

(Civil Jurisdiction)

BETWEEN: GERALD MOULOU TURALA

Claimant

AND: THE REPUBLIC OF VANUATU

Defendant

Mr Justice Oliver A. Saksak

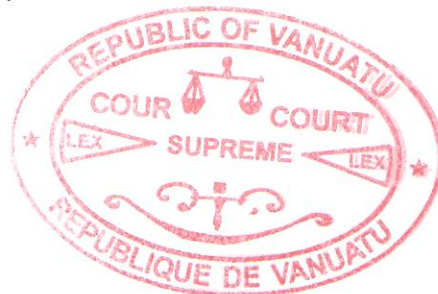
Mr Saling N. Stephens for the Claimant
Mr Frederic Alain Obed for the Defendant

Date of Hearing: 16th July 2012
Date of Judgment: 11th February 2013

JUDGMENT

1. Background Facts

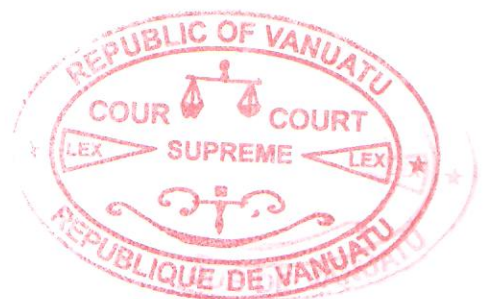
- 1.1. This case goes back to 2002. A police Inspector Seru Tapairangi was on the late night shift from 2300 hours on 16 August 2002 to 0700 hours of 17 August 2002. He saw the Claimant, a police officer himself with another Police officer Martin Sarai drunk and disorderly and causing some commotion on the street just outside the main police station in Port Vila. The Inspector and his other colleague proceeded to stop them. In this process the two policemen resisted and began acting aggressively and in a disorderly manner. They were then invited to the Inquiry Room at the Police Station where the claimant and his colleague were abusive.
- 1.2. The two Policemen were aggressive and uncontrollable. As such the Inspector arrested them and attempted to keep them in Cell No. 6. In this



process the Claimant assaulted the Inspector on his face and on his upper left eye. Martin Sarai assaulted the Inspector on his upper lip causing injury.

- 1.3. On 17th August 2002, the Inspector made a formal complaint against the Claimant and his friend at 04.45 hours. He attended medical treatment at 0830 hours on the same day. The Medical Report confirms the assault and the injuries complained of.
- 1.4. As a result of the assault and formal complaint, the Claimant was suspended from duties by letter dated 5th November 2002.
- 1.5. On 17th May 2004, the Prosecutions laid formal charge of intentional assault under Section 107 (c) of the Penal Code Act against the Claimant.
- 1.6. On 12th July 2004, the Magistrate Court struck out the case and ordered that the Claimant as defendant be discharged.
- 1.7. On 16th November 2004, the Claimant appeared before a Disciplinary Proceeding and pleaded guilty to the charge of causing an act likely to bring discredit to the Police and to the assault on the Inspector. He was punished by loss of one day of his salaries.
- 1.8. On 7th January 2005, the Claimant was re-instated to his position with full salaries by the Acting Commissioner of Police, Arthur Caulton Edmanley. Instructions were also given for payment of all his outstanding arrears.
- 1.9. In Civil Case No. 197 of 2005, the Claimant instituted suit against the Government for his arrears of salaries. By consent reached on 11th December 2005, Counsel agreed to the sum of VT482,772 plus costs in the sum of VT30.000. The consent was endorsed by the Court on the same date.

2. The Claims



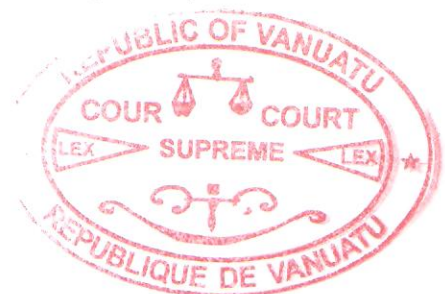
- 2.1. The Claimant filed an Amended Claim on 16 June 2009 increasing his claims to VT15 Million being for –
- (a) Battery –VT2.000.000
 - (b) Unlawful Imprisonment –VT2.000.000
 - (c) Malicious Prosecution – VT2.000.000
 - (d) Mental Stress and Anxiety – VT2.000.000
 - (e) Damage to Personal and Professional Reputation – VT5.000.000
 - (f) Exemplary Damage –VT2.000.000.
- 2.2. The Claimant seeks also the following reliefs –
- (a) A finding that his suspension was unjustified.
 - (b) Interests of 4% on the judgment sum; and
 - (c) Costs of an incidental to the action.

3. Defence

- 3.1. The Defendant filed an Amended Defence on 17 June 2009 generally denying all the claims of the Claimant. They also raised the defence of time limitation under paragraph 8(a) of the defence. The Court has dealt with this issue in its decision of 29 April 2011.
- 3.2. They contend at paragraph 8(c) of the defence that the Claimant is not entitled to any of the reliefs he seeks.

4. The Evidence

- 4.1. On 16th July 2012, Counsel agreed that all factual evidence by sworn statements by both the Claimant and Defendant be received by the Court subject to any objections as to admissibility raised by Counsel in their written submissions. On that date, the Court directed Counsel to file written submissions within 21 days by the Claimant and within a further 21 days thereafter by the Defendant. Some five months have gone by and there has



been no written submissions filed as directed. The Court will dispense with those submissions in view of the delay.

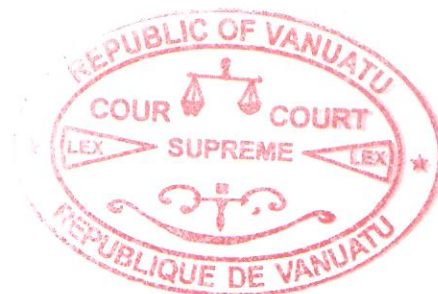
- 4.2. There has therefore been no objections. The evidence of the Claimant is contained in his sworn statements dated 13 November 2008, of 28 June 2010 and of 5 August 2011. He relies also on the evidence by sworn statements of Charley Morris dated 5 August 2011 and of Titus Kalontas dated 8 August 2011.
- 4.3. The Defendant relies on the evidence of Joshua Bong dated 28 May 2010 and of John Tete dated 10 June 2011.

5. Discussions and Considerations

- 5.1. The Claimant in this case has the duty of proof on the balance of probabilities.
- 5.2. In the absence of written submissions, the Court will consider each claims as raised in the pleadings as follows –

(a) Battery

- 5.2.1. Osborn's Concise Law Dictionary 11th Edition defines "Battery" to mean "The direct or indirect application for unlawful force by one person upon another." The Common law position is that this may be intentional or reckless, but must amount to a positive act. (See Fagan v. Metropolitan Police Commissioner [1969] 1QB: 439).
- 5.2.2. Paragraph 4 of the Claimants evidence dated 20 October 2008 he says he was drunk at 0400 hours in the early hours of 17 August 2002 and that he assaulted Inspector Seru Taparangi. Subsequently he was arrested and placed in Cell No. 6.



5.2.3. The evidence of Joshua Bong discloses the complaint statement of Inspector Seru and his Report which confirms the assault, the verbal abuse and the arrest and detention of the Claimant on 17 August 2002.

5.2.4. From the evidence, the Court concludes that the Claimant was properly arrested under the circumstances at the time. If there was any force used, such force was necessary in the circumstances at the time and therefore it could not be said to be unlawful force which could make it unlawful.

5.2.5. I find there was no battery and therefore rule that this claim for battery must fail.

(b) Unlawful Imprisonment

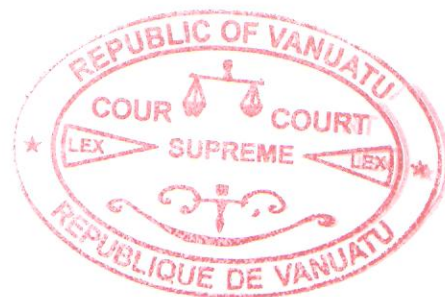
5.3. Based on the same evidence as referred to previously in relation to battery, I find the Claimant's detention on 17th August 2002 was not unlawful under his circumstances. I therefore dismiss his claims in that respect.

(c) Malicious Prosecution

5.4. The Claimant through Counsel had withdrawn this claim on 4 May 2009 and paragraph 9 of his original claims. However in his Amended Claims filed on 16 June 2009, the Claimant maintained this claim. This claim is therefore not worthy of any further consideration.

(d) Mental Stress and Anxiety

5.5. The Court has not seen any evidence by the Claimant showing that he suffered from these during the period of his suspension. He has not produced any Medical Report to support his claims in this regard. Accordingly, these claims are dismissed.



(e) Damage to personal and professional reputation

- 5.6. From the evidence, the Claimant's rank is only a Police Constable. There appears to be no evidence from him as to how long he has been serving as a Policeman. But the clear evidence in the statement of Inspector Seru is that:

"PC Mulo Gerald istap jump blong faitem mo stap faitem of traffic stop sign mo mov I kam long insaid enquiry office mo sakem abusive language long mi olsem "F.....yu"

Certainly and surely those actions are contrary to the actions expected from a professional character. Policemen should be law-abiding officers who uphold the laws at all times. A Policemen who goes out of his way, gets drunk and acts in breach of the peace in the public street causing damage to public property and being abusive to his superior in a public office, is guilty of the most serious disciplinary offence against the reputation of the Police Force. Interestingly the Claimant received a very light punishment.

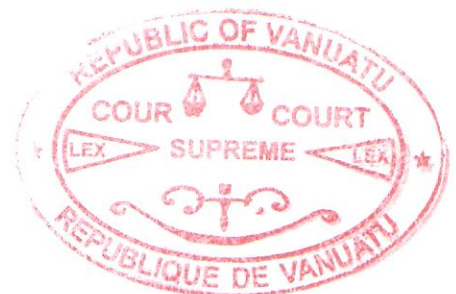
- 5.7. Under those circumstances, there should be no room for complaints. He was reinstated and paid all his arrears. He should be contended with all those as favourable to him. His claims for damage to reputation is also dismissed.

(f) Exemplary Damage

- 5.8. For the same reasons stated, this claim is unfounded and is hereby dismissed.

(g) Suspension Whether Unlawful

- 5.9. From the evidence of Joshua Bong and John Tete, the Court finds the suspension of the Claimant was lawfully done pursuant to the Police Act [Cap. 105].




6. Conclusion

6.1. The Claimant is unsuccessful in all his claims and the Court dismisses his claims in its entirety.

6.2. Under those circumstances, the Court orders that the Claimant pays all costs of and incidental to this action to the Defendant on the standard basis as agreed or determined by the Court.

DATED at Port Vila this 11th day of February 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge

