

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

Civil
Case No. 18/604 MC/CIVL

BETWEEN: HANNAH TALEO & HARRY PHILIP
Claimants

AND: CHANTAL TIPAL
Defendant

Before: *Fsam*

In Attendance: *Mrs Kalwatman_P for the Claimants*

Mrs Matas_V for the Defendant

Copy: *The Public Solicitor's Office, The Vanuatu Women's
Centre, Claimants, Defendant.*

JUDGMENT

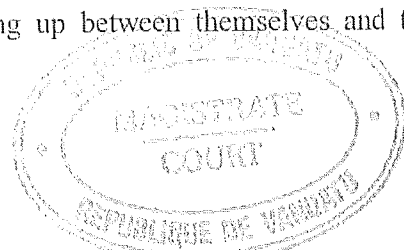
Introduction

1. The Claimants bring a claim for damages over an allegation of assault and battery by the Defendant Mrs Chantal Tupal on the Claimants, particularly Mrs Taleo and her daughter.

Facts

2. The Claimants Hannah Taleo and Harry Philip are current de facto partners and the Defendant is the former de facto partner to the Claimant Harry Philip.

3. The Claimant Mr Harry Philip had decided to move in to live with the Mrs Taleo when tension started building up between themselves and the



defendant, leading to a stoning incident by Mrs Tupal against Mrs Taleo and her daughter on the 13th day of August, 2017, which led to the main cause of action in tort of assault and battery, and wherefrom the Claimants are seeking damages and costs accordingly.

Issue

4. I have summarized from both submissions by the Claimants and Defendant, the following as the three main issues to be determined:

a) *Whether or not the stones thrown by the defendant on the 13th of August 2017 at Mrs Taleo and her daughter constituted an act of assault and battery?*

b) *Whether or not the stones did hit the claimant Hannah Taleo and her daughter causing them injury?*

c) *Whether or not Claimants are entitled to damages?*

Evidence:

5. The Claimants relied on both their oral testimonies under oath.

6. The Defendants relied on her own oral testimony under oath.

Submissions

Assault and Battery

7. I have heard submissions by the claimants in respect of the stoning incident of 13th of August 2017.

8. The main elements of assault and battery in this case that needed to be satisfied by the claimants and as summarized below are:



a) That the defendant had the intention to carry out the act of stoning the claimant Hannah Taleo and her daughter on the 13th of August 2017.

b) That the defendant's intended act was meant to cause harm or injury on the claimants.

c) That such act was harmful or had the likelihood of causing injury or harm on the claimants.

9. The Claimants through their counsel Mrs Kalwatman submitted that while there was tension in the relationship between the claimants and the defendant, this did not give Mrs Tupal the right to take the law into her own hands, by throwing not one but four stones consecutively against the Mrs Taleo and their daughter.

10. That Mrs Tupal's act of throwing stones (the size of counsel's fist), and not caring there was a child present already constituted battery and assault.

11. Claimant Counsel further submitted that according to the evidence the stones were aimed at the claimants but whether or not it hit Mrs Taleo's chest is enough evidence to constitute battery and assault.

12. Mrs Kalwatman further submitted that the defendant herself in evidence admitted her action was not lawful.

13. That in light of these admission, the claimant says the court should find the defendant liable for assault and battery and order claimants damages of VT50,000 for fear and bruises sustained from the defendant's actions and cost at VT8,000.



14. Mrs Kalwatman further made reference to the defendant's on-going trespass into the claimant's premises on two occasions, the 22nd October, 2017, and 22nd January 2018, wherefrom they are also seeking damages.

15. The Defendant on the other hand, submitted through her counsel Mrs Matas, that she does not dispute throwing stones at the claimant Hannah Taleo and her daughter on the 13th of August 2017, but stated that the stones did not hit Hannah Taleo on the chest as stated by Mrs Taleo, because according to her evidence, the claimants and their daughter were already walking away when she threw the stones at them. She did state under cross and re-examination that there was a possibility the stones hit Mrs Taleo's back or buttock although no evidence was given as to the stones actually hitting Mrs Taleo.

16. However the defence submitted that in the absence of medical certificate confirming the injuries or bruises claimed by the claimants, the claimants are not entitled to claim for damages they seek.

17. Mrs Matas further submitted that the claimant's evidence of the stones thrown by the defendant that hit the claimant Mrs Taleo's chest is not convincing enough without a medical report.

18. Mrs Matas further made reference to the case of *Bernard v Blake [2013] VUSC 217*, as a guideline for this court to consider in assessing general damages in respect of damages sought in this case.

19. The Defence submitted the claimants failed to convince the court in respect of damages they seek accordingly.

20. Mrs Kalwatman on the above cited case, in their further reply submitted that the injuries sustained here were a lot more serious and permanent compared to the current case which involves only bruises without any permanent injury.



21. That their claim for general damages is in reference to pain and suffering and loss of enjoyment of life by the claimants due to on-going interferences by the defendant against them. That they are also seeking out of pocket expenses of VT20, 050 for travelling expenses incurred by the claimants.

22. They further submit that although there is no medical report, the mark on Mrs Taleo's chest (as shown to the court) is enough to confirm her evidence.

23. Mrs Kalwatman further made reference to Rule 4.10 (1) with specific reference to sub paragraph [4.10.3], although she could not assist this court with a full case citation of an authority she was referring to in her submission in reference to general damages, I could only go so far as determining the issue of damages on what is produced as evidence before me.

Findings

24. In answering the first issue, the only evidence before me that I can rely on is by the claimant Mrs Taleo and Mrs Tupal, where circumstances revealed from their evidences are that the stones were intentionally aimed by Mrs Tupal at Mrs Taleo and her daughter, with intention of causing them harm or injury.

25. Mrs Taleo's evidence was the stones hit her upper left chest leaving a black mark as remaining scar from the incident, and Mrs Tupal's evidence is that she denied the stones hit Mrs Taleo on the chest, however, she admitted she was cross at that time when she threw the stones at Mrs Taleo and her daughter. The only evidence in respect of Mr Taleo's daughter was that a stone thrown at them passed the girl's leg but there was no injury.

26. I have had the opportunity of seeing Mrs Taleo's demeanor and hearing her testify and I accept her evidence that she was afraid for herself and her daughter's safety, that they actually felt some fear of harm upon them



by Mrs Tupal's actions, and this was also confirmed by Mr Philip's evidence where he observed Mrs Taleo and her daughter scared soon after the stoning when they approached him to inform him of the situation.

27. I also accept that Mrs Tupal admitted to throwing stones at Mrs Taleo and her daughter for the very reason she was cross at Mr Philip for leaving her and their children and choosing to live with Mrs Taleo.

28. That given Mrs Tupal's admission that she had every intention to carry out her action, or to cause some harm to Mrs Taleo and her daughter, and that she knew the act was unlawful, is enough evidence to show her action did amount to assault and battery.

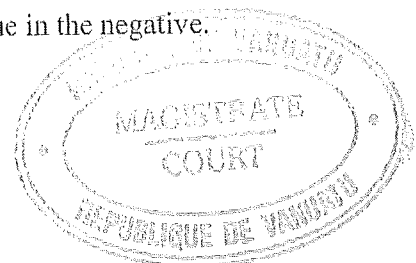
29. And so I answer the first issue in the affirmative.

30. With respect to the second issue, on whether or not the stones did hit Mrs Taleo and her daughter, I find there is no sufficient evidence before this court to prove this.

31. I find that in the absence of any independent eye witnesses, and or a medical report, I cannot decide solely on Mrs Taleo's testimony or on the black scar on her upper left chest that the stones thrown at her and her daughter did hit her accordingly or caused her bruises or injury, given also the denial by Mrs Tupal that the stones did not hit Mrs Taleo, and her defence under cross examination in stating her location and direction from which she threw the stones, was towards their backside, and she confirmed this position under re-examination.

32. The black scar on her chest could be a result of anything other than by the contact of defendant Mrs Tupal, and so I refuse to accept this as prove of her claim for injury from the defendant's act.

33. Accordingly, I answer the second issue in the negative.



34. And as to the third and final issue, on whether or not the Claimants are entitled to damages, there is no medical evidence to prove injuries were sustained by the Claimant Mrs Taleo or her daughter.

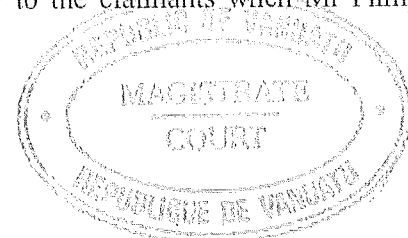
35. And so I repeat my answer to issue 2 above in paragraphs (31) and (32) accordingly.

36. Therefore, on damages sought, I find there is no sufficient evidence to satisfy this court on the balance of probabilities that the claimant suffered pain and loss of enjoyment of life due to the defendant's actions of 13th of August, 2017, or for the trespass of the 22nd October 2017 and 22nd January, 2018.

37. The defendant disputed the allegations against her that on the 22nd of October 2017, she had intended to stop Mr Philip at that time from travelling to Santo with Mrs Taleo, and says instead she had accompanied two persons to the airport to speak with the Claimants following some outstanding payments for pigs owing to the two by the claimants, and it was when they were approaching the claimants that they (Claimants) got angry seeing her there and a confrontation resulted between them.

38. And in respond to the claim for trespass happening on the 22nd of January 2018, the Defendant again disputed this saying she had gone there to confront Mr Philip because she was cross at him for having gone to see her earlier at their home, and telling her that he does not want to be with Mrs Taleo and wants to return to Mrs Tupal and their children.

39. Accordingly, I find that Mr Philip's action in moving between Mrs Taleo and Mrs Tupal is in a way contributing to some of the suffering by Mrs Taleo and that he is the cause of this on-going tension and dispute particularly between Mrs Taleo and Mrs Tupal and between Mrs Tupal and the claimants, and for this very fact, it would not be fair to award damages for trespass or loss of enjoyment of life only to the claimants when Mr Philip



himself is obviously contributing to some of this suffering felt by both women.

40. The claimant also seeks out of pocket expenses of VT20, 050, from which no evidence or breakdown of this amount is given to satisfy this court to award such costs.

41. I therefore find the claimants have failed to prove their claim for damages accordingly and I answer this last issue in the negative.

Conclusion

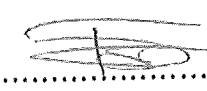
42. On the basis of above considerations, I find accordingly that the claimants are only partly successful in their claim.

43. That the claim for damages cannot stand and is therefore dismissed.

44. That parties bear their own costs.

DATED at Port Vila this 27th day of November, 2018.

BY THE COURT


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Magistrate

