

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

Civil  
Case No. 13/262 SC/CIVL

**BETWEEN:** Nuvi Iata  
*First Claimant*

**AND:** Leitau Iata  
*Second Claimant*

**AND:** Moses Kamut  
*Third Claimant*

**AND:** Tanna Coffee Development Company Limited  
*Defendant*

*Coram:* Judge Aru

*Counsel:* Mr. J. Ngwele for the Claimants  
Mr. E. Nalyal for the Defendant

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**RESERVED JUDGMENT**

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**Introduction**

1. Mr Nuvi Iata, Mrs Iata and Mr Kamut were all employees of Tanna Coffee Development Company Limited (Tanna Coffee). All three were employed under contracts of employment. On the 27 and 29 of August 2013 all three employees were terminated by Tanna Coffee effectively ending their employment.
2. Following receipt of their termination letters, the claimants filed this claim challenging their dismissal.

**Summary of the Pleadings**

3. The claimants allege that their termination was unjustified as they were not given an opportunity to respond to the allegations against them; and that they were not given notice or any payment in lieu of notice. As a result they now claim their entitlements to severance, 3 months' notice, annual leave, Vanuatu national Provident Fund contributions and outstanding wages for overtime. In addition, they are seeking general damages.
4. The defendant on the other hand says that the claimants were terminated for serious misconduct and no notice was required for such a termination. It says it afforded an opportunity to the claimants to respond to their terminations by arranging a meeting

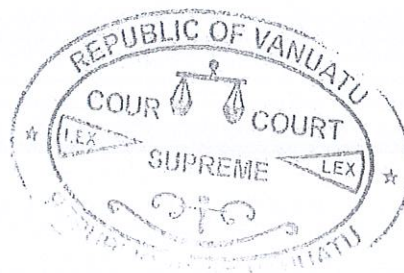


with the Labour Department. As the termination was for serious misconduct it says that the claimants are not entitled to any compensation except for their annual leave and Vanuatu National Provident Fund contributions.

5. The defendant also counterclaims for fraud against the claimants for overpayments for overtime, unpaid loans, advances and working on weekends and public holidays. These are all denied by the claimants.
6. There are two issues which arise requiring determination namely:-
  - Whether there was serious misconduct
  - Whether the terminations were justified
7. Under the Employment Act [CAP 160], s50 (1) provides that if an employee is dismissed for serious misconduct, he is not entitled to notice or to any compensation in lieu of notice. Secondly, s 50 (4) requires that before dismissing an employee on the grounds of misconduct, the employee must be afforded an opportunity to be heard. If the opportunity is not given, the termination is deemed unjustified. The claimants have the onus of proving their claim on a balance of probabilities.

#### **Background Facts**

8. There is no dispute that the claimants were each put on contracts of employment. Mr Kamut signed his contract of employment with Tanna Coffee on 20 September 2010. Mr Nuvi Iata and his wife signed theirs on 25 November 2010. Prior to their formal contracts of employment, Mr Iata had been employed by the company since 1994. Mrs Iata had also been with the company since 2007 and Mr Kamut since 2008. Their contracts had standard terms apart from their positions and remuneration. Mr Iata was the Factory Production Manager with a salary of VT425 per hour. Mrs Iata was the Factory Assistant /Café Supervisor with a salary of VT260 per hour and Mr Kamut was the Factory/Roasting Assistant with a salary of VT250 per hour. This was later increased to VT360 per hour.
9. Each was required to work 9 hours per day including lunch break and entitled to 12 paid annual leave days per annum and 21 days paid sick leave per annum. In addition it was agreed that if the employment ceases the company will provide 4 weeks paid notice and will pay out any accumulated outstanding annual leave. In the event of resignation each claimant was required to give 4 weeks' notice and to serve out the notice period with the company.
10. On 27 August 2013 Tanna Coffee terminated the employment of Mr Iata by letter. Two days later on 29 August Mrs Iata and Mr Kamut were also terminated. Each was alleged to have committed serious misconduct.





30. Section 50 (4) specifically states:-

*"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."*

31. To dismiss an employee on the basis of serious misconduct, Parliament intended that specific allegations of the serious misconduct must first be provided to the employee, following which he must then be afforded adequate opportunity to respond prior to any decision to terminate without notice. Where this process is not complied with the termination will be deemed unjustified.

32. In each claimant's case, the letter of termination first says that the claimant is dismissed immediately then tells the claimant that an appointment is being made with the Labour Department to afford them an opportunity to answer the charges against them.

33. Mr Adlington under cross examination said he met with Mr and Mrs Iata for 3 hours. There is no record or minute of the meeting. There is also no evidence that specific allegations in the termination letter were put to the three claimants to answer before they were terminated. The letter of termination is evidence that the claimants were terminated then notified in the same letter to answer the charges against them at the Department of Labour. The terminations in my view were unjustified as no adequate opportunity was given to the claimants to answer the charges before their termination.

34. My answer to the second issue is also in the negative.

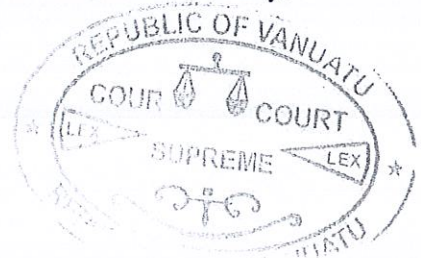
#### Damages

35. Each claimant is also seeking general damages as follows:-

- Mr Nuvi Iata - VT 7,000,000
- Mrs Leitau Iata - VT 3,500,000
- Mr Moses Kamut - VT 3,500,000

36. In their Claim, there is no specific pleading by each claimant for the amount claimed. It was generally pleaded at paragraph 30, 31 and 32 that the claimants have suffered stress, anxiety and hardship and that they were not able to secure another employment. As a result they suffered loss. The Civil Procedure Rules (r 4.10) requires that a claim for general damages must provide the following particulars; nature of the loss or damage suffered, exact circumstances in which the loss or damage was suffered and the basis on which the amount claimed was worked out or estimated. These particulars were not provided.

37. Furthermore, there is no medical evidence that the claimants suffered stress and anxiety. On that basis the claim for damages must be rejected.



## Result

38. The claimants are only entitled to their severance, notice, annual leave and any outstanding salary or entitlement which are calculated as follows:-

### a) Nuvi Iata

- Severance - VT 68,000 per month x 15 years = VT 1,020,000
- 3 months' notice – VT 68,000 per month x 3 = VT 204,000
- Annual Leave – VT 3,400 per day x 12 days annual leave x 12 years = VT 489,600
- Outstanding entitlement for work during public holidays (15 public holidays) = VT 3,400 per day x 2 = VT 6,800 x 15 public holidays x 11 (years in which he did not take holiday) = VT1,122,000
- Outstanding salary for period 15 August 2013 (2 weeks' pay) = VT 6,374
- Outstanding Vanuatu national Provident Fund contribution for the period 15 August 2013 =VT 75

**TOTAL = VT2, 842,049**

### b) Leitau Iata

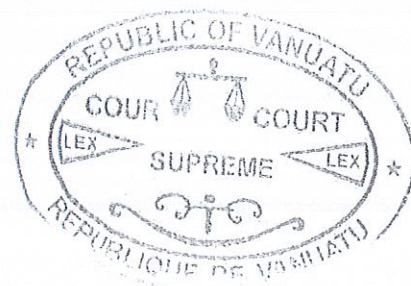
- Severance - VT 41,600 per month x 6 years = VT 249,600
- 3 months' notice – VT 41,600 per month x 3 = VT 124,800
- Annual Leave – VT 2,340 per day x 12 days annual leave x 3 years = VT 84,240
- Outstanding entitlement for work during public holidays (15 public holidays) = VT 2,240 per day x 2 = VT 4,480 x 15 public holidays x 4 (years in which he did not take holiday) = VT268,800

**TOTAL = VT727, 440**

### c) Moses kamut

- Severance - VT 45,600 per month x 5 years = VT228,000
- 3 months' notice – VT 45,600 per month x 3 = VT 136,800
- Annual Leave – VT 2,880 per day x 12 days annual leave x 4 years = VT 138,240
- Outstanding entitlement for work during public holidays (15 public holidays ) = VT 2,880 per day x 2 = VT 5,760 x 15 public holidays x 5 (years in which he did not take holiday) = VT432,000

**TOTAL = VT 935, 040**



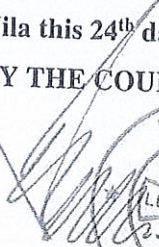


**Conclusion**

39. Judgment is entered for the claimants and the counterclaim is therefore dismissed. The claimants are entitled to costs to be agreed or taxed.

**DATED at Port Vila this 24<sup>th</sup> day of October, 2019**

**BY THE COURT**

  
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**D. Aru**  
**Judge**

