

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

Civil Case No. 48 of 2014

BETWEEN : JOHN HENRY SILAS

Claimant

AND: THE GOVERNMENT OF THE REPUBLIC
OF VANUATU

Defendant

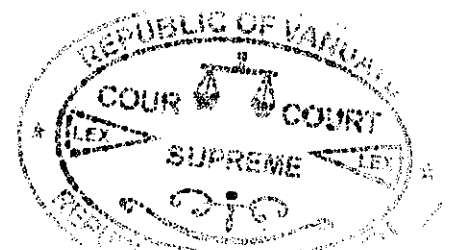
Coram: Justice Aru

Counsel: Mr. J. Kilu for the Claimant
Mr. L. Huri for the Defendant

RESERVED JUDGMENT

Background

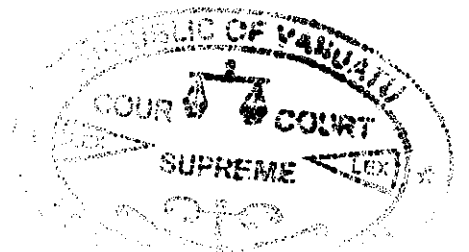
1. John Hendry Silas is a member of the Vanuatu Police Force (VPF) and alleges that he suffered a number of injuries during the course of his employment and claims compensation.
2. The following chronology of events sets out some of the facts which are not disputed.
 - From 1998 to 2005 the claimant was assigned to the National Disaster Management Office (NDMO) from the VPF.



- Around 2 September 2004 the claimant accompanied relief supplies for distribution to the northern part of Vanuatu aboard a local trading vessel, the MV Makila.
- During this voyage the claimant sustained injuries to his left thumb (First Injury) whilst trying to remove a knife from one of the passengers who was mentally ill and had stabbed another passenger with the knife.
- During the general elections in 2008 the claimant was tasked with other members of the VPF to accompany ballot boxes on MV Outlaw a local trading vessel to Tanna.
- On 30 August 2008 they arrived on Tanna and the vessel berthed at the Lenakel wharf. Whilst in the process of offloading the ballot boxes from the vessel, the claimant slipped and fell into the water between the vessel and the wharf injuring his left shoulder (Second Injury). The other officers pulled him from the water and he was taken to the Lenakel hospital for medical attention and was given some time off work to recover.
- In 2010 the claimant was posted to Lamap Police Post on Malekula as commanding officer and in 2014 he was posted back to the Corporate Services Unit of the VPF at VANSEC House in Vila.

Claim

3. The claimant alleges that the injuries he sustained occurred in the course of his employment and to date he has not fully recovered from those injuries. He is



unable to use his left hand and shoulder to its full capacity and now claims compensation. He claims the following relief:-

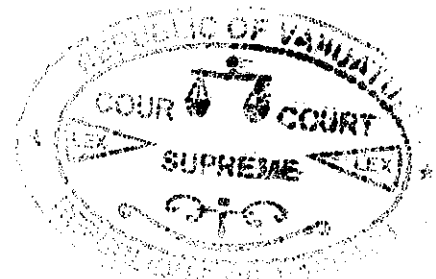
- a) Temporary injury (left Thumb- loss of blood and suffering and psychological trauma) - VT 500,000
- b) Permanent shoulder injury (pain and suffering permanent loss of full shoulder function, psychological trauma - VT 8,000,000
- c) Special damages (expenses incurred to attend to injuries sustained) VT300,000
- d) Total claimed VT8,800,000

Defence

4. The defendant denies that the claimant is entitled to any compensation and says that the injuries sustained were of a temporary nature and the claimant was given time off work to recover pursuant to section 32 A (1) of the Police Act [CAP105].

Evidence

5. The evidence for the claimant in support of the claim was given by the claimant himself in two sworn statements namely:-
 - Sworn statement of John Hendry Silas in support of the claim filed on 10 March 2014 Exhibit 'JHS1';



- Further sworn statement of John Hendry Silas in support of the claim filed 13 October 2014 Exhibit 'JHS2'.
6. The defendant relies on the sworn statement of John Taleo filed on 25 August 2014 Exhibit 'JT1'.

Issues

7. Two main issues identified for determination by the court are:-
- Whether the claim is time barred under the Limitation Act.
 - Whether the claimant is entitled to compensation.

Law

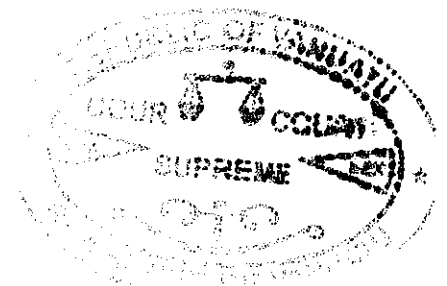
8. Section 32A (1) of the Police Act provides for compensation to members of the VPF in cases of injuries suffered in the performance of their duties and states:-

"32A. Compensation, etc., for injury, death, etc.

(1) If any member is temporarily incapacitated by reason of any wound or injury or sickness contracted by him in the performance of any duty or training by him under this Act and such wound or injury is received or such sickness is contracted in the actual discharge of his duty as a member and without his own default, he shall be eligible to receive free medical treatment therefore and full pay for the period of such incapacity.

(2) If any member receives any permanent disablement attributable to any wound or injury received or sickness contracted by him in the circumstances referred to in subsection (1), the Minister may, after consultation with the Minister responsible for finance, pay gratuity to such member at such rates as shall be prescribed.

....."



9. The Limitation Act [CAP 212] stipulates limitation periods for certain actions and section 3 (1) provides:-

"3. Limitation of actions of contract and tort and certain actions

(1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –*

- (a) *actions founded on simple contract or on tort;*
- (b) *actions to enforce a recognizance;*
- (c) *actions to enforce an award, where the submissions is not by an instrument under seal;*
- (d) *actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:*

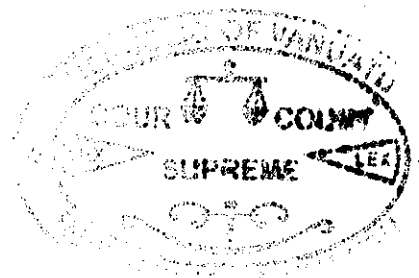
Provided that –

(i) *in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and*

(ii) *nothing in this subsection shall be taken to refer to any action to which section 5 applies.*

..."

(emphasis added)



9. For a personal injury claim filed out of time or is to be filed out of time, section 15 and 16 of the Act provide:-

- Section 15

“15. Extension of time limit for actions in respect of personal injuries

(1) The provisions of subsection (1) of section 3 shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which –

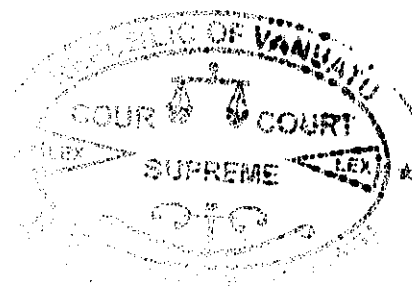
- (a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and*
- (b) the requirements of subsection (3) are fulfilled.*

(2) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(3) The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which –

- (a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period; and*
- (b) in either case was a date not earlier than twelve months before the date on which the action was brought.*

...”



• Section 16

"16. Application for leave of court

(1) Any application for the leave of the court for the purposes of section 15 shall be made *ex parte*, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.

(2) Where such an application is made before the commencement of any relevant action, the court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –

(a) to establish that cause of action, apart from any defence under subsection (1) of section 3; and

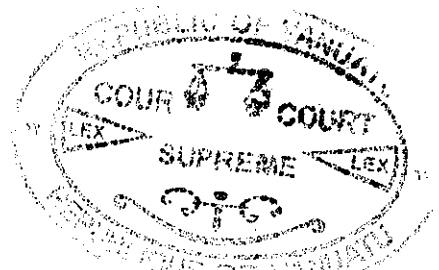
(b) to fulfil the requirements of subsection (3) of section 15 in relation to that cause of action.

(3) Where such an application is made after the commencement of a relevant action, the court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –

(a) to establish that cause of action, apart from any defence under subsection (1) of section 3; and

(b) to fulfil the requirements of subsection (3) of section 15 in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that



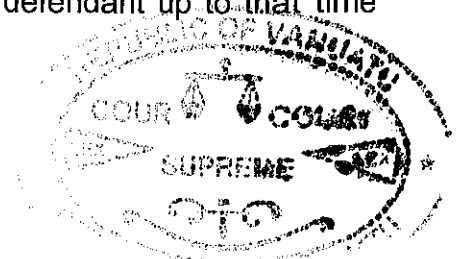
cause of action had occurred on such a date as, apart from the last preceding section, to afford a defence under subsection (1) of section 3.

(4) In this section, "relevant action", in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required."

Discussions

Issue 1 – whether the claim is time barred by the Limitation Act

10. The First Injury suffered as a result of a knife cut to the left thumb occurred on 2 September 2004. The Second Injury to the left shoulder sustained as a result of the fall at Lenakel wharf occurred on 30 August 2008. The claim for compensation for both injuries (this proceeding) was filed on 10 March 2014, 10 years after the first injury and 6 years after the second injury.
11. Mr. Kilu accepts that the claim is for damages for personal injury therefore pursuant to section 3 (1) of the Limitation Act the limitation period is three years. He submits that after the First Injury they were engaged in continuous negotiations with the defendant for settlement from 2006 to 2008 and in 2008 after the claimant suffered the Second Injury the negotiations continued to 2013. As a result of those negotiations, the claimant saw no need to commence proceedings as the defendant indicated that the claimant's injuries would be compensated. Mr Kilu submits that the claim was filed in 2014 after it became clear that the defendant was not serious about settling the claim as no response was received to their letter of 14 March 2013.
12. He further submits that the cause of action only accrued after the 14 March letter was not responded to as indications from the defendant up to that time



was that the claim would be settled. No reference is made to any legal authority that supports the submission. This submission is rejected for reasons that first, the Limitation Act recognises that time begins to run from the date the cause of action accrued. In this case, the cause of action accrued from the dates the claimant suffered his two injuries. Secondly, Mr Kilu whose firm was representing the claimant knew or ought to have known the 3 year limitation period for actions for personal injury.

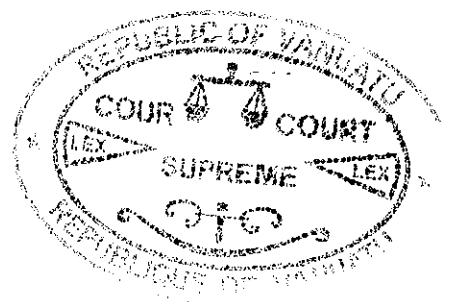
13. In the alternative Mr. Kilu submits that if time begun to ran from the dates the injuries were suffered, he submits that the claimant relies and is protected under section 15 of the Limitation Act. Again that submission must to be rejected. That section has to be read with section 16: Application for leave of Court. The two sections are to be read together. No extension of time can be made unless an application for such extension is first made. The claimant has not applied to extend time to file his claim either before or after the claim was filed as required by section 16.

14. The claim is therefore in my view statute barred by the Limitation Act for the reasons given.

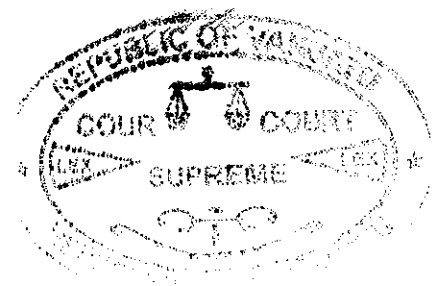
Issue 2 - Whether the claimant is entitled to compensation

15. Even if the claim is not statute barred, the claimant has the onus of proving his claim on the balance of probabilities.

16. No medical evidence was called by the claimant to prove the extent of his injuries. He relies on the following medical reports:-

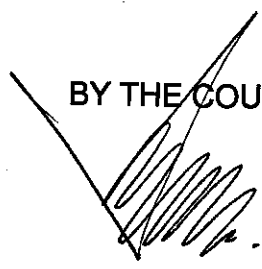


- Medical report from Jacques Honore Maurice, Emergency Nurse Practitioner, Vila central Hospital(Annexure 'JHS4');
 - Medical certificate from Doctor Dan ,Lenakel Hospital (Annexure 'JHS12');
 - Medical certificate from Samson Mesol, Surgeon, Vila Central Hospital (Annexure 'JHS13');
 - Medical report from Dr Samson Mesol, Surgeon, Vila Central Hospital (Annexure 'JHS14').
 - Medical report from Dr Richard W Leona, Chief Surgeon, Ministry of Health (Annexure 'JHS1') to the claimant's further sworn statement.
17. None of the above medical personnel or any other medical expert were called as witnesses by the claimant or filed their sworn statements in support of the claimant's claim. Relying on medical reports attached to the sworn statement of the Claimant as proof of the extent of the injuries suffered is in my view hearsay and inadmissible evidence at best and is rejected.
18. In any event, the claimant at paragraph 15 of the claim accepts that the First Injury is temporary in nature .Under section 32A (1) of the Police Act, if any member of the VPF is incapacitated by reason of any injury contracted by him in the performance of his duty *"he shall be eligible to receive free medical treatment therefore and full pay for the period of such incapacity"*. No evidence is put by the claimant to show that he did not receive free medical treatment or that he did not receive his full pay during his incapacity.



19. Regarding the Second Injury, I am not satisfied that claimant has proven that he suffered a permanent injury. He is still employed as a member of the VPF. In such circumstances, no gratuity can be paid to him pursuant to section 32A (2).
20. The claim is dismissed and given the circumstances, each party shall bear its own costs.

DATED at Port Vila this 2nd day of October, 2017

BY THE COURT


D. Aru
Judge

