

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 242 of 2012

**BETWEEN: SONGI GEORGE, TALIBAN SYLVAIN, GERALD
MALERE, FRAZER TAMBE AND WILSON ABIUT**
First Claimants

**AND: MARY SANDY, REDFORD DAVID, KALPAT
STEEDMAN, JOE TOTO AND NELSON ROGER**
Second Claimants

AND: COMMISSIONER OF POLICE
First Defendant

AND: REPUBLIC OF VANUATU
Second Defendant

Hearing: 14 October, 2013

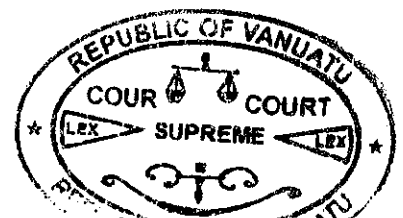
Before: Justice Robert Spear

In attendance: Sailing Stephens for the Claimants
Kent Ture (SLO) for the Defendants

REASONS FOR CONSENT JUDGMENT

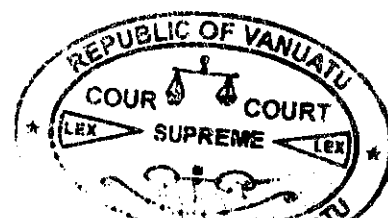
Delivered 17 October 2013

1. The claimants are all serving police officers. On 4 December 2012 they were arrested and held in custody for periods of between 2 hours and 7 ½ hours. They claim damages for false imprisonment.
2. At the hearing of the substantive claim on 1 August 2013, the State eventually admitted that the claimants had been falsely imprisoned. The case was then adjourned at the request of

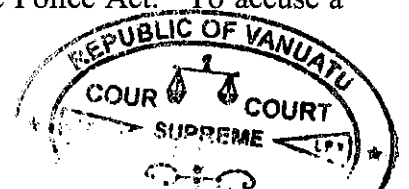


State Counsel eventually through to today for the assessment of damages. Each of the claimants sought damages of Vt 12 million.

3. The State subsequently raised an issue in respect of the second claimant Mary Sandy. The State contended that she had never been arrested or held in custody. That issue has now been resolved. The State accepts that Mary Sandy made a voluntary appearance on 4 December 2012 at the Police station where she was arrested at 15.50 pm and processed in the usual manner which a personal search by a female police officer. As the number 6 cell was not available at that time, she was instructed to remain in the general precincts of the police station which she did until being allowed to leave approximately 2 hours later.
4. The State now accepts that Mary Sandy was falsely imprisonment for a period of 2 hours.
5. During the course of the hearing, agreement was reached as to the damages to be awarded to each of the claimants. This involved a realistic and responsible appreciation by State Counsel as to the likely award of damages that would be made if the case proceeded to a determination of the damages. Judgment by consent was then entered. Given the sensitivity of this matter, it is necessary that there is a record of the basis for this judgment and which reflects the matters dealt with at the hearing.
6. The other claimants (besides Mary Sandy) were arrested at their homes in the early hours of the morning of 4 December 2012. They were arrested in each case by a large team of police officers drawn particularly from the Vanuatu Mobile Force and the Police Maritime Wing. Those arrests took place in each case at their homes in front of family members and in circumstances that attracted the attention of their neighbours. The claimants were taken to the Port Vila Central Police Station where they were searched and detained all together in one cell in appalling conditions. The claimant George Songi is a Senior Police Inspector. He describes the cell as being "*really filthy, smelly and unhygienic*". He said that they were held in the one cell from the early hours of the morning to the afternoon or evening without anything to eat or drink. There was only one toilet in the cell which was filthy. The arrest and detention of the claimants was all carried out before other police officers, for the most part junior police officers, and members of the public.



7. The background to these arrests lies in the unfortunate circumstances surrounding the initial suspension and eventual non-reappointment of former Police Commissioner Bong. On 29 September 2012, the day before Mr Bong's term as Commissioner came to an end, the claimants were variously instructed by their superior officers to arrest Deputy Police Commissioner Caulton (who had been Acting Police Commissioner during the period when Mr Bong was suspended from office), other Senior Police Officers as well as the Chairperson of the Police Service Commission. This instruction to arrest the claimants followed a general complaint of mutiny that had been lodged against the complainants by Mr Bong.
8. Mr Caulton was eventually appointed Commissioner of Police. It is clear that the newly appointed Commissioner Caulton ordered the arrest of the claimants and as a reprisal response to his own arrest on 29 September 2012.
9. At the hearing on 1 August 2013, State Counsel was asked to focus upon the lawfulness of the arrest of the claimants. That consideration had to take account of the particular and prescribed powers of a police officer to arrest a person without warrant. A police officer is empowered to arrest a person without warrant only in one of two situations:
 - a) Where the police officer suspects, on reasonable grounds, that the person arrested had committed a "cognizable offence – s. 12 of Criminal Procedure Code; or
 - b) Where the person arrested had been accused of an "offence" under the Police Act – s. 72 Police Act.
10. The evidence pointed to the arrests having taken place as a result of an direction or order from Commissioner Caulton to enable those arrested (the claimants) to be questioned about their part in the arrest of Mr Caulton and other police officers on 29 September 2012. There is, however, no power of arrest reposed in the Police just to enable a person to be questioned.
11. Furthermore, a mere instruction or direction, even from a Commissioner of Police, does not carry the authority of a warrant to arrest nor does it amount to an accusation that a person has committed a criminal offence or indeed even an offence under the Police Act. To accuse a

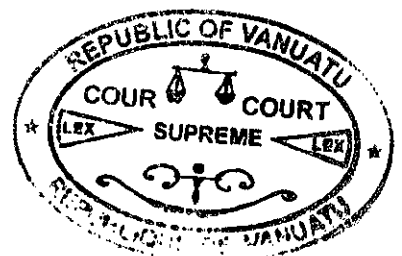


person of an offence generally requires the initiation of a formal process for the laying of a complaint or at least a formal accusation being made and recorded. There is no evidence that such a complaint was laid or even that an accusation was made. Instead, there was just a direction that the claimants be arrested and held for questioning about their involvement in the arrest of Mr Caulton and the other senior police officers on 29 September 2012.

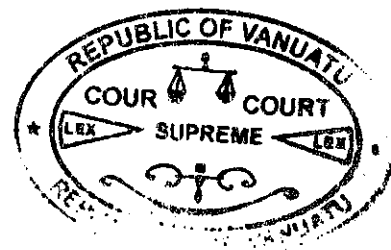
12. The State eventually conceded the point as to the unlawfulness of the claimants' arrest and detention. That concession was both correct legally and it was a responsible position taken by State Counsel having regard to the evidence submitted. It resulted in judgment being entered against the defendants on liability for false imprisonment in respect of each of the
13. The cause of action is correctly one of false or unlawful imprisonment. While the claim also alleged wrongful arrest, the arrest was simply part and parcel of the false imprisonment and it is not a separate action.
14. Damages for false imprisonment are generally assessed having regard to two principal considerations. The first is the injury to liberty and the second is the injury to feelings – *McGregor on damages (17th Edit) para 37 – 007*. Those damages can be aggravated by the manner in which the false imprisonment is effected as illustrated in particular by the general principle stated by Lawrence LJ in *Walter v. Alltools (1944) 61 TLR 39 at 40 (CA)*.

“Any evidence which turns to aggravate or mitigate the damage to a man's reputation which flows naturally from his imprisonment must be admissible up to the moment when damages are assessed. A false imprisonment does not merely affect a man's liberty: It also affects his reputation. The damage continues until it is caused to cease by an avowal that the imprisonment was false”.

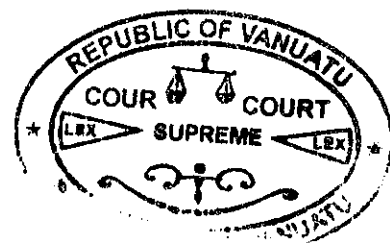
15. It is arguable that the false imprisonment continued, for compensatory purposes, beyond the actual time that the claimants spent in custody that day. Be that as it may, consideration has been given to a fair, reasonable and not excessive assessment of damages in the Vanuatu context based on the time that each of the claimants spent in custody and as aggravated by (what termed) the injury to feelings and reputation.



16. Some of the claimants asserted that they had suffered in their employment as police officers since their arrest. However, that is a matter more for employment law consideration and it has not featured in the consideration of the damages here.
17. It is clear that the injury to feelings in the case of each of the claimants is aggravated significantly because of a variety of factors. They were police officers of rank and with some of very senior rank. In all but one case (Mary Sandy) the claimants were in their homes when confronted by a large team of police officers in the early hours of the morning all before family members and their neighbours. While Mary Sandy was arrested at the police station, the police team had gone to her home that morning to arrest her and with the consequence that her family was subjected to the presentation of a large police team inquiring as to her whereabouts.
18. Those arrested at their homes were taken to the Port Vila Central Police Station where they were processed including being searched and then kept for up to 7 ½ hours in conditions which they considered were simply atrocious. The likely explanation for the claimants being kept in such appalling conditions is that this was designed as a means of punishing the claimants for their involvement in the arrest of Mr Caulton and those other police officers back on 29 September 2013. Those injuries to feelings obviously were aggravated because of the humiliation of being subjected to arrest and detention in the very police station in which they worked and in front of junior staff.
19. Some guidance has been gained as to the quantum of damages to be considered in Vanuatu for false imprisonment by a recent decision of the Court of Appeal - *Warte v. Republic of Vanuatu* [2013] VUCA 10: Civil Appeal 52-12 (26 April 2013). For current purposes, that case addressed the wrongful actions of the police coming on to a Mrs Dornic's land and arresting both her and a Mr McNicol who had simply assisted Mrs Dornic in respect of the removal of a former employee who would not leave Mrs Dornic's property. Mrs Dornic and Mr McNicol were arrested and taken to the police station in Luganville where they were held for some three hours before they were released. Mrs Dornic was assaulted in the course of that arrest. Both the Supreme Court at first instance and the Court of Appeal accepted that the police had acted outside their lawful powers.



20. The Court of Appeal accepted that "*the police were acting outside their lawful powers for the purposes of assisting an acquaintance (the former employee) in a private dispute with another. The police had been told by Mrs Dornic's solicitor that they were not welcome to come and interview her*". Mrs Dornic sued in both trespass and false imprisonment. Mr McNicol, a 67 year old man in poor health, sued only in false imprisonment.
21. The Court of Appeal considered that Mrs Dornic and Mr McNicol "*were arrested and imprisoned without cause and in circumstances where the arresting police officers were well aware that the arrests were not justified.*" The Court considered that damages should be awarded within a range of Vt 400,000 to Vt 600,000 for false imprisonment. As Mrs Dornic had been assaulted she received a higher award of Vt 600,000 and Mr McNicol Vt 400,000. Mrs Dornic also received Vt 1 million for the police officers' trespassing on her land without lawful justification.
22. The claims in this case have been confined solely to false imprisonment. Be that as it may, to enter onto the various claimants' homes in the early hours of the morning to arrest the claimants where there was no lawful justification for such an arrest is an aggravating factor when it comes to the assessment of damages notwithstanding that it is not separately presented as a trespass. Additionally, the arrests and subsequent detention came about not through the actions of low ranking police officers (as was the case in *Warte's* case) but the actions of the Commissioner of Police.
23. In the course of discussion between counsel and the Court, agreement was reached on an approach to assess the damages. In each case, counsel accepted that the claimants should be entitled to damages for their loss of liberty at the rate of Vt 100,000 per hour of detention. Furthermore, that each of the claimants received an additional amount of Vt 500,000 for the injuries to their feelings arising from the manner of the arrest and detention. This assessment is somewhat global in its presentation and follows the approach adopted by the Court of Appeal in *Warte's* case. However, it necessarily includes a significant element of aggravated damages as well as exemplary damages. It is unnecessary to make separate assessments given the consent position achieved.



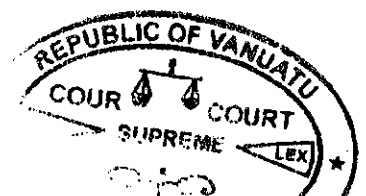
24. Counsel accepted the accuracy of the analysis of hours of detention set out in Mr Ture's submissions resulting in the following awards of damages:-

	<i>Claimant</i>	<i>Period of detention (hours)</i>	<i>Damages for injury to liberty</i>	<i>Damages for injury to feelings</i>	<i>Total (Vatu)</i>
A	George Songi	7 ½	750 000	500 000	1 250 000
B	Sylvain Taliban	6	600 000	500 000	1 100 000
C	Gerald Malere	6 ½	650 000	500 000	1 150 000
D	Frazer Tambe	6 ¼	615 000	500 000	1 115 000
E	Wilson Abiut	6	600 000	500 000	1 100 000
F	Mary Sandy	2	200 000	500 000	700 000
G	Redford David	5 ¼	515 000	500 000	1 150 000
H	Kalpat Steedman	7 ¼	715 000	500 000	1 215 000
J	Joe Toto	6	600 000	500 000	1 100 000
K	Nelson Roger	7	700 000	500 000	1 200 000

25. Judgment has been entered for each of the claimants accordingly together with costs to be agreed or taxed.

26. Finally, it is perhaps timely to observe that false imprisonment is not only an actionable wrong under the Common Law, it is a cause of action that is substantially supported by the Constitution of the Republic of Vanuatu which guarantees the right to liberty – Article 5(1)(b). It must be understood that the Judges of the Supreme Court, who are indeed the guardians of the Constitution, will respond clearly and decisively when there is an abuse of power from someone in authority, particularly high authority as in this case, which has resulted in the deprivation of liberty. The Republic of Vanuatu is not a police state where the police should feel able to act with impunity.

27. There was absolutely no need for Commissioner Caulton to direct the arrest of any of the claimants. At that time, no complaint of criminal conduct had been made against any of the claimants and so there was no legitimate police investigation underway. The arrests and the detention of the claimants were determined actions clearly designed to punish the claimants



and without any legitimate justification. Indeed, it can be observed that the claimants were, indeed, only carrying out orders from superior officers when they undertook the arrests on 29 September 2012. As such, it was reprehensible conduct on the part of a Commissioner of Police to attempt to punish police officers in this way and a contumelious abuse of his authority.

BY THE COURT

