

BETWEEN: JEAN PIERRES KENIE

Claimant

**AND: ANDREW ARVOL TAVOR
SILAS REMY**

Defendants

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Miss Jane Tari for the Claimant*

Defendants in persons

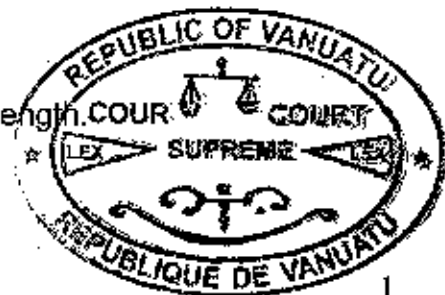
Date of Trial Hearing: *27th November 2012*

Date of Judgment: *6th August 2013*

JUDGMENT

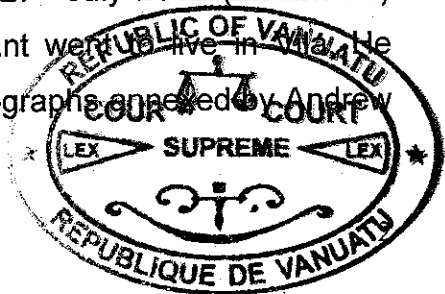
1. This is a reserved judgment.

2. On the night of 26th December 2010 the two defendants assaulted the Claimant. The assault occurred at the house of one Sergio at Port Oly Village, East Santo. The defendants attacked the Claimant with a knife causing serious injuries to his head and body. Immediately after the assault, the Claimant was treated at the local clinic or dispensary. He was taken to the Northern District Hospital two days later on 28th December 2010. When examined by Dr. Adelfa the following injuries were confirmed –
 - (a) Laceration on the right upper head at 6 cm in length.
 - (b) Laceration on the left frontal side.
 - (c) Hematoma around left upper eyebrow.
 - (d) Laceration on left forearm at 3.5 cm in length.
 - (e) Laceration on left lower back elbow at 3 cm in length.
 - (f) Laceration on right hand at 1.5 cm.



- (g) Abrasion on the left back about 5.5 cm in length.
- (h) Two puncture wounds on right upper abdomen.

3. For those injuries and the pain suffered the Claimant filed his claims on 26th April 2011 claiming damages for pain and suffering in the sum of VT1,000,000 and a further VT100,000 for emotional distress and for costs.
4. At the initial stages of the proceeding the defendants were represented by Vire Lawyers. However counsel filed a notice of ceasing to act on 13th April 2012. Thereafter the defendants acted on their own behalf without legal counsel despite the Court having encouraged them to do so.
5. On 5th July 2012, the defendants filed a defence. Paragraph 4 of their defence contains their admission that "mitufala I atakem Claimant" and discloses the reason for such attack being that "Claimant I bin drong mo damagem haus blong mi Andrew Arvol Tavor." Then at paragraph 16 of the defence the defendants appear to be making a counter-claim of VT5,000,000 being for loss and damage to property for a period of 1 year and 7 months.
6. The defendants did not pay the appropriate fees for filing their counter-claim.
7. The defendants were charged separately in the Magistrate's Court for Intentional Assault under Section 107(b) of the Penal Code Act Cap. 135. They both pleaded guilty and were convicted and sentenced to imprisonment for 8 months each on 11th February 2011. Both have completed their imprisonment terms.
8. The Court considers and determines first the counter-claim of the defendant Andrew Tavor. His wife Corine Tavor's evidence supports those allegation.
9. The Claimant disputed the issue of damage to the house and properties of defendant Andrew Tavor. In his response dated 27th July 2012 (Exhibit C3) they had solved this problem before the Claimant were in Vanuatu. He categorily denied the damage alleged in the photographs annexed by Andrew Tavor to his sworn statement dated 5th July 2012.



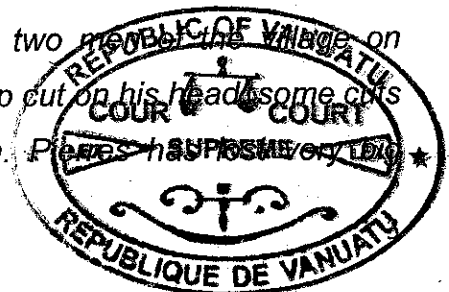
10. It is the view of the Court that the counter-claim of the defendants is too remote. It relates to the period from 2008 to 26th December 2010. The defendants have not clearly identified to the Court which damage was done by the Claimant and in what year. They had no evidence to show this. Further, if the defendant Andrew Tavor had any complaints about the loss and damage done to his house and property from 2008 to 2010 he was obliged to lodge formal complaints to the police to investigate and where possible lay criminal charges. There is no evidence by him or any of his witnesses that avenue was taken. As such any issue or complaint about loss or damage to property must be isolated from the issue of assault and injury. Under these circumstances the Court is of the view that the counter-claims of the defendant Andrew Tavor are unsubstantiated and therefore, he not having paid the appropriate filing fees, his counter-claims fail and are hereby dismissed.

11.1. Returning now to the Claimant's claims, he produced evidence from three other witnesses namely by Dr. Adelfa Destura, Pierre Tarisa and Nurse Clelia Keimol.

11.2. Nurse Clelia Keimol filed a sworn statement on 31st August 2013. Although not available at trial, the defendants did not seek to cross-examine her nor did they object to her statement being part of the Claimant's evidence. She was the first person who saw the Claimant's wounds immediately after the attack on 26th December 2010. And she acted fast and appropriately in the circumstances to suture the wounds and gave antibiotics to stop pain. On 27th December 2012 she made following report:

"Subject: Assault Case

I undersign Clelia Keimol Advance Nurse Practitioner working at the Port Olry H/Centre, certify that Pierre Kiniez was been seriously assaulted with knives by two men on the village on 26/12/10. The victim has 2 very deep cut on his head, some cuts on his arms and on his abdomen. Pierre has some very bad



amount of blood because of those multiple deep cuts. His wounds had been sutured and dressing has been done at the H/Centre. The patient is fortunately well treated.

Thank you for your consideration/

Sign: ANP Clelia Keimol".

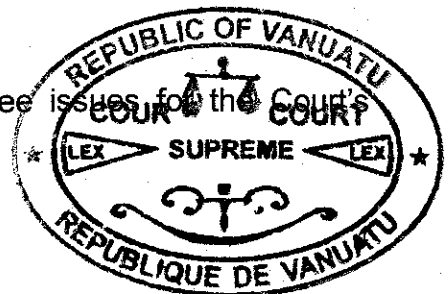
11.3. Jean Pierre Tarisa gave evidence confirming the two big cuts on the head of the Claimant. He took photographs which he annexed to his sworn statement dated 23rd August 2012. (Exhibit C8).

11.4. Dr. Adelfa gave evidence that she saw the Claimant at the Northern District Hospital on 28th December 2010. She issued a Medical Report on the same day confirming the injuries outlined in paragraph 2 (a) – (h) inclusive, of this judgment. She described the wounds or injuries as serious. The Report is annexed to her sworn statement dated 18th September 2012 (Exhibit C1).

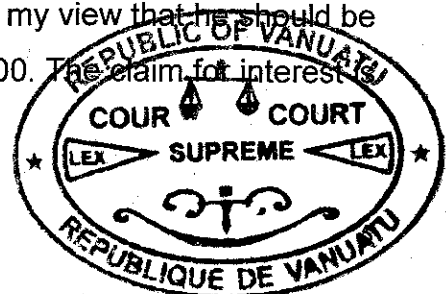
12. From those evidence the Claimant had clearly established that –

- (a) The defendants Andrew Tavor and Silas Remy had brutally attacked and assaulted him on the night of 26th December 2010.
- (b) The injuries they inflicted were those confirmed by the Reports of Nurse Clelia Keimol dated 27th December 2010 and of Dr. Adelfa Destura dated 28th December 2010.
- (c) Those injuries were serious and although not permanent were multiple and as such, the Court is satisfied on the balance of probabilities that the Claimant suffered much pain and suffering.
- (d) As such he is entitled to claim for damages as he has done.

13. Counsel for the Claimant raised the following three issues for the Court's determination:-




1. Whether or not the Defendants Andrew Arvol Tavor and Silas Remy did indeed assault the Claimant whilst he was drunk?
 2. Whether or not the acts of the Defendants were intended to cause an apprehension of harmful or offensive contact?
 3. Whether or not the injuries sustained could qualify the claims sought?"
14. From the findings made on the evidence in paragraph 12 above, all the issues are answered in the affirmative.
15. It is clear from the evidence the Claimant was brutally attacked by the defendants. He was defenceless and did not expect it to be so. The Court rejects the defendants' submission that they attacked the Claimant only in self-defence. In short they had simply taken the law into their own hands that night. All their submissions are rejected.
- 16.1. The Claimant is successful and judgment is given in his favour. He is entitled to damages for pain and suffering. The cases of Griffin v. Vuduy [2011] 101 is distinguished on its facts but the principle on the Law of Torts per Salmon & Henston as quoted by Fatiaki J is applied. The amount of damages awarded are however too low for multiple injuries in this case.
- 16.2. The case of Kal Alphonse v. Philip Taso and Thomsen Keith [2007] VUSC 54 is distinguished on its facts and the injuries were more serious in that they required treatment overseas on three separate occasions. There were special damages claimed, whereas in this case there is no claim for special damages. Tuohy, J fixed the damages for pain and suffering at VT441,883. However, the injuries sustained were fewer than in the Claimant's case.
- 16.3. For the Claimant's multiple injuries in this case, it is my view that he should be entitled to general damages in the sum of VT600,000. The claim for interest is disallowed because he has no special damages.

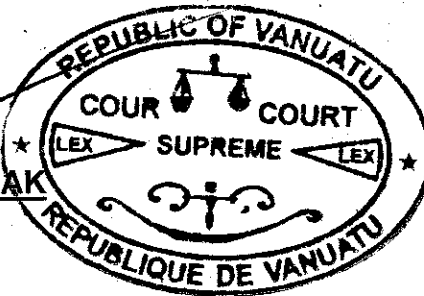


17. The Claimant therefore has judgment against the defendants for damages in the sum of VT600.000 together with the costs of and incidental to this action on the standard basis as agreed or taxed by the court.

DATED at Luganville this 6th day of August 2013.

BY THE COURT


OLIVER A. SAKSAK
Judge



The seal of the Supreme Court of Vanuatu is circular. The outer ring contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLIQUE DE VANUATU" at the bottom. Inside the ring, the words "COUR" and "COURT" are positioned on either side of a central scale of justice. Below the scales, the word "SUPREME" is written in a larger font. On either side of "SUPREME", the word "LEX" is written in a smaller font, flanked by small stars. At the bottom of the inner circle, there is a decorative flourish.