

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

Civil Case No. 4029 of 2016

BETWEEN: MARCEL MOLWAK

Appellant

Claimant's lawyer:
Eric Molbaleh of LENT TEVI
LAWYERS, Port Vila, Efate
Vanuatu

**AND: SAMUEL ATUARY &
LOLO SIO**

Defendant

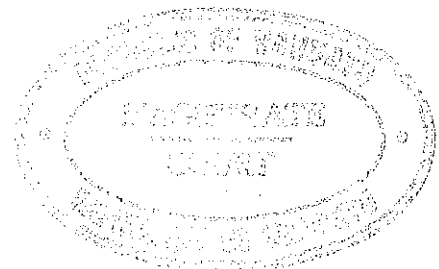
Defendant Samuel Atuary's
Lawyer:
Anna Sarisets of YAWHA &
ASSOCIATES
Port Vila, Efate
Republic of Vanuatu

Coram: Moses Peter

*Appearances: Eric Molbaleh for claimant
Anna Sarisets for defendant*

JUDGMENT

1. The claimant filed proceedings against the defendant claiming for specific and general damages in respect of an alleged assault on him by the defendant.
2. The claimant asserts that the defendant and some persons who were unknown to him went into his house on the early morning of 14th December 2016 and assaulted him at his house a result of which he sustained very serious injuries and was taken to the hospital on an ambulance.
3. Upon examination, the findings of the medical officer showed he sustained laceration on his lips and has fracture on his tooth.



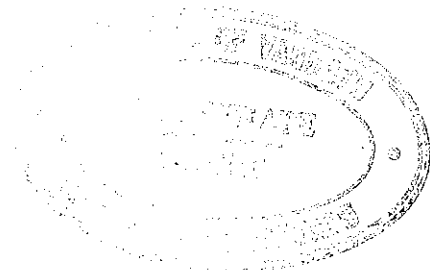
4. The fracture he had on his tooth made it difficult for him to eat solid food so he had to rely on milk and water for some time.
5. His family were also fearful over the ordeal and were traumatised thus affecting them over a certain period of time.
6. The Second defendant namely Lolo Sio was not served the claim and did not file a defence. It appears the claimant does not wish to advance the case against him except the first defendant namely Samuel Atuary who appeared to be his brother in law.
7. The first defendant Samuel Atuary denied the allegation and say he was acting in self-defence as it was the claimant who perpetrated the assault on him.

Issue

- ***Whether the Defendant Samuel Atuary is solely responsible for the assault perpetrated on the claimant?***
- ***If not, then what quantum of damages will commensurate with his liability?***

8. Agreed facts

- The incident occurred in the early morning of 14th December 2016.
 - The defendant went to the claimant's house and knocked at their door that caught everyone up out of their bed.
 - The claimant approached the defendant Samuel Atuary.
 - Altercations led to fisticuffs.
 - In the meantime, defendant's friends intervened and perpetrated assault on the claimant.
 - It was dark and no one at the time clearly saw what was happening. However, the claimant sustained serious injuries on the joint involvement of the defendant and his friends.
 - The claimant's families were traumatised by the act of the defendants.
 - A reconciliation ceremony had been performed by defendant's friends except the defendant.
 - The defendant attempted to perform reconciliation with the claimant but the claimant refused and filed proceedings against him instead.
9. The defendant said in cross examination that he was visiting his sister that night purposely to seek accommodation on the veranda of their house because he went home but the families had gone to bed and had locked the door to their house.
 10. Interestingly he went to his sister with his friends they were drinking beer together that night. It was very early in the morning and a visit to a person's residence would be a kind of a disturbance to everyone.
 11. If the defendant's whole intention was to seek accommodation at the veranda then he having been on the veranda should have slept right there instead of knocking loudly on the door.
 12. I tend to believe the claimant's version of the story that he opened the door and the boys were standing at the veranda when he chased them out that they started throwing punches at each other.
 13. I strongly hold the view that the defendant and his friends intended to cause trouble on the claimant when they approached him just past mid-night at his house.



14. The claimant and his witnesses being his father Joseph Molwak and Marie-Hellen Molwak all gave consistent account of what happened that early morning. Whilst it is obvious that in evidence, none of them were able to give an accurate account of who was responsible for the damage on the claimant's teeth, it remain clear that one of the defendant's friend threw a rock aiming at the claimant that early morning that it landed on his mouth.
15. Evidence shows the defendant was confronting the claimant when the stone flew from behind and landed on the claimant.
16. The defendant remains unblemished by the damages on the claimant's teeth however; he facilitated the actions which resulted on the injuries sustained by the claimant. Evidences also substantiated him inflicting attacks on the body of the claimant.
17. The court will not rely on the defence of self defence because he trespassed into the claimant's property at odd hours of the night and provoked the claimant by the act of banging on the door of his house and behaving in a disorderly manner. The witnesses do confirm the defendant has on several occasions gone into the claimant's residence and caused discomfort on the claimant and his family.
18. I having considered the evidence and the closing statement by both counsels and have formed the firm view that the defendant is not solely responsible for the damages inflicted on the body of the claimant. I therefore answer the first issue in the negative.
19. With regards to the second issue, I have considered the statement submitted by counsel for the defendant in (*Hannah Godfrey, Linda Jacobs, "Cloisters"* at p.6 where it says "...Therefore, where two or more tortfeasors cause different damages to the claimant, the causes of action are distinct from one another. The claimant can sue each defendant, but can only recover the extent of the damage f or which each tortfeasor is liable".
20. Whilst it could be accepted that significant reparation has been achieved through the custom reconciliation between the claimant and the other friends of the defendant the court is of the view that the defendant will only be liable to one quarter of the damage claim of the claimant.
21. It is therefore ordered that the defendant pay claimant VT 100,000 for assault and general damages in 30 days from today.
22. Cost for the claimant to be taxed failing agreement.

Dated at Port Vila this 13th day of September 2018

BY THE COURT

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MOSES PETER
Senior Magistrate

