

**BETWEEN: DANIEL PETER**  
Claimant

**AND: PUBLIC PROSECUTOR**  
First Defendant

**AND: REPUBLIC OF VANUATU**  
Second Defendant

**Submissions:** 14<sup>th</sup> December 2016 and 13<sup>th</sup> February 2017

**Date of Judgment:** 26<sup>th</sup> April 2017

**Before: Justice Mary Sey**

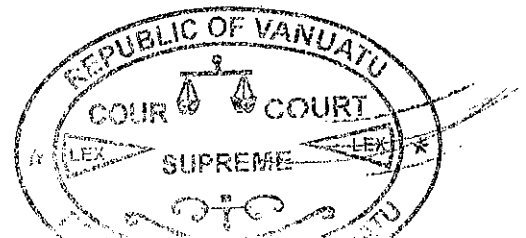
**Appearances:** Mr. Saling Stephens for the Claimant  
Mr. Lennon Huri for the Defendant

**RESERVED JUDGMENT**

1. The Claimant's claim is for damages in the sum of VT593,000,000 against the Defendants severally or jointly for trespass, battery, unlawful arrest and false imprisonment. The Claimant also seeks damages for malicious prosecution plus interest at the rate of 5% per annum from 25 June 2014 to the date of settlement.

**Background**

2. Sometime in August 2011, an SDA Pastor named Ezekiel passed away in the Eratap area where the Claimant resides. On Thursday 18 August, 2011, the Claimant and two others, namely, Lemis Simon and Dickson Joseph were accused of performing witchcraft which caused the death of the Pastor.
3. The Claimant alleges that Chief Kalpoilep and his sons took the opportunity to blame him and his friends for the pastor's death. He says that at 2 o'clock in the morning of 18 August 2011, some men from the Eratap community including some Police officers arrested him at his residence at Teouma about 500 meters from the bridge and escorted him in a police vehicle to Chief Andrew Kalpoilep's house at Eratap village.



4. The Claimant says that upon arrival at Chief Kalpoilep's residence he was handed over to a group of waiting men who started accusing him and Lemis Simon and Dickson Joseph of performing witchcraft which caused the death of the pastor. He says all three of them were brutally assaulted by the men and that they were forced to admit that they were responsible for the death of the Pastor.
5. On Friday 19 August 2011, the Claimant and the two men were taken to the Magistrates' Court in respect of a charge of Intentional Homicide contrary to section 106 (1) of the Penal Code Act [CAP 135]. They were then remanded into custody at the correctional centre to await their trial in the Supreme Court. On 20 April 2012, the Public Prosecutor entered a Nolle Prosequi pursuant to section 29 of the Criminal Procedure Code [CAP 136] and the Claimant and the other two defendants were discharged by the Supreme Court in respect of the charge.
6. The Claimant alleges that the charge was preferred maliciously and without reasonable and probable cause. He now sues the Republic of Vanuatu for trespass, wrongful arrest, unlawful imprisonment and malicious prosecution.

### The Evidence

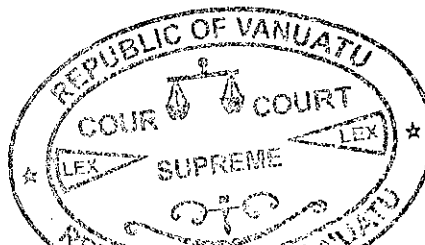
7. The Claimant's evidence was essentially contained in the following documents which he confirmed as his sworn statements in his examination-in-chief and which were admitted in evidence as follows:

**Exhibit C1** – sworn statement dated 21 August 2014

**Exhibit C2** – Further sworn Statement of Daniel Peter dated 10 November 2014.

8. At paragraph 2 of the Claimant's sworn statement dated 21 August, 2014 (i.e. **Exhibit C1**) he stated:

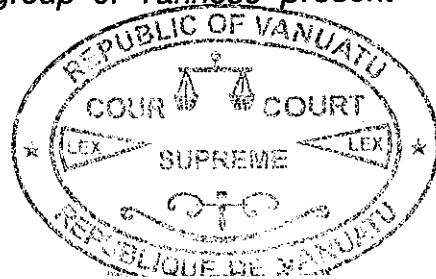
*"2. In August, 2011, I was falsely accused of Intentional Homicide by a group of Tannese people under the leadership of Eratap Chief, Andrew Kolpoilep and his own sons. This false accusation concern with (sic) the death of an SDA pastor named Pastor Ezekiel whom they allegedly claim that the three of us, myself, Lemis from Paama and Dickson from Epi, we kill (sic) late Pastor Ezekial through socery (Black Magic)."*



9. The Claimant gave evidence that on Thursday 18<sup>th</sup> August, 2011 at about 2 am, Chief Kalpoilep sent his son Willy and a group of more than 20 men from Tanna to go and fetch him from his house. He said they told him that he should accompany them to the Chief's residence to discuss a matter. He said he knew nothing about their plan and as they walked 50 meters away from his house, a police vehicle stopped near them and he was told to get into the cage. He said that after he climbed in the police vehicle drove off to the Chief's nakamal. The Claimant said he thought that the police would have driven him to the police station in town for a round table discussion but to his surprise they went to the Chief's residence at Teouma. He said that upon their arrival, a group of Tannese men who were present asked the police who had sent them there. He said that the police replied that it was Chief Kalpoilep who had given them a call. He said the police spoke for a short time with the Tannese men and then left. He said he requested to go with the police to the police station for his safety but the police only allowed Lemis to go with them and they told him that he had to stay at the Chief's residence. He said he was then brutally beaten up by the group of men from Tanna.
10. Testifying further, the Claimant said that at 7am on Thursday morning, Chief Kalpoilep approached him and forced him to admit that he had killed pastor Ezekiel. He said the Chief told him that he would call the police to pick him up if he admits that he killed the pastor. He said he told Chief Kalpoilep that he cannot say yes to an incident which he was not involved in.
11. Paragraphs 20 to 26 of **Exhibit C1** are quite significant as they appear to form the crux of the Claimant's evidence. For ease of reference these paragraphs are reproduced hereunder as follows:

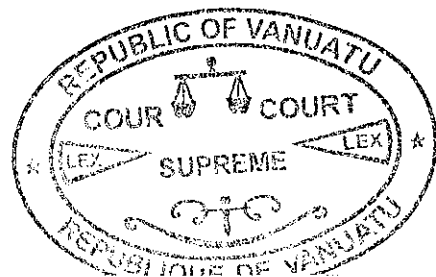
*"20. On 18<sup>th</sup> August, 2011 at about 2am in the morning the Chief sent his son Willy and a group from Tanna (more than 20 men) to my house to fetch me. They said to me we would together go up to the Chief residence to discuss a matter. I knew nothing about their plan. As we walked away, about 50 meters away from house, a police truck stopped near us. As we got into the cage vehicle, and drove off to the Chief Nakamal, a Tannese named Fred Lonis who lives at Teouma said to me that Lemis on being questioned had said that it was us (myself, Lemis and Dickson) who killed pastor Ezekiel by witchcraft.*

*21. I thought that the police would have driven us to police station in town for a round table discussion but to my surprise we went to the Chief's residence at Teouma. Upon arrival, a group of Tannese present*



asked the police who sent them here. They replied it was Chief Kalpolep who gave them a call. Police spoke for a short time with the Tannese men and then left. For my safety I asked the police to go with them to the police station but they said I had to stay.

22. People present at the Chief's nakamal where I was questioned were Noel Takau, Steven, Jack, Willy and some more. Question: Is it true that you three killed pastor by sorcery? I replied: No, I had no idea and also I knew not Lemis. Lemis was so afraid that he lied to have known me. At that moment, they beat me up while questioning me. I was beaten up throughout that night till 8:00am in the morning, Thursday, morning. Police took Lemis away and I remained receiving punches. Police notices bruise on my face and body but they did nothing to help me. They went on beating me up forcing me to say yes I was the one who killed the pastor.
  23. In the morning at 7am, the Chief came to me and said, "Daniel, if you said yes, I will contact secretly the police, and they will come and take you away". Full of bruises, I answered, "hi, I can't say yes to an incident which I was not involved in". The Chief said "Okay, the only thing I felt sorry for is they gonna beat you up till they kill you."
  24. The third time police came in, police officer Ron Tamtam declared to those present "We are fortunate the suspect is with us today." At the same time all men, women and children present at the gathering, clapped their hands in agreement with the officer's statement. After this declaration, police departed. A group of Tannese came in and beat me up much worse than previously after being encouraged by the police declaration. As a result, I had a fractured rib which so painful and I still feel the pain till now. I cannot do heavy work like before. Annexed hereto and marked with letter "B" is a true and correct copy of the medical report.
  25. At that point, there was so much pain in my body, so terrible and unbearable that I had no other way but to lie to them that yes it was true, we were the ones who killed late pastor Ezekiel. So I called upon Chief Kalpolep and told him.
  26. Chief Kalpolep went outside and phoned the police. They came and took me away in the midst of protest from those present. Upon arrival at the police station in town, I was then locked up in cell 6. I spent 2 days and one night at no.6 after which I was sent to remand Centre, Ex- British Jail."
12. The evidence adduced by the Defendant was contained in the following documents:



**Exhibit D1** – sworn statement of Bruno Nicholas dated 19 September 2016 with annexure “BN1” “BN2” and “BN3”.

**Exhibit D2** – sworn statement of Judy Bule dated 27 September 2016.

**Exhibit D3** – sworn statement of Jimmy Nimisa dated 12 September 2016 with annexure “JN1”.

13. The defence called three witnesses namely Bruno Nicholas, Judy Bule and Jimmy Nimisa. Their evidence can be summarized briefly as follows:

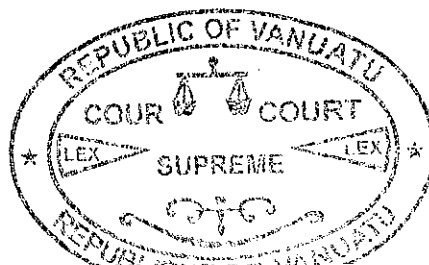
- (a) That on 18 August 2011, around 2:30am in the early hours of the morning, Chief Andrew Kalpoilep (the “Chief”) of Eratap village went to the police station to report an incident that had occurred at Eratap village and to seek police assistance.
- (b) Around 2:45am, PC Joseph Marae, PC John Meake, PC Komoa Daniel, PC Ishmael Liwuslili, PC Jean Kalo and PC Jimmy Nimisa who were on night shift duty at that time went to Eratap village to deal with the complaint raised by the Chief.
- (c) PC Jimmy Nimisa deposed to a sworn statement dated 12 September 2016 (**Exhibit D3**) and at paragraph 4 of that statement he said:

*“4. On 18<sup>th</sup> August, 2011, around 2:30am in the early hours of the morning, Chief Andrew Kalpoilep (the “Chief”) of Eratap village came to the police station and reported an incident that occurred at Eratap village seeking police assistance. Attached and marked “JN1” is a true copy of the police occurrence book showing the report by Chief Kalpoilep”.*

(d) At paragraph.6 of the said statement PC Nimisa stated as follows:

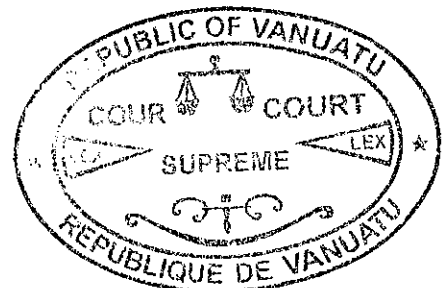
*“6. When we arrived at the chief’s house at Eratap village we saw some group of people there. We found out that the Claimant and another person were at the chief’s house and had already sustained injuries on their bodies in terms of bruises and the chief told us that he is keeping them at his house for their safety”.*

(e) At the Chief’s house, there were a lot of people and the situation was really tense and some of the people seemed to be angry with the Claimant and the other person. The officers were threatened by the

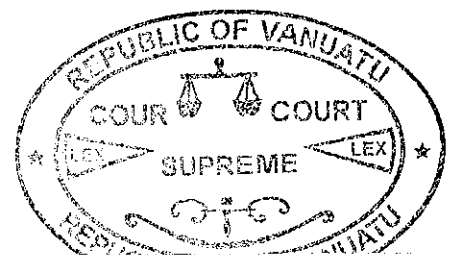


people and told they were not to take the Claimant and the other person to the police station and that if they did so they will kill them.

- (f) The officers advised the people not to take the law into their hands but to remain calm until a meeting was organized in the morning to settle the matter. As the officers were outnumbered by the people present at that time, they left the scene and went straight to the Vanuatu Mobile Force (VMF) camp to ask for reinforcement from the VMF members. However, the number of the VMF members at that time was also not sufficient to attend the scene at Eratap village to control the situation.
- (g) The police officers then went to see Inspector Ron Tamtam who was the officer on call and they briefed him about the incident that had occurred. After that briefing, the officers from the night shift went back to the police station and waited until the morning to take further steps in relation to the incident that had occurred. Then their shift ended at 7:00 am in the morning of 18 August 2011.
- (h) The day shift commenced at 7:00am on 18 August 2011 and the officers comprised Sergeant Bruno Nicholas, PC Judy Bule, PC Amos Tolang and PC Timothy Ati. Their evidence is that at about 09:51am the Police received a phone call from Chief Andrew Kalpoilep requesting police assistance.
- (i) At paragraph 4 of **Exhibit D1**, Sgt Bruno Nicolas made the following statement:
- “4. At 9:51am, the VPF received a phone call from Chief Andrew Kalpoilep (the “Chief”) requesting the police to go to his residence to remove a witchcraft suspect, as some group of men from Tanna residing in Eratap village are surrounding the suspect’s (the claimant’s) house and are intending to injure him. A copy of the VPF report docket which captures the report and the action the VPF took is attached and marked “**BN1**”
- (j) Following the 09:51am telephone call from the Chief, the Police went to the village to render assistance. Paragraphs 6 to 12 of Sgt Nicholas’ sworn statement read as follows:

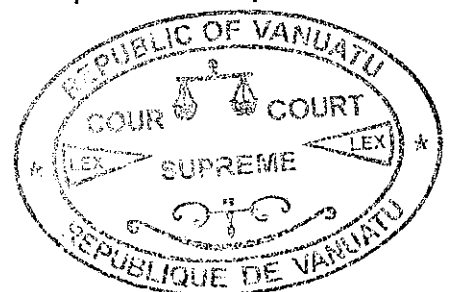


- "6 When we arrived at the Claimant's residence at Teouma Bridge Area we saw a group of villagers there who seem to be very angry with the Claimant. We found that the Claimant has sustained injuries on his body as we could see blood running and bruises all over his body and in order to keep him safe, we had to remove him from his residence to the police station.*
7. *We took the Claimant to the Police Station to keep him safe but not arresting him."*
8. *At the Claimant's residence, I saw a vehicle parked outside the Claimant's house and some people were removing things from the Claimant's house to the vehicle.*
9. *I confirm that upon taking the claimant to the VPF vehicle, we never hit, injured or cause any other bodily harm on the Claimant.*
10. *When we reached the police station, we took the Claimant and left him at the rest room (where our clients rest) of the police station.*
11. *On 18 August 2011 at 13:00pm, Jeffery Ezekil Uloky lodged a formal complaint to the police alleging that the Claimant had practised witchcraft causing the death of his father late Pastor Uloky. A copy of the said statement of witness is attached and marked "BN2".*
12. *On the same day at 2:04pm the Claimant was put in custody as a suspect for the offence of witchcraft causing death. A copy of the VPF watch house custody register is attached and marked "BN3."*
14. The Claimant's counsel, Mr. Stephens, submits that the two versions of the police patrol reports relating to the incident on 18 August 2011 differ from each other to a great extent.
15. According to PC Jimmy Nimisa, when he and his team of night shift officers arrived at Chief Kalpoilep's house at Eratap at 2:45 am, they saw some group of people and from that group they found out that the Claimant and another person were at the Chief's house and that they had already sustained injuries



on their bodies. Under cross examination PC Nimisa said *"we saw a crowd. There were some people inside the house with two people who had sustained injuries on their bodies. When we arrived we went and talked to the people but they told us that we had to leave or they will beat us up."*

16. On the other hand, however, Sgt Bruno Nicolas, who led the morning shift officers to the scene at 09:51am, stated that when they arrived at the Claimant's house at Teouma Bridge area they found that the Claimant had sustained injuries on his body and they *"could see blood running and bruises all over his body"*. He stated that in order to keep the Claimant safe they removed him from his residence and took him to the police station. PC Judy Bule confirmed Sgt Nicholas statement in her examination in chief and under cross examination she maintained that the Claimant was removed from his residence. In fact, she specifically stated that when they arrived at the Claimant's house, it was the Claimant himself who came to the police truck and asked them for protection and that they then took him to the police station.
17. The question posed by Mr. Stephens is: how on earth did the Claimant, with the injuries he suffered at the Chief's house walk out from a group of angry men and make his way to his residence which is about 500 meters from the Chief's house?" In answer to questions put to Sgt Nicholas under cross examination, he said *"I don't know who took the Claimant to his house. When I arrived the Claimant was at his house."* Counsel submits that this is a mystery and he urges the Court to believe the officers of the first patrol because they did see the Claimant and another person with injuries and blood running on their bodies at the Chief's house. Counsel further submits that the Court should disregard the version of Sgt Nicholas and PC Judy Bule as it contains inconsistencies.
18. I must say I am inclined to agree with counsel's submissions regarding the glaring inconsistencies in the evidence of the police officers as to how and where the Claimant was taken from. I accept the Claimant's evidence that Chief Kalpoilep had sent his son Willy and a group of more than 20 men from Tanna to go and fetch him from his house. I also accept PC Jimmy Nimisa's evidence that when he and his team of night shift officers arrived at Chief Kalpoilep's house at Eratap at 2:45 am they saw some group of people and from that group they found out that the Claimant and another person were at the Chief's house and that they had already sustained injuries on their bodies. In my view, it seems logical to conclude that the Claimant was removed from the Chief's residence following the Chief's phone call to the police as deposed





to by the Claimant at paragraph 26 of his sworn statement dated 21 August 2014.

### Issues for Determination

19. The following issues have been posed for the Court's determination:

- Whether or not the Defendants trespassed onto the Claimant's land?
- Whether or not the Defendants committed battery against the Claimant?
- Whether or not the Claimant was unlawfully arrested and unlawfully imprisoned?
- Whether or not the Claimant was maliciously prosecuted?

### Discussion and Decision

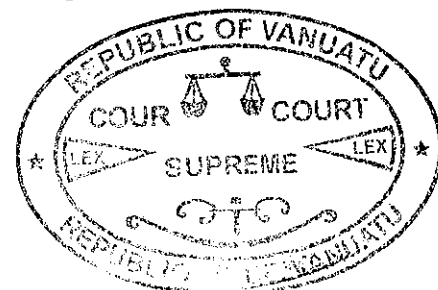
**Issue 1: Whether or not the Defendants trespassed onto the Claimant's land?**

20. **Invariably, the Courts have held that to succeed in an action for trespass to land a plaintiff must prove that:**

- (a) The defendant entered land, either directly (in person) or indirectly (e.g. by propelling an object or a third party on to the land);*
- (b) The defendant did so by some intentional act;*
- (c) The defendant had no lawful authority;*
- (d) The plaintiff was in lawful possession of the land; and*
- (e) The plaintiff's enjoyment of the land was interfered with.*

Mr. Huri submits that in order for the Claimant to succeed in his claim for trespass against the Defendants he must prove that these five factors existed at the material time. I agree. See the case of **Mamelin v Republic of Vanuatu** [2015] VUSC 1; CC 71 of 2013 (27 January 2015) in which this Court in its discussions in the judgment referred to the PNG case of **Bob v Stettin Bay Lumber Company Ltd** [2008] PGNC 120, where the National Court of Justice held that a plaintiff must prove that these five factors existed.

21. Judging from the evidence before this Court in this present case, I find that the Defendants did not trespass onto the Claimant's land. Moreover, I reject the Claimant's allegation that he, Lemis and Dickson were brought from their



various houses by the police at 2:00 am on 18 August 2011 to Chief Kalpoilep's residence and handed over to a group of waiting men who started beating them. I equally reject the Claimant's evidence that a police truck with a cage was waiting to pick him up from his house. The Defendants have not in any way trespassed onto the Claimant's land and the Claimant's claim for trespass must fail.

**Issue 2: Whether or not the Defendants committed battery against the Claimant?**

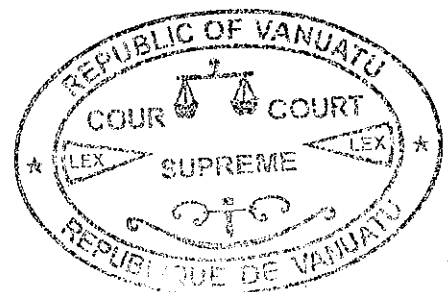
22. It is the Claimant's case that he was badly assaulted whilst in the company of the police. I totally reject this allegation because the evidence adduced by the Claimant is that he was assaulted at Chief Kalpoilep's residence by a group of Tannese men. At no time has the Claimant alleged that the police officers were present at the Chief's residence during the assault. There is also no proof before this Court of any use of force by the police officers against the Claimant at the time they took him to the police station. Furthermore, there was nothing mentioned in the Claimant's evidence (i.e. **Exhibit C1** and **Exhibit C2**) relating to any unreasonable use of force by the police officers. In the circumstances, I find that the Claimant has failed to establish that the Defendants committed battery against him.

**Issue 3: Whether or not the Claimant was unlawfully arrested and unlawfully imprisoned?**

23. The Defendants submit that on 18 August 2011, the Claimant was arrested and put in cell no. 6 as a suspect for the offence of witchcraft causing death as shown in **Exhibit D1** annexure "BN3" which is the watch house custody register. The Defendants further submit that at the police station, the Claimant was initially put in the resting room in the police station and that he was later put in the cell after a formal complaint was lodged against him.

24. The offence of Intentional homicide is a cognisable offence for which police officers can arrest a person without a warrant. Section 12 of the Criminal Procedure Code Act [CAP136] (CPC) provides as follows:

**"12. Arrest by police officer without warrant**



- (1) Any police officer may, without an order from a judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence.

Cognisable offence as defined in the CPC means “any offence for which a police officer may in accordance with the Schedule or under any law for the time being in force, arrest without warrant”.

In light of the evidence adduced I am satisfied that the Claimant was lawfully arrested after Jeffery Ezekil Uloky had lodged a formal complaint to the police alleging that the Claimant had practised witchcraft causing the death of his father late Pastor Uloky. It seems clear that the Claimant was charged with the offence of Intentional Homicide and this is evident in the Orders of the Supreme Court made in *Criminal Case No. 132 of 2011* dated 20 April 2012 and attached to **Exhibit C1** as annexure A.

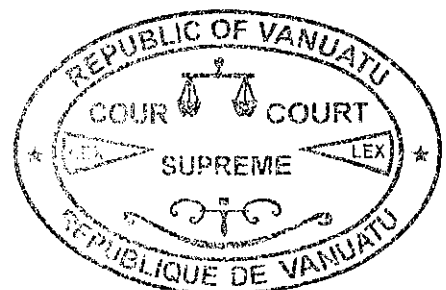
25. Was the Claimant unlawfully detained?

Section 18(1) of the CPC provides as follows:

**“18. Detention of person arrested without warrant**

- (1) Subject to subsection (2) when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the State, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of a serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable”.

26. At paragraph 26 of **Exhibit C1**, the Claimant stated that he spent 2 days and one night in cell no. 6 after which he was then remanded into custody at the Correctional Centre. However, this piece of evidence does not seem to be in line with the Claimant’s Statement of Claim where he pleaded in the Particulars under paragraph 4 as follows:



“(viii) On 19<sup>th</sup> August, 2011 the claimant and his two (2) friends were transported to the Vila Central Hospital to attend to medical attention.

(x) At 4pm on the same date the claimant and his two (2) friends were taken to the Magistrates Court to collect their remand warrants and thereafter to the Correctional Centre.”

27. It seems inexorably clear to me that the Claimant was arrested on 18 August 2011 and he was formally charged with an offence of Intentional Homicide contrary to section 106 (b) of the Penal Code and taken before the Magistrates' Court on 19 August 2011. The Claimant was remanded into custody at the Correctional Centre on the same day which was precisely within 24 hours after he had been taken into custody pursuant to the provisions of section 18 (1) of the CPC. Thereafter, on 7 October 2011 after hearing the matter and considering that a prima facie case was disclosed, the Senior Magistrate issued a committal order committing the Claimant to the Supreme Court for trial upon information. On the balance of probabilities, I find that the Claimant was lawfully arrested and detained at the police station and that he has failed to prove the allegation of unlawful arrest and false imprisonment against the Defendants.

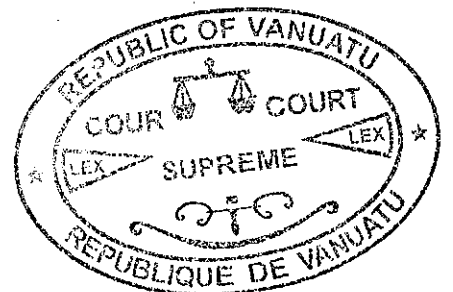
**Issue 4: Whether or not the Claimant was maliciously prosecuted?**

28. It is the Claimant's case that the charge against him was preferred maliciously and without reasonable and probable cause. However, the Defendants contend that there was reasonable and probable cause for the investigation of the allegation against the Claimant after a formal complaint had been lodged to the police by Jeffery Ezekiel Uloky alleging that the Claimant had practised witchcraft causing the death of his father.

29. In **Republic of Vanuatu v Patunvanu [2015] VUCA 9; CAC 11 of 2015** (8 May 2015), the Court of Appeal remarked as follows:

*“Establishing the tort of malicious prosecution is no easy task. The ..... authors of Salmond and Heuston on the law of torts (21st edition, 1996) state at paragraph 19.4:*

*In order that an action shall lie for malicious prosecution.... the following conditions must be fulfilled:*



- (1) *The proceedings must have been instituted or continued by the defendant:*
- (2) *He must have acted without reasonable and probable course;*
- (3) *He must have acted maliciously;*
- (4) *The proceedings must have been unsuccessful – that is to say must have terminated in favour of the plaintiff now suing."*

30. At paragraphs 12, 13 and 14 the Court of Appeal went on to state that:

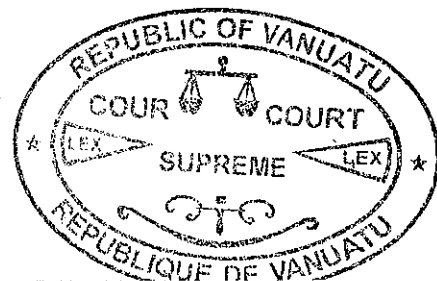
*"12. The first question to be considered is whether in laying the charges in Criminal Case No. 72 of 2011 the Prosecutor acted without reasonable and probable course. The burden of proving the absence of this is on the claimant who, as Salmond and Heuston observe "thus undertakes the notoriously difficult task of proving a negative."*

*13. As the lenient authors go on to say:*

*"Reasonable and probable course means a genuine belief based on reasonable grounds, that the proceedings are justified..... the defendant is not required to believe that the accused is guilty: It is enough if he believes there is reasonable and probable course for a prosecution. He need only be satisfied that there is a proper case to lay before the Court."*

*14. It is obvious, but none the less important not to forget, that the assessment of this question and indeed of whether there was malice, is to be made at the time when the charges were laid rather than informed by hindsight. Self-evidently, a prosecution launched with reasonable and probable course may nevertheless for a variety of reasons be later discontinued without this derogating from the original justification for the charge."*

31. In this present case, Mr. Stephens submits that *"the Prosecutor knew he was acting unlawfully and that his act would injure the claimant so when being questioned about the charge of Intentional Homicide he did enter a Nolle Prosequi at once."* However, Mr. Huri contends that even though the Public



Prosecutor entered a Nolle Prosequi and the Court discharged the Claimant on 20 April 2011, there was reasonable and probable cause for the prosecution of the Claimant and the Defendants did not act maliciously in his prosecution. It is noteworthy that, despite Mr. Stephens' submission, the Claimant has not adduced any or enough evidence to support the allegation that the charge against him was laid without reasonable and probable course. In any event, section 29 of the CPC clearly provides that *in any criminal case and at any stage thereof before verdict or judgment, the Public Prosecutor may enter a nolle prosequi by informing the court that he intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered.*"

32. I am satisfied that the prosecution that was launched against the Claimant was made with reasonable and probable cause as there was an identified complainant who had lodged a complaint to the police and an investigation was carried out accordingly. As the Court of Appeal said in **Republic of Vanuatu v Patunvanu**, "*self-evidently, a prosecution launched with reasonable and probable course may nevertheless for a variety of reasons be later discontinued without this derogating from the original justification for the charge.*"
33. For all the foregoing reasons, the Claimant's claim is therefore dismissed.
34. In the circumstances, **Orders** are made accordingly as follows:
1. The Claim in Civil Case No.271 of 2014 is hereby dismissed.
  2. The Defendant is entitled to costs on the standard basis. Such costs shall be taxed by the Master failing agreement.

**DATED at Port Vila, this 26<sup>th</sup> day of April, 2017.**

**BY THE COURT**

  
**M. M. SEY**  
Judge.

