

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

*Civil Jurisdiction)*

Civil Case No. 63 of 2009

**BETWEEN: CHRISTIAN MULONTURALA**  
*Claimant*

**AND: VANUATU INVESTMENT PROMOTION  
AUTHORITY**  
*First Defendant*

**AND: REPUBLIC OF VANUATU**  
*Second Defendant*

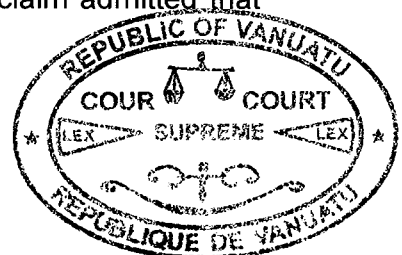
**Hearing:** *1 December 2011*  
**Before:** *Justice RLB Spear*  
**Counsel:** *Evelyn Roberts for the Claimant*  
*Frederick Gilu for the Defendants*

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**JUDGMENT**  
**Ex Tempore**

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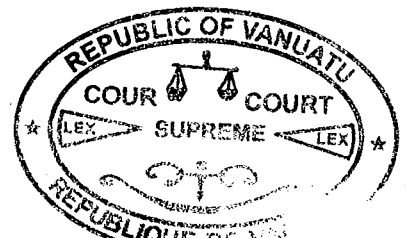
1. The only issue for this hearing was the assessment of loss sustained by the claimant as a result of the wrongful detention of his two ships.
2. The claimant operated a business known as "Pacific Venuar" out of Port Vila. The business was involved with coastal trading and, in that respect, the claimant was the owner at times of two ships, MV Malekula and MV Outlaw.
3. On 13 May 2009, one or more agencies of the Republic seized both ships and wrongfully detained them for a period of 1 month and 4 days: that is, from 13 May 2009 to 17 June 2009. The defence to the amended claim admitted that



the detention was wrongful and, clearly, that was a responsible and proper concession. It appears that there was a misunderstanding amongst certain government agencies which led to the decision to seize the ships. That misunderstanding was not contributed to by the claimant.

4. The ships were released from detention pursuant to an order to that effect given by this Court on 17 June 2009.
5. Mr Gilu for the Republic accepts that the Republic has to accept responsibility for what occurred.
6. The case proceeded today towards a determination of the loss sustained by the claimant as a result of the wrongful detention of his two ships and thus the interruption to his shipping business. There was before the Court a report from Mr Martin St-Hilaire assessing loss at between Vt 15m and Vt 20m. That report addressed a number of headings of damage:-

a) <i>Loss Margin</i>	1.200.000
b) <i>Fixed expenses during shut down period</i>	3.700.000
c) <i>Expenses relating to the dismissal of staff during the shut down</i> (at least)	445.000
d) <i>Secondary impact of the financial losses and the deterioration of the company's cash flow including its inability to repair the MV Outlaw</i> (at least)	3.500.000
e) <i>Losses related to customer's trust reputation and corporate leaders. Negative impact on customers, suppliers, and other business partners</i> (between)	5-10,000,000

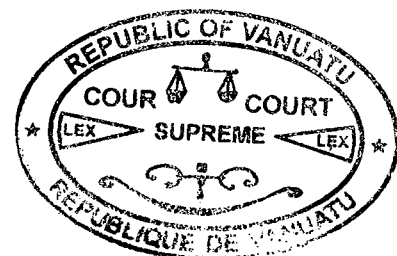


f) *Financial costs and attorney's fees*

<i>Financial</i>	200.000
<i>Lawyers</i>	750.000
<i>Legal advice</i>	200.000

g) *Other points/the company was driven to the brink of financial ruin due to this decision in May 2009. The financial and ..... Consequences are enormous.*

7. At the commencement of the hearing today, a discussion occurred with counsel as to the proper approach to assess loss based on wrongful detention. Additionally, what could be considered as a loss reasonably foreseeable in all the circumstances established in this case. Without ruling on the point, it was indicated that there was insufficient evidence on which the Court could assess loss in respect of the *MV Outlaw 5* breaking down in July 2009 and the claimant being unable to afford repairs as well as effectively a loss of good will. While those might have been provable, there was simply insufficient evidence to contemplate that they would have been reasonably foreseeable losses.
8. Mr St-Hilaire redid his calculations during the lunch break and presented them in evidence this afternoon. He relied in particular on the VAT returns filed by this company over 32 month period and reached the cost of what might be called "business interruption" for a 3 month period of Vt 3.280.088. His assessment being based on 3 months (May-July 2009) particularly because of the disruption to the business as seen in the analysis of the income against expenditure returns filed each month from January 2008 to December 2009.
9. Because of interruption to his work, the claimant had to terminate the employment of a number of his staff being crew members and that caused him Vt 445,620 as severance payments.



10. Further heading was Vt 350.000 for both ships over the one month period that they were not operating.
11. Based on that assessment, Mr St-Hilaire reached an amount of Vt 5.496.217 (excluding the amounts that he initially inserted for lawyers and legal advice totaling Vt 950.000) but which included a fee of Vt 200.000 for his fees.
12. Once this stage of Mr St-Hilaire's evidence was reached, Mr Gilu indicated that the Republic would accept the rounded up amount of Vt 5.500.000 as the loss sustained by the claimant for the wrongful detention of his two ships; accepting also that this will be subject to interest and costs.
13. Ms Roberts confirmed also that the claimant accepted that assessment of the loss.
14. Accordingly, judgment for the claimant against the first defendant, by admission, in the sum of Vt 5.500.000 together with interest thereon at 5% per annum calculated 3 monthly from 10 July 2009 to the date that payment is received. The claimant is also entitled to his costs calculated on a standard basis to be agreed or taxed.

BY THE COURT

