

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

Civil Case No .315 of 2014

BETWEEN: STEVE TINNING
Claimant

AND: REPUBLIC OF VANUATU
Defendant

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Justin Ngwele for the Claimant*
Sammy Aron for the Defendant

Date of Hearing: *2nd and 6th June 2017*
Date of Judgment: *5th July 2017*

JUDGMENT

Introduction

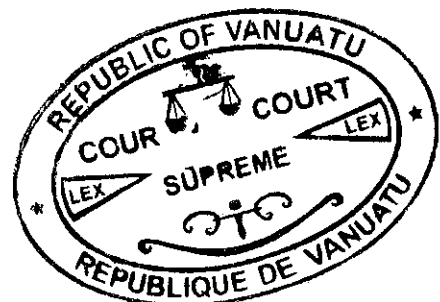
1. This is a claim for damages under 2 separate Heads-

- (a) For damage done to the Claimant's vehicle, and
- (b) For unlawful arrest and false imprisonment

Claims

2. The Claimant claims as follows-

- (a) For damage to vehicle and repair costs- VT 1.050.000.
- (b) For unlawful arrest and false imprisonment- VT. 9.600.000 at VT 400.000 per hour.
- (c) For punitive damages- VT 1.000.000
- (d) For interests- 5%
- (e) For costs of and incidental to the action.



Facts

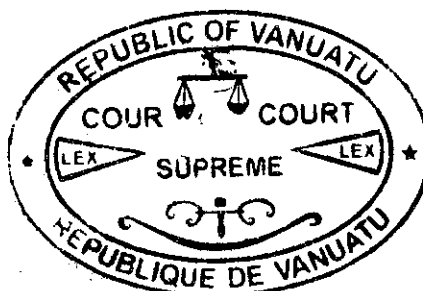
3. In the afternoon of 15th December 2009 the Claimant was involved in an accident at Anabrou Area. He collided with a Hyundai Bus and as a result his vehicle sustained some damage to its left front side. The Police were alerted and came onto the scene. They arrested the Claimant and detained him in a police cell for up to 23 hours without a warrant. He was released in the morning of 16th December 2009.

4. Meanwhile the police acting on instruction, took steps to detain the claimant's vehicle as well. One of the police officers attending the scene with the instructing Sergeant took the vehicle and were driving it to the Police Station in town. However at the turn-off by the entrance to the Cooks Barracks and the Lycee College the Claimant's vehicle collided with another Bus. The police asked the claimant to obtain 3 different quotes and made representation that they would pay for the repair costs. The best costs preferred by the Defendant was from James George at VT 1.050.000. As a result of the representation made the claimant caused the vehicle to be towed to the garage for repairs. The defendant has not paid, and the vehicle has fallen into a State of disrepair.

Allegations

5. The claimant alleges that-
 - (a) The police had no authority to remove the vehicle from the accident scene and having done so and in doing so, causing a second accident, the police are liable to pay for the repair costs.

 - (b) His arrest by the police was without a warrant and as such his subsequent detention was unlawful.



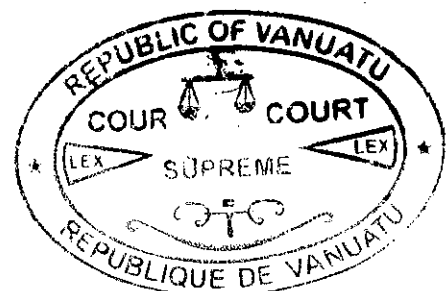
The Defence

6. The defendant's defences are-

- (a) The claimant was drunk
- (b) The instruction to drive the vehicle was given by a superior officer.
- (c) The second accident occurred when the vehicle became uncontrollable due to the damage sustained by the first accident.
- (d) The vehicle did not have a road worthy certificate
- (e) The claimant was only detained from 3:38pm on 15th December 2009 to 8:00am on 16th December 2009 when he was released.

The Evidence

7. To prove his claims on the balance of probabilities the claimant gave evidence himself. He confirmed his evidence by sworn statements dated 26th June 2015 (Exhibit C1), 14th February 2017 (Exhibit C2) and 29th May 2017 (Exhibit C3). He was cross examined on these by Mr Aron. The Claimant intended to rely also on the sworn statement of Kalo Marango but the State took objection due to the unavailability of the deponent for cross-examination, the Court ruled out its admissibility.
8. The defendant called evidence from 3 police officers in support of their defence. These were Sargeant Edward Kalura who confirmed his sworn statement dated 11th April 2017 (Exhibit D1) PC William Seru who confirmed his sworn statement dated 13th April 2017 (Exhibit D2) and PC David Bong who confirmed his statement dated 11th April 2017 (Exhibit D3). All the Police officers were cross-examined by Mr Ngwele.



The Issues

9. The Claimant raised 2 issues for consideration-

- (a) Did the action of the Vanuatu Police Force cause damage to the claimant's vehicle?
- (b) Did the actions of the Vanuatu Police Force towards the claimant amount to unlawful arrest and false imprisonment?

Submissions

10. The claimant filed written submissions on 22nd June 2017, some 20 days late pursuant to the orders dated 6th June 2017. The claimant asked for 2 days.

11. The defendant asked for 7 days for response submissions and have not done so.

Considerations

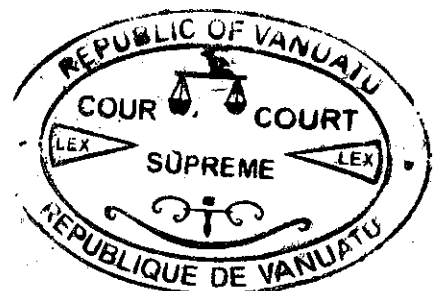
12. A) The Relevant Legal Provisions

I begin first by setting out what I consider to be the relevant legal provisions that the Court must apply to the facts of this case in the following manner;-

- (i) Section 16- Road Traffic (Control) Act [CAP.29] provides:-

"Driving when under influence of drink or drugs

It is an offence for any person to drive on the public road when under the influence of alcoholic liquor or a drug to such an extent that the driver is incapable of properly controlling his vehicle. A police officer shall be empowered without warrant to arrest any person contravening this section.



- (ii) Section 40 of the Traffic Act provides:-

"Notification of change of ownership

When the ownership of a motor vehicle changes the last owner and the new owner shall, within 7 days of such change of ownership, give notice thereof to the licensing authority stating the name and address of the new owner. The latter shall, within the same period, furnish the licensing authority with the registration book for registration of the change of ownership and shall pay the transfer fee prescribed by the Minister by Order."

- (iii) Section 54 (2) of the Traffic Act states:

"Power of police officer to stop offenders

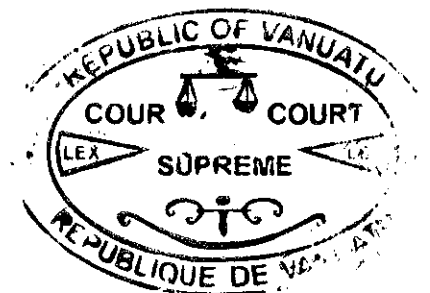
- (2) Any police officer may detain any vehicle concerned in an offence which seriously jeopardizes the safety of road users, the state of preservation of the public roads or their normal use."

- (iv) Section 12 of the Criminal Procedure Code Act [CAP 136] provides:

"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.
- (2) Without prejudice to the generality of subsection (1) a police officer may without a warrant arrest –
- (a) any person who commits a breach of the peace in his presence.....;"

(Underlining for emphasis)



B) The Issues

Before considering the two issues raised by the Claimant I am of the firm view there is a central issue that Mr Ngwele has omitted to raise either by oversight or deliberately. And this is the issue of whether or not the Claimant has standing to bring his claims for damage to the vehicle he was driving on 15th December 2009. The further question necessary for considerations is whether he was the legal owner of the vehicle he is claiming damages for? I consider that these are the first issues I have to determine in light of the evidence before me.

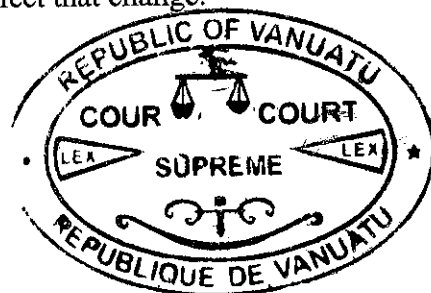
Sargeant Edward Kalura's sworn statement annexes a letter dated 4th April 2017 as "EK1". Paragraph 2 of the letter confirms the owner of the vehicle driven by the Claimant on 15th December 2009 is Noel Marango.

The Claimant's evidence confirms that position. In his worn statement dated 26th June 2015 (Exhibit C1) he annexes as "STT1" a copy of the Registration Book. The name of the registered owner is Noel Marango.

In his document annexure "STT2" the Claimant annexes a record from the Public Works Department showing that as at 14th October 2010 the vehicle belongs to Noel Marango. Also as part of this annexure is disclosed a reprint copy of a receipt of VT 3.000 paid by one Rachel Chavalier for road worthy test of the vehicle concerned. This is a receipt and not a certificate as claimed by the claimant in paragraph 8 of his statement.

Applying section 40 of the Road Traffic Act to the facts as shown by the evidence, I find-

- a) There has been no change of ownership,
- b) There has been no notification as required given by Noel Marango and the claimant about that change, and
- c) There has been no transfer fees paid to effect that change.



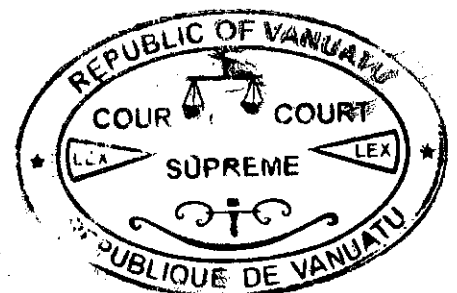
I am therefore not satisfied that the claimant is the legal owner of the vehicle he now claims damages for or over. And as such I conclude that he has no standing to claim for the damages sustained or the costs of its repairs.

That brings me to the first issue raised by the Claimant. The evidence is that Sgt Edward Kalura instructed PC Bong to drive the vehicle for detention at the police station in town. In the process both police officers say in their evidence at a turn-off at the Lycee conjunction one of the front wheels came off and resulted in a second accident. Sgt Edward said in evidence in cross he gave the instruction because the vehicle was obstructing traffic at the time. Sgt Edward accompanied PC Bong in the vehicle. In his view when the wheel became detached he said there was a mechanical problem.

13. Applying the law to the facts, I am satisfied section 54(2) of the Traffic Act gives discretionary power to the police to drive away and detain the vehicle. I am satisfied also that because there was absence of a certificate of roadworthiness for the period 2009/2010, the vehicle was not road worthy at the time. Had the vehicle been certified roadworthy the wheel could not have come off. I am therefore not satisfied the police had by the actions caused damage to the vehicle and therefore answer the issue in the negative.

14. The second issue relates to the arrest and the detention of the claimant from the facts and the written submissions the claimant accepts he was detained for almost 23 hours. Therefore his being kept in the cell for less than 24 hours pursuant to section 18 of the Criminal Procedure Code Act could not be said to be unjustified or unlawful detention or false imprisonment. His main complaint is that his arrest was unlawful because he did not commit any cognisable offence.

The evidence in cross by PC William Seru is that the claimant was drunk. He smelt of alcohol and his eye was red. He had drunk the night before. And PC Bong said in cross that the claimant had an argument and a fight with by-standers at the scene of accident prior to their arrival.



From those evidence I am satisfied there was a breach of the peace which warranted the police to arrest the claimant under the exception rule of section 12(2) (a) of the Criminal Procedure Code Act. That being the position, I am satisfied the police had arrested the claimant lawfully and therefore answer the second issue also in the negative.

15. I find the evidence of the claimant lacked credibility and therefore prefer the evidence given by the witnesses for the defendant as the truth.


16. I appreciate Mr Ngwele's written submissions on behalf of the claimant. Mr Ngwele refers to a number of cases such as Knightley.v. Jones, Republic.v. Titus Togagi and Republic.v. Emil. Those cases do not assist the Claimant's position. I therefore reject those submissions.

The Result

17. The end result is that the claimant is unsuccessful in his claims and accordingly I dismiss them in its entirety.

18. The Claimant has put the defendant to costs. And the defendant is entitled to their costs of and incidental to this proceeding. The claimant shall pay those costs on the standard basis as agreed or be taxed by the Master.

DATED at Port Vila this 5th day of July 2017
BY THE COURT


OLIVER.A.SAKSAS
Judge

