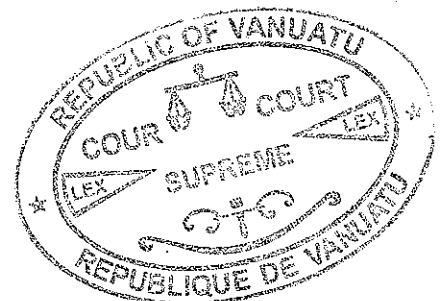
**Date of Decision:** 14<sup>th</sup> April 2026

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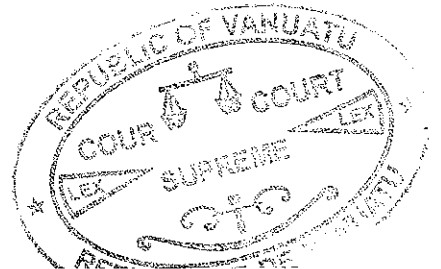
**JUDGMENT**

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1. This is a reserved judgment. The defendant applied formally pursuant to Rules 7.2 and 9.10 of the Civil Procedure Rules on 31<sup>st</sup> October 2025. The defendant seeks orders that the claim be struck out in its entirety and that the claimant should pay the defendant's costs.
2. The claimant filed a Supreme Court claim on 17<sup>th</sup> December 2024 claiming outstanding entitlements listed in paragraph 3 of the claims which includes:
  - Base salary at time of appointment.
  - 2017 salary from 11<sup>th</sup> December 2017.
  - 2018 salary with increments.
  - 2019 salary with increments.
  - Superannuation- 10%.
  - Severance allowance ( 6 months salaries).
  - Traveling expenses for hearings
  - Accommodation costs.
  - Legal costs and visa fees.



3. The claimant pleads breach of contract in paragraph 4 of his claims. He alleges the defendant wrongfully terminated his employment in 2018 and that the defendant failed to settle his outstanding entitlements, despite conclusive findings by the Review Panel. He further alleges the defendant's failure to pay his entitlements constitute a breach which he asserts is actionable under the Employment Act [ Cap 160].
4. The defendant filed a defence on 19<sup>th</sup> June 2025. Whilst the defendant acknowledged that the claimant was employed as Coordinator Properties and Facilities from 2016 until his termination on 11<sup>th</sup> December 2017, the defendant denies that the claimant is entitled to any claims in respect to the termination of his employment. The defendant pleads in their defence that the claimant's claims are time-barred under section 20 of the Employment Act and section 3 of the Limitation Act.
5. The background facts as pleaded in paragraph 2 of the claim are that-
  - The claimant commenced employment with the Defendant in 2016 under a contractual appointment in the role of Coordinator Properties and Facilities.
  - His appointment was for a fixed period of three years with an agreed salary of VT 3, 295, 198 per annum.
  - In 2018, the Defendant terminated the claimant's employment alleging gross misconduct as the basis of the termination.
  - Following the termination a USP Review Panel convened in 2018 to review the termination process and found the termination to be unjustified and unlawful.
  - The Panel determined that the claimant was entitled to his employment entitlements, which the defendant has acknowledged but has failed to settle despite numerous correspondences exchanged between them.
6. The issues for determination are- whether the claimant's claim were filed outside the 3 years period permitted by section 20 of the Employment and 6 years period under section 3 of the Limitation Act and if so, should they be struck out with costs?
7. I heard Mr Blake verbally in relation to the written submissions filed on 27<sup>th</sup> February 2026. I also heard Mr Mesao verbally in relation to the written submissions filed on 27<sup>th</sup> February 2026 and the further submissions filed on 9<sup>th</sup> April 2026.



8. The relevant provisions of the legislations are section 20 of the Employment Act [ Cap 160] which states:

***"20. Period of limitation***

*No proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates."*

9. Section 3 (1) of the Limitation Act states:

*"3. Limitation of actions of contract and tort and certain actions*

*(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –*

*(a) actions founded on simple contract or on tort;*

*(b) actions to enforce a recognizance;*

*(c) actions to enforce an award, where the submissions is not by an instrument under seal;*

*(d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:*

*Provided that –*

*(i) in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and*

*(ii) nothing in this subsection shall be taken to refer to any action to which section 5 applies."*

10. Mr Blake submitted that the periods of 3 years and 6 years are to be applied strictly and that they are mandatory periods. Counsel relied on the case of National Bank of Vanuatu v Cullwick [ 2002] VUCA 39. Mr Blake submitted that from the evidence the claimant's cause of action accrued as from 11<sup>th</sup> December 2017 when the termination occurred and become effective. He submitted that 6 years from that date expired on 10<sup>th</sup> December 2023. The claim was however filed about one year late on 17<sup>th</sup> December 2024.

Mr Blake also referred and relied on the PNG case of Maso Samai v Good man Fielder t/a Associated Mills Ltd [ 2019] PGNC 462 in support of his submission.

11. In my considered view the cases of Simbolo , Mann and Mariango do not assist the claimant's case, on the contrary, it is my view that these cases support the submissions of Mr Blake that



the periods of 3 years and 6 years as stipulated in section 20 of the Employment act and Section 3 (1) of the Limitation Act are strict mandatory periods. To extend the periods due to the claimant's choice to follow an internal process not created by or under the Staff Ordinance would in my view be going beyond what Parliament intended in section 20 of the Employment Act and Section 3 (1) of the Limitation Act.

12. When the claimant was appointed by letter dated 15<sup>th</sup> November 2016, paragraph 4 of the letter is specific that the contract is subject to the provisions of the Charter and statutes of the University, the Staff Ordinance and the Ordinance for the Discipline of Academic and Professional Staff and the Intellectual Property and Copy right policy of the University. The claimant clearly indicated his acceptance of these and placed his signature on 17<sup>th</sup> November 2016.

13. The Staff Ordinance is annexed as " MA2" to the sworn statement of Monovi Amani in support of the strike out application. I note under Clause 1 it states:

*" The University will fully investigate any allegations of misconduct in a timely and impartial manner and all disciplinary processes will be subject to natural justice and due process expected in Civil contractual law."*

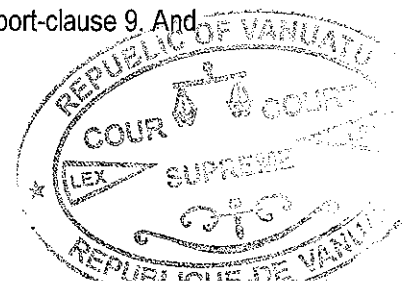
14. I note the definition of " Disciplinary action," ' misconduct," and ' summary dismissal" amongst others, on pages 2 and 3. I note Clause 2 (11) which provides for Application as follows:

*" (a) where an allegation is made that a member of staff has committed an act of misconduct, the allegation must be investigated and dealt with in accordance with provisions of this ordinance."*

15. I note Clause 3 which deals with allegation of misconduct and the process to be followed such as:-

- a) An allegation of misconduct to be made to Human Resource Department,
- b) The Human Resource Department is responsible for conducting a preliminary investigations of the allegation to determine the severity of it, etc..

16. I note clause 6 which deals with gross misconduct and the process to be followed. And Clause 6.1 provides for summary dismissal and the process to be followed. And Clause 8 provides for Staff Disciplinary Committee Hearing Procedure and the requirement for a report-clause 9. And finally I note clause 12 providing for appeals to the Visitor and the process.



17. The letter of termination dated 11 December 2017 is headed "Re: Gross misconduct-Termination of Employment." It makes reference to clause 2 of the USP Disciplinary Ordinance (2015) in paragraph 3. It also makes reference to Clause 6.1 (a)(1) of the Staff Ordinance as the basis of summary dismissal with immediate effect.
18. Regrettably the claimant did not plead in his claim filed on 11<sup>th</sup> December 2024 that the University failed to follow and adhere to the specific requirements of the Staff Ordinance. If he had done so, and claim for continuity of his dispute to 2022 and 2023 when all the processes failed, then his argument that the accrued date of his action was 2022 or 2023 would have weight and force. But that is not the case. The claimant specifically pleaded only that the defendant had breached his contract of employment and that the termination was unlawful, and nothing more.
19. From the clear evidence, the date when his cause of action accrued was 11<sup>th</sup> December 2017 when he was terminated with immediate effect. I therefore accept Mr Blakes's submissions based on the case law of NBV v Cullwick and the PNG case of Maso.
20. I reject the submissions by Mr Mesao as not tenable. I note the sworn statement by Dr Robert Early filed on 27<sup>th</sup> March 2026 in support of the claimant's case. I accept Mr Blake's submissions that these are hearsay and they are inadmissible.
21. I find that the claims of the claimant are time-barred. Accordingly I allow the application by the defendant. The claims are therefore hereby struck out in their entirety.
22. The defendants are entitled to their cost of the application on the standard basis as agreed or taxed, to be paid within 28 days after agreement or after taxation.

**DATED at Port Vila this 14<sup>th</sup> day of April 2026**

**BY THE COURT**

  
**Hon. Justice Oliver A Saksak**

