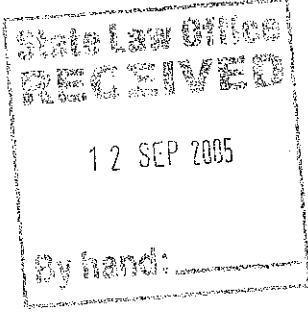


19/06/05

(Civil Jurisdiction)

**BETWEEN: WILSON GARAE**

Claimant



**AND: THE POLICE COMMISSIONER**

First Defendant

**AND: VANUATU GOVERNMENT**

Second Defendant

**Coram: Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit - Clerk**

**Counsel: Mr Saling N. Stephens for the Claimant  
Miss Florence Williams for the Defendants**

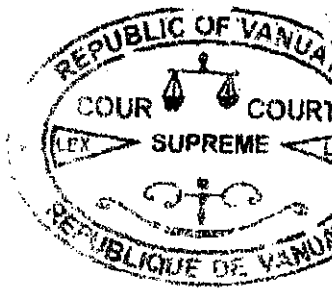
**Date of Hearing: 12<sup>th</sup> and 14<sup>th</sup> July 2005  
Date of Judgment: 12<sup>th</sup> September 2005**

**JUDGMENT**

**Introduction**

This is a reserved judgment. At the end of the evidence for the defence on 14<sup>th</sup> July 2005 Counsel were directed upon their requests to file and serve final written submissions within 7 days for the Claimant and 7 days thereafter for the defendant. Neither parties have filed written submissions as at 31<sup>st</sup> August 2005. The Court therefore dispenses with their submissions.

**Parties**



The Claimant is a Senior Inspector in the Vanuatu Police Force who has served as a police officer for some 25 years. The Commissioner of Police is sued as employee or agent of the Vanuatu Government.

### Claim

The Claimant is suing the defendants jointly and severally for damages in the sum of VT1.500.000 under the following heads -

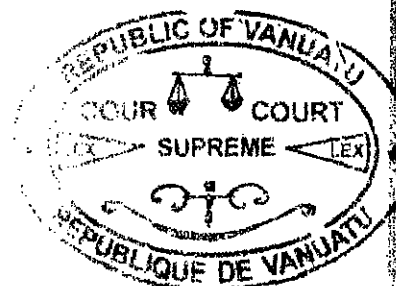
- (a) unlawful arrest - VT300.000
- (b) unlawful imprisonment - VT300.000
- (c) anxiety and emotional stress - VT300.000
- (d) harm to good reputation - VT300.000
- (e) punitive damages - VT300.000

### Facts

The Claimant complains that on 24<sup>th</sup> October 2001 at or about 4 O'clock in the afternoon a group of uniformed officers of the Vanuatu Mobile Force (VMF) under the command and control of Major Robert Diniro (the then Acting Commander of VMF) had trespassed to the residence of one Monic Stephens, a relative of the Claimant at Anamburu area, Port Vila. He complains that these VMF officers had arrested him without a warrant and had him brought to the VMF Headquarters where he was unlawfully confined until 25<sup>th</sup> October 2001 when he was released. He further claims that the matter was reported to the First Defendant on 16<sup>th</sup> November 2001 but that no action was taken. He further claims that such inaction by the Defendants amounted to negligence in resolving the matter within the bounds of discipline and/or to punish the officers concerned in the operation. He therefore took legal proceedings against the defendants.

### Evidence

Evidence from both the Claimant and the defendants were received in the form of affidavits. All deponents were cross-examined in relation to their affidavit evidence.



On the Claimants part, the Claimant himself testified and was cross-examined. He also called evidence from Major Willie Vira the current Acting Commander of VMF and Sgt Haggai Bebe.

For the defendants, Major Robert Diniro, Sgt. Major Morris Manmelin and Private Willie Apia gave evidence by affidavits and were cross-examined on them by Mr Stephens.

### Burden and Standard of Proof

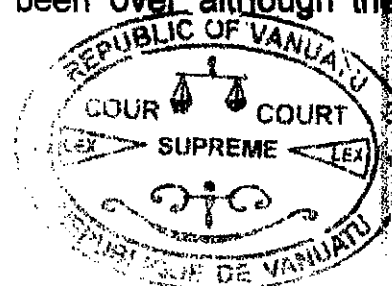
The burden of proof in this case rests on the claimant to prove his case on the balance of probabilities.

### Issues

#### 1. Was the Claimant Arrested and was the Arrest Unlawful?

In his evidence the claimant used the term "arrest". No warrant of arrest was produced. Major Robert Diniro in his evidence explained the position. He conceded that there was no warrant of arrest issued. He explained that his instruction to the officers was to invite the claimant and bring him back to the Barracks to explain why he had not been sleeping in the allocated room assigned for him. He explained that after weighing the circumstances of the case, it was better to have the officer confined rather than have him disciplined which would be detrimental to his 25 years of service in the Police Force. He explained to the Court why the Claimant among other officers were brought into Port Vila to undergo a predeployment training for overseas UN Missions. He explained that as the then Acting Commander of VMF he was directly responsible for all officers of the Force and other police officers on training who were allocated sleeping quarters at the VMF Barracks. This was necessary to ensure that the officers in training maintain a high standard of discipline and comradeship. Further that for the purposes of relating messages back to spouses and relatives it was easier to keep the whereabouts of each officer.

The evidence was that the Claimant was allocated a room in the VMF Barracks to live in while undergoing training for UN Peacekeeping Mission in Bosnia. That training had not been over although the



Claimant said that it was. The Claimant did not produce any evidence from Superintendent Eric Pakoa and Captain Bongran.

The Court prefers the evidence given on behalf of the defendants as credible to that of the Claimant and his witnesses.

### Finding and Conclusions By the Court

On the evidence and in the special circumstances of the case this was not a case where a warrant of arrest was necessary. The action of the Acting Commander and his assigned officers did not amount to an arrest and the Court concludes that the action of the VMF Officers on the Claimant on 24<sup>th</sup> October 2001 was not unlawful and therefore his claim under this head fails.

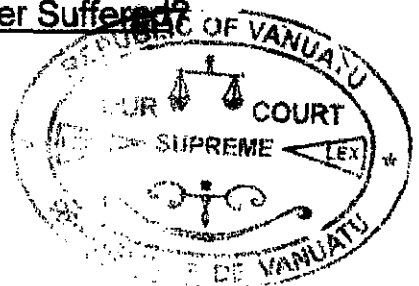
#### 2. Was the Claimant Imprisoned and Was Such Imprisonment Unlawful?

The Court prefers the evidence of Mr Diniro and the witnesses for the defendants. There was no evidence by the Claimant that he was locked up in jail and therefore there was no imprisonment. The evidence was that his movement was restricted for the reasons given by Mr Diniro. Those were very valid reasons and such confinement could not have been unlawful. It was not a total confinement. Evidence showed that the Claimant was at liberty to move around provided he informed duty officers of his whereabouts. He was allowed to go to the bank. There was nothing unlawful about the defendants actions as regards the allegation of unlawful imprisonment. For these reasons, the Claimants claim under this head also fails.

#### 3. Did the Acting Commander's Actions Cause Anxiety and Emotional Stress On the Claimant?

The Claimant did not show by evidence his anxiety and emotional stress. There is no evidence from a doctor to show that he suffered such as a result of his alleged arrest and detention. Therefore his claim under this head also fails.

#### 4. Harm to Good Reputation – Whether Suffered?



The Claimant has not shown any such harm. In fact the reverse is true. During the training period his rank was as Inspector. After that period his current rank is as Senior Inspector. That appears to me to be a promotion. Had Mr Diniro decided to take disciplinary measures against the Claimant in accordance with the provisions of the Police Act, such action would have had very detrimental effects on the Claimant. The claim under this head also fails.

5. Whether Claimant Entitled to Punitive Damages?

The answer is in the negative. There is nothing the Defendants did that was unlawful to entitle the Claimant to this claim. This claim is also fails.

Conclusion

In the circumstances of this case the Court is of the view that this is a vexatious litigation. With good advice, the case should not have been initiated in the first place. There is no reasonable cause of action. As such the claims of the Claimant are dismissed in their entirety.

Costs

There will be no order as to costs. Each Party must pay their own costs.

DATED at Luganville this 12<sup>th</sup> day of September, 2005.

BY THE COURT



OLIVER A. SAKSAK  
Judge

