

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

Civil
Case No. 24/259 SC/CIVL

BETWEEN: ALICKSON VIRALONE GAMALIERE
Claimant

AND: REPUBLIC OF VANUATU
Defendant

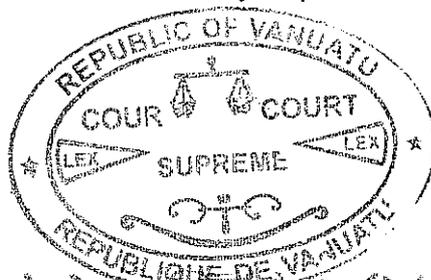
Date: 9 December 2025
Before: Justice M A MacKenzie
Distribution: Claimant – Mr KT Tari
Defendant – Ms N Robert

JUDGMENT

Introduction

1. The Claimant, Mr Gamaliere was Consul General of the Republic of Vanuatu to Dubai (“Consul General”) in 2022. He was appointed by the Minister of Foreign Affairs for a 3 year period on 3 March 2022. On 9 November 2022, a different Minister of Foreign Affairs decided to recall him under s 28 of the Foreign Affairs Act No 20 of 2013, thus terminating the appointment.
2. Mr Gamaliere then filed judicial review proceedings. Hastings J found that the decision to recall Mr Gamaliere was unlawful.¹
3. Mr Gamaliere then filed a private law claim pleading breach of the employment appointment because the Defendant:
 - a. terminated his employment without providing the reasons for the proposed recall; and
 - b. breached clause 2 of the terms and conditions of the employment appointment as Mr Gamaliere was to hold the position as Consul General for a 3 year period.

¹ *Gamaliere v Government of the Republic* [2023] VUSC 141.



4. Mr Gamaliere asserted the breach of the employment appointment had a consequential and incidental impact and damage on the sponsorship agreement that caused great loss to him in terms of future earnings and other entitlements. But for the unlawful recalling, Mr Gamaliere would have enjoyed the benefits and profits as if the agreement had been performed. Mr Gamaliere seeks that he be paid the following:
- (a) Entitlements under the sponsorship agreement at USD \$ 32,000 per month for the balance of the 3 year appointment period - USD \$ 928,000.
 - (b) Severance – USD \$ 192,000
 - (c) Three months notice – USD \$ 96,000
 - (d) Travelling allowances- USD \$ 180,000
 - (e) Flights - VT 4,290,660
 - (f) Unlawful termination at a multiplier of 6 under s 56(4) of the Employment Act - USD \$ 1,152,000
 - (g) Common law damages of VT 5 million
 - (h) Incidental and consequential damages of VT 2 million
 - (i) Punitive damages of VT 2 million

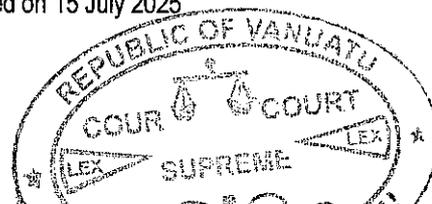
Background

5. Mr Gamaliere was appointment as Consul General to Dubai pursuant to section 17 (1) of the Foreign Services Act No. 20 of 2013. The appointment was for a period of three years. On 3 March 2022, the Minister of Foreign Affairs made an order setting out the terms and conditions of Mr Gamaliere's appointment. Relevantly, pursuant to clause 6 of the terms and conditions of appointment, the position was self-funded and Mr Gamaliere was not entitled to remuneration and other entitlements. As the Court of Appeal said² an unusual feature of the appointment was the self-funding.
6. Accordingly, Mr Gamaliere secured sponsorship funding. His position is that the Defendant was aware of the sponsorship arrangement. He relies on a letter from the Minister of Foreign Affairs to the sponsor³ appointing the sponsor as Vice Consul General for the Republic of Vanuatu in Dubai. The Director of the Ministry of Foreign Affairs, Mr Basil disavows any knowledge of the sponsorship agreement.⁴
7. This sponsorship arrangement was for three years. The sponsor agreed to pay a fixed minimum sum of USD 32,000 per month for the salaries of the Consul General, Private Secretary, Consular officer and head of legal / operations. The first monthly payment was to be made upon the signing of the sponsorship agreement. The next payment of five months salary was due upon the opening of the Consular office. There is no evidence before the Court whether the Consular office in fact opened. Mr Gamaliere's sworn statement filed in support of the claim on 7 February 2024 is silent as to that issue.

² *Gamaliere v Government of the Republic of Vanuatu* [2023] VUCA 50.

³ The letter of 7 March 2022 is attached to Mr Gamaliere's sworn statement filed on 15 July 2025

⁴ See paragraph 10 of Mr Basil's sworn statement filed on 14 November 2024



8. On 9 November 2022, Mr Gamaliere was recalled as Consul General of the Republic to Dubai with immediate effect. That decision was found to be unlawful. As I have said, Mr Gamaliere asserts that the employment appointment has been breached and that his appointment was terminated by the unlawful recall decision. This has had a consequential impact and damage on the sponsorship agreement that has caused him significant loss in terms of future earnings and other entitlements.

Procedural matters

9. This matter was set down for a trial on 3 July 2025. It did not proceed as the Defendant's witness was overseas. An adjournment was not opposed. Counsel proposed that the matter be dealt with by way of written submissions and a determination of the papers.⁵ As is evident from the Minute issued on 3 July 2025, Counsel confirmed to me there were no contested facts or evidence. So, I acceded to their request and made timetabling directions.
10. On my review of the evidence and submissions, there is a dispute as to whether the Defendant was aware of the sponsorship agreement and its terms. I will discuss this further shortly, but counsel know that if there are contested facts, then the Court is not able to resolve disputed facts by reading sworn statements, and I will not do so.⁶
11. Counsel were directed to file written submissions. Neither counsel complied with the timetabling directions. When Mr Tari did file his submissions, for reasons not known to me, they were not placed on the Court file. When counsel were followed up, Ms Robert advised my secretary that she had received Mr Tari's submissions and provided a copy to the Court. The Defendant's submissions were eventually filed on 20 November 2025.

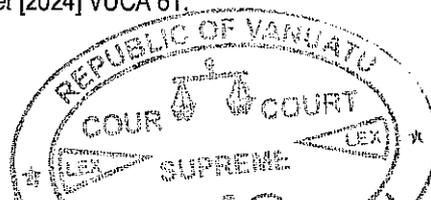
Discussion

12. In his written submissions, Mr Tari contended that Mr Gamaliere's claim was for damages as a result of the Supreme Court's finding that the recall decision was unlawful. The fact that the recall decision was unlawful does not of itself entitle Mr Gamaliere damages. Damages are not an available remedy on judicial review. The Court of Appeal said this in *Republic of Vanuatu v Jong Phil Shin* [2025] VUCA 43:

21. *We mention that even if the revocations of the Claimants' citizenship had been unlawful (which they may well have been, if only because of the apparent denial of procedural fairness), this would not of itself have entitled the Claimants to damages, as damages are not an available remedy on judicial review. Damages are a well-recognised remedy for a tort, but the tort should be identified so that the appropriate principles governing the assessment will be known. The Defendants have not at any stage contended that the damages should be confined to the*

⁵ See the discussion about hearings on the papers in *Pakea Ltd v Bourdet* [2024] VUCA 61.

⁶ *Hiwa v Family Niatgei* [2024] VUCA 36.



period it would have taken the Claimants to bring a successful claim for judicial review and/or for the Citizenship Commission to consider the revocations afresh after providing procedural fairness.

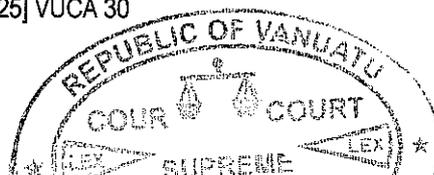
13. But as the Court of Appeal said in *Vanuatu Ferry Limited v Republic of Vanuatu* [2024] VUCA 17, the facts that give rise to a successful judicial review application may provide a basis for a claim based on a private law wrong such as a tort or nuisance.
14. The claim is not pleaded as clearly as it could have been. That may reflect at least in part the unusual funding arrangements. The private law cause of action appears to be breach of the employment contract, and unlawful termination arising from the unlawful recall. In *Vanuatu Copra and Cocoa Exporters Limited v Vanuatu Coconut Product Limited* [2011] VUCA 29, the Court of Appeal said:

[13] The basic rule governing the law of remoteness of damage in contract was stated by Alderson B in Hadley v. Baxendale [1854] 156 ER 145 at 151: "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, ie, according to the usual course of things, from such breach of contract itself, OR such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

[14] The word "OR" has been emphasized to indicate that there are two branches or limbs to the rule in Hadley v. Baxendale. Under the first limb damages awarded are broadly described as "general" damages, and those awarded under the second limb as "special" damages. The general damages are those which the law presumes to follow "naturally" from the breach, whereas special damages are of an exceptional nature and are only recoverable where the defendant had prior knowledge of a likelihood that the loss would be suffered.

15. Most of the relief sought is for damages, arising from the breach of contract/unlawful termination, which resulted from the unlawful recall. In *Remy v Kyong Sik Jang* [2018] VUCA 5, the Court of Appeal set out the principles guiding a Court in assessing damages. The Court said that when a Court is required to assess damages, the Court starts from the principle that it is for the Claimant to identify the losses which are claimed and to lead evidence to establish them.⁷
16. Mr Gamaliere seeks to be paid USD 32,000 a month for the balance of the 3 year term of appointment and other entitlements. Mr Gamaliere must be seeking general damages arising from the breach / termination of the employment contract. His evidence is that this was the salary he was entitled to under the sponsorship agreement, and that the Defendant was aware of the sponsorship. Mr Basil expressed a contrary view. As I

⁷ See also *Shefa Provincial Government Council v Timbaland Ltd* [2025] VUCA 30



have said, I am not in a position to determine any contested facts. However, I accept Ms Robert's submission that the letter of appointment of the sponsor as the Vice Consul General of Vanuatu does not mention the Minister's awareness or knowledge of the sponsorship agreement, as Mr Gamaliere contends. This may have been relevant to the type of damages claimed, but I do not think anything turns on it, given my view as to the insufficiency of the evidence to establish damages, as explained below.

17. But more fundamentally, Mr Gamaliere has not provided any evidence to the Court as to whether the Consul General's office was opened, whether there were other staff or what portion of the monthly payment of USD 32,000 he did receive or was to receive each month. An obvious point is that the funding agreement makes it clear that the USD 32,000 per month was for the salaries of the Consul General and other staff including a Private Secretary, Consular officer and a head of legal / operations, and not just Mr Gamaliere's salary. He simply asserts that he was entitled to be paid USD 32,000 per month under the sponsorship agreement. But that is not what the sponsorship agreement provided. Further, Mr Gamaliere has not provided any evidence (such as bank statements) to show what he in fact was paid in the 9 months before he was recalled. A monthly salary of USD 32,000 per month is exorbitant by any standards. It equates to VT 3,900,000 per month, a staggering amount of money. It strains credibility to think he received that amount of money for the time period he was in Dubai, particularly as the agreement itself provided for one month's salary to be paid initially, and then the next tranche of salary was to be paid once the Consul General's office was opened. Further, Mr Gamaliere has provided no evidence as to whether he had taken flights, their cost and travel costs. He has not provided any evidence as to the cost of the flights either.
18. In summary, in relation to the sponsorship agreement, Mr Gamaliere has failed to adduce any evidence, other than the agreement itself, to support the claim for damages arising from the breach/ termination of his employment. While I accept that in the case of inadequate evidence the Court will endeavour to quantify the damages suffered as best as it can on the limited evidence available⁸, there is no evidence to be able to assess these damages.
19. There is no evidence either to establish the other heads of damages claimed, being common law damages, incidental and consequential damages and punitive damages. All Mr Gamaliere says in his sworn statement filed on 7 February 2024 is that the Defendant's breach of his employment agreement had a consequential and incidental impact and damage on the sponsorship agreement that has caused him great loss in terms of future earnings and other entitlements. He would have enjoyed the benefits and profits as if the agreement had been performed. He also says he suffered great loss and damages. There is no evidence other than the sponsorship agreement to establish how Mr Gamaliere is entitled to common law damages, incidental and consequential damages and punitive damages. Finally, there is no evidence as to any steps taken by Mr Gamaliere to mitigate his losses.

⁸ See *Remy v Kyong Sik Jang* [2018] VUCA 5 and *Republic of Vanuatu v Jong Phil Shin* [2025] VUCA 43.



20. It was for Mr Gamaliere to lead evidence to establish the damages claimed. For the reasons set out above, he has not done so. This is not a case where I consider it appropriate to endeavour to assess damages as best as I can, given the evidential deficiencies.
21. The claim for damages fails as Mr Gamaliere have not proved the losses claimed on the balance of probabilities.

Employment Act entitlements

22. Mr Gamaliere seeks a severance payment and a multiplier payment (of 6 times) for the unlawful termination of the appointment. He also seeks payment of 3 months' notice. The amounts claimed for each of these heads are based on the sponsorship agreement monthly salary amount of USD \$32,000. Mr Tari made no submissions as to the legal basis for either the entitlements or why the claimed amounts could be based on the sponsorship agreement.
23. Severance is provided for in s 56 of the Employment Act [CAP 160] ("the Act"), and s 30(1) of the Foreign Service Act.
24. Section 56 of the Employment Act says:

AMOUNT OF SEVERANCE ALLOWANCE

56. (1) *Subject to the provisions of this Part, the amount of severance allowance payable to an employee shall be calculated in accordance with subsection (2).*

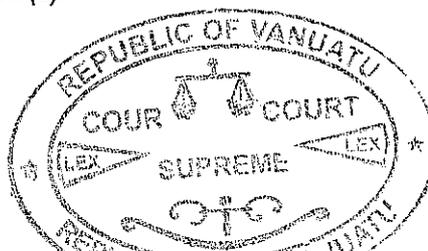
(2) *Subject to subsection (4) the amount of severance allowance payable to an employee shall be –*

(a) *1 months remuneration;*

(b) *for every period less than 12 months a sum equal to one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the employee was in continuous employment.*

(3) *Where remuneration is fixed at a rate calculated on work done or includes any sum paid by way of commission in return for services, the remuneration shall, for the purposes of this section, be computed in the manner best calculated to give the rate at which the employee was being remunerated over a period not exceeding 12 months prior to the termination of his employment.*

(4) *The court shall, where it finds that the termination of the employment of an employee was unjustified, order that he be paid a sum up to 6 times the amount of severance allowance specified in subsection (2).*



(5) Any severance allowance payable under this Act shall be paid on the termination of the employment.

(6) The court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest, at a rate not exceeding 12 per cent per annum from the date of the termination of the employment to the date of payment.

(7) For the purposes of this section the remuneration which shall be taken into account in calculating the severance allowance shall be the remuneration to the employee at the time of the termination of his employment.

25. Section 30 of the Foreign Services Act says:

30. Severance Entitlement

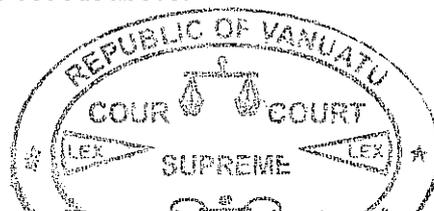
(1) A Head of Mission and a Consul General is entitled to receive from the Government a severance payment calculated at the rate of 2 months by the number of years specified in the terms of their contract.

26. The purpose and effect of s 30 of the Foreign Affairs Act is to give a Consul General a more generous severance entitlement than the 1 month severance provided for in the Employment Act. While both s 30 of the Foreign Services Act, and s 56(2) of the Employment Act are expressed in mandatory terms, Mr Gamaliere cannot be paid severance. That is because pursuant to s 56(2) of the Employment Act, severance is based on remuneration paid by an employer. The Defendant was Mr Gamaliere's employer, but he was not entitled to be paid remuneration by the Defendant under the terms and conditions of employment. The sponsor was not Mr Gamaliere's employer. I venture to observe that this was a very unusual arrangement.

27. In terms of a severance multiplier under s 56(4) of the Act, where there is an unjustified termination of employment, a payment is to be made of up to a multiplier of 6 times the amount of the severance specified in s 56(2). Mr Gamaliere is not entitled to a severance payment under s 56(2), so it follows that he is not entitled to a payment based on the multiplier under s 56(4). Even if he was entitled to a payment under s 56(4), Mr Gamaliere has not led any evidence for the Court to assess a multiplier.

28. Mr Gamaliere is not entitled to be paid out 3 months' notice. He was appointed for a fixed term of 3 years. There is no provision in the terms and conditions for the fixed term to end early on notice by either party. Because it was a fixed term appointment, s 49 of the Employment Act does not apply. Further, it was a term of the appointment that Mr Gamaliere was not entitled to paid remuneration from his employer, the Defendant.

29. The claim for entitlements under the Employment Act fails as Mr Gamaliere is not entitled to the claimed payments, for the reasons set out above.



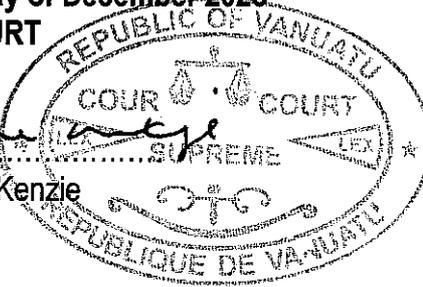
Result

30. The claim fails for the reasons set out in the judgment.

31. I make an order for costs in favour of the Defendant as either agreed or taxed.

**DATED at Port Vila this 9th day of December 2025
BY THE COURT**

Mackenzie
.....
Justice M A Mackenzie

The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR" and "COURT" are positioned on either side of the scale, with "SUPREME" below it. A small star is visible on the right side of the seal.