

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

Civil Case No. 246 of 2021

**BETWEEN: MARIE-NOELLE FERRIEUX  
PATTERSON TRADING AS  
FERRIEUX PATTERSON  
LAWYERS**

Claimant

**AND: DOLCY PAKOA**

Defendant

*Ms. Muluan. V for Claimant  
Mr. Botleng. J for Defendant*

*Date of judgment: 27 August 2021*

## **JUDGMENT**

### **Claim**

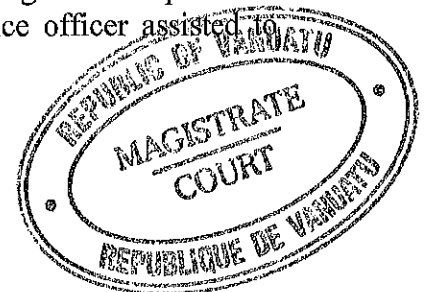
This is a claim for a permanent restraining order against the Defendant, specific damages and punitive damages.

### **Facts**

Sometime in year 2019, the Defendant started to cause disturbance to the Claimant and her employee in the form of abusive language, threats and damage to the Claimant's property.

On 06 November 2020 at 10am in the morning, the Defendant met the Claimant at Cello villa shop and shouted to the Claimant that she was a thief. This was not the only times but the Defendant continuously cause threats and fear on the Claimant or Claimant's employee. The Defendant's actions cause fear and insecurity to the Claimant and her employees.

On 11 November 2020 around 9.30am, the Defendant came to the Claimant's office and locked the main gate of Claimant's office with a big padlock causing which deprive the Claimant and her employees from leaving the office until a police officer assisted to remove the padlock.



Around 4.15pm on 20 January 2021, the Defendant came to the Claimant's office where she painted the Claimant's car with a red and black spray paint. After the Defendant painted the Claimant's car, she went into PCS shop and called the Claimant's employee to inform the Claimant to come and see her painted car. The Claimant then lodge a complaint against the Defendant with the police. The removal of the paint costs the Claimant a sum of VT230, 000. This is not the first time that the Defendant painted the Claimant's car. She had done so a year earlier.

The facts are not disputed by the Defendant.

### Issues

- a) Whether or not the Defendant actions were vindictive towards the Claimant?
- b) Whether or not claimant is entitle to general damages?
- c) Can the Magistrates Court grant a permanent restraining order?
- d) Whether or not the Court has jurisdiction to deal with the counter claim?

### Claimant's case

The Claimant produced a sworn statement of Melissa Charley dated 07 June 2021 and 12 May 2021 and a sworn statement of Marie-Hellen Omry dated 02 February 2021. The defence choose not to challenge the sworn statement in a trial hearing but submits that the Defendant accepts the claim of specific damage in the amount of VT230, 000.

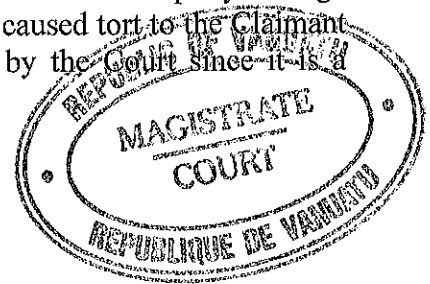
### Defendant's case

The Defendant challenges the claim of punitive damage not the specific damages. No sworn statement filed to support the defence.

### Submissions

Claimant submits that the Defendant accepts the specific damage in the amount of VT230,000. The Court should award that amount to the Claimant. The Claimant relied its pleadings to make its case and that general damage should be awarded to the Claimant since the actions of the Defendant was vindictive and insolent which no person of a right mind could acted in such manner over a period of time as in this case. The Claimant suffered more than once by the action of the Defendant and that is why the Claimant sought a permanent restraining order as a first remedy in its claim filed in Court on 03 March 2021.

The Claimant relied on the case of **Nasse v Lui [2021] VUSC 4** to say that the Claimant do not need to show receipts to support the claim for specific damage. The Claimant sought general damage in the amount of VT500, 000 as a punitive or exemplary damage against the Defendant as it is not the first time the Defendants caused tort to the Claimant and her employee. The general damage should be awarded by the Court since it is a



punitive damage to punish the Defendant for the harmful acts she had done on the Claimant over a period of time.

Claimant relied on **Heston v Moli [2000] VUSC 80** to say that the punitive damages will teach the Defendant. Claimant submits the case of **Banga v Waiwo [1996] VUSC 5** to say that the punitive damage should be awarded by the Court because the conduct of Defendant insolent and vindictive including malicious and that clearly shows that it is in breach of the Claimant's right which is a disrespectful and harmful to the Claimant. No common decent person would have acted in the manner which the Defendant had acted. The actions of the Defendant towards the Claimant started in the year 2019 until 2021 when she is brought before the Court in this proceeding. The Defendant painted the Claimant car not only once but twice during that period, cause threats to Claimant and her employee, locked the Claimant and her employee in their office with a padlock etc.

It is submitted that since the Defendant do not dispute the claim then the Court should award the costs of the proceeding in the amount of VT118, 000.

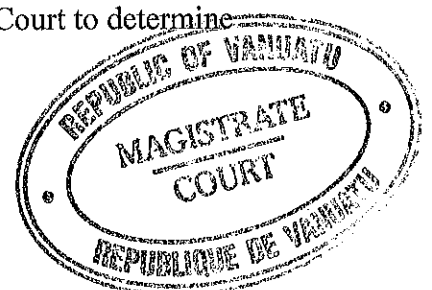
Defence submits no case law to support its argument. However, defence relied on Rule 11.2 (1)(2) and Rule 11.4 (a) (a) of the Civil Procedure Rules No. 49 of 2002 to argue that punitive damage should be dismissed by the Court.

### **Discussion**

The Court had considered the submission on quantum filed by both parties in this matter, the Court appreciate the Claimant's submission which was very helpful since it sheds the view of the higher courts in respect of punitive damage.

The responses to the issues above are as follows:-

- (a) The answer to issue (a) is affirmative. This is not a one-off incident but repetitive over a certain period causing fear to the Claimant and her employees. The Court finds that the normal person would not acted in the manner as the Defendant. The Claimant's actions were vindictive and insolent towards the Claimant.
- (b) The answer to (b) issue is affirmative. However, the Court is of the view that the amount claim by way of punitive/general damage is too high. The Court is of the view that the proper general/punitive damage would be the amount awarded in **Lau v Arksai [2014] VUSC 45**; Civil Appeal 04 of 2013 (7 May 2014) which is the sum of VT60, 000.
- (c) The answer to (c) would be negative. This Court has limited jurisdiction. A permanent restraining order would in some ways amount in breach of the Defendant's constitutional right. Supreme Court is the only Court to determine



such relief. The Court hereby dismiss this relief. The Claimant may seek the relief before the Supreme Court if she wishes to do so.

- (d) The answer to (d) would be negative. The claim sought by the Defendant against the Claimant is above the jurisdiction of this Court. The Court hereby dismiss the relief. Defendant can seek such relief before the Supreme Court if she wishes to do so.

The judgment in favour of the Claimant shall be as follows:

- VT230, 000 as specific damage.
- VT60, 000 as punitive damages for continuing threats and damage to property
- VT118,000 as costs of proceedings in this matter

**Total of VT408, 000** which must be paid within 30 days.

Matter is hereby listed for enforcement conference on 04 October 2021 at 8.30am in the morning.

Claimant shall file and serve a detailed summons 3 days before 01 October 2021.

DATED at Port Vila, this 27<sup>th</sup> day of August 2021

