

IN THE MAGISTRATES' COURT
OF THE REPUBLIC OF VANUATU
HELD IN PORT VILA
(Civil Jurisdiction)

Civil Case No.99 of 2011

HT
15/72/11
BETWEEN: ROBERT TANARANGO

Claimant

AND: REPUBLIC OF VANUATU

Defendant

Mr. Collin Leo the Claimant
Solicitor General for the State

RESERVED JUDGEMENT

1. The Claim

On 2nd June 2011 a claim was filed for damages for wrongful arrest. The claim was for damages of 600,000VT.

2. The Onus of Proof

In the claim the onus is on the claimant to prove the case on the balance of probabilities.

3. Background

The police had been called by the Claimant to an incident on 26th December 2009. There had been some stone throwing and a fight between some young men, one of whom was related to the Claimant, his wife's brother. The police decided to arrest the Claimant's wife's brother, Cliffson. The Claimant intervened. On his account he merely inquired why the police were arresting his brother-in-law when they had only heard one side of the story. The Defence account is that the

situation was still violent with drunk people throwing stones and they tried to arrest those responsible. The Defence say that the Claimant interfered with these arrests and so was arrested himself for obstructing the police.

The charge against him was subsequently withdrawn.

4. The issues for the Court to decide

1. Was there a wrongful arrest of the Claimant for which he can bring an action against the police (republic of Vanuatu) for damages?
2. Given the immunity provisions of the Police Act, did the police officers act in good faith when arresting the Claimant.

The parties agreed that the second issue should be decided first because, depending on how that was decided by the court the Claim would either succeed or fail. That is, even if it was shown that the defendant has made a wrongful arrest, unless the Claimant proved that the Police were not acting in good faith, the Claim would fail because of the immunity of S40 Police Act.

5. The relevant law

Section 12 (1) and (2) of the Criminal Procedure Code sets out the police powers of arrest. Under S12(2)(b) a police officer may, without a warrant, arrest *“any person who willfully obstructs a police officer while in the execution of his duty....”*

S18(1) of the CPC sets out what is to happen to a person arrested without a warrant.

S40 Police Act provides for an immunity for police against claims for damages. That section states *“No suit or other legal proceedings for damages shall be instituted in any court of law against the Minister or the Commissioner or any other member of the Force or any other person for or on account of or in respect of any act, matter or thing done or purported to be done, or omitted to be done, in good faith, in the performance or exercise of any duty or power imposed or conferred by or under this Act....”*

6. The evidence

The evidence on file is set out in a number of sworn statements. Each statement provides an account of the incidents on the night when the police arrived because of the fight. Whilst the Claimant's account is that the fight had settled down, the Police witnesses give evidence that the reason they decided to arrest the Claimant's brother-in-law was that there were stones being thrown and people were still drunk and aggressive.

In the sworn statement of David Bong dated 7th December 2011 at paragraph 7 and 8 he stated "*The situation was getting out of hand; stones were being thrown at the police truck. Therefore, in order to calm the situation, we had to arrest those who were drunk and take them to the station.*

However, we were not able to do that, because the Claimant who was also under the influence of alcohol was preventing us from arresting the people concerned."

The Claimant denies he was affected by alcohol but agrees he did question the police about why they were arresting his wife's brother. His witnesses also saw him speaking to the police.

7. Findings of fact by the Court

Without making any finding about whether the Claimant was or was not drunk, there seems no doubt on the evidence that the Claimant questioned the police about the arrest of his brother-in-law at a time they were trying to attend to their duty at the scene. Whilst the Claimant may have seen his actions as reasonable, the court accepts the Defendant's account that for the police, the intervention of the Claimant was making their task more difficult to perform and adding to the risk that they would not be able to settle down the scene and prevent further breaches of the peace.

There is no evidence presented in the case which would lead the court to decide that the police were acting in bad faith when they arrested the Claimant.

The Claimant, at paragraph 74 of his submissions suggests an alternative approach the police could have taken. After the event it is easy for someone to look at alternative ways that a police officer may have managed a situation and conclude that might have been preferable. However, that does not prove the police officer acted in bad faith. The fact the Claimant disagreed with how the police managed the situation is not proof that they acted in bad faith.

There is no evidence before the court on which the court could conclude that the police officers acted in bad faith in arresting the Claimant.

8. Conclusions based on the law and the facts.

Given the Court finds there is no evidence that the police acted in bad faith, the police and in turn the defendants are entitled to the protection of S40 Police Act.

The Court therefore does not need to decide if the arrest was lawful.

9. Decision

- 1) I am not satisfied on the balance of probabilities that the Claimant has established its claim.
- 2) I find for the Defendant.

10. Costs

I make the following order as to costs.

Each party to pay their own costs.

Dated at Port Vila this 3rd day of July, 2017

BY THE COURT

