

**BETWEEN: Sam Lai**  
*Claimant*

**AND: Noviel Timothy**  
*Defendant*

**Before: Justice Aru**

**Counsel: Mr. B. Livo for the Claimant**  
**Mr. W. Daniel for the Defendant**

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**RESERVED JUDGMENT**  
**(Liability)**

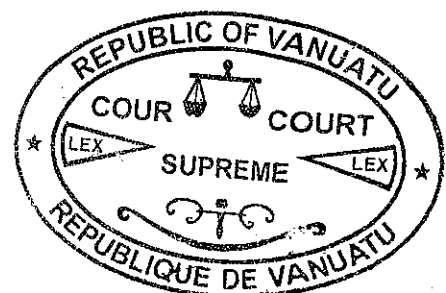
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**Introduction**

1. The trial of this matter was to determine liability in relation to a car accident involving the parties.
2. At the end of the trial on 15 September 2017, the parties indicated that they wanted to file written submissions and for the court to consider and to give judgment based on those submissions. They were each given 14 days. The defendant was to have filed his response on 13 October 2017. The claimant filed his written submissions on 23 October 2017. By 2 May 2018 no submissions were filed by the defendant. By a minute issued on the same date I gave the defendant a further 14 days to comply and that if no written submissions were filed, judgment would be issued.
3. To date no written submissions have been filed by the defendant.

**Background**

4. The claim arises as a result of a car accident which occurred on the evening 6 October 2010 along the Pango road. The claimant was driving a bus with Registration No 9827; and he was driving into town. Travelling towards Pango village in the opposite direction was the defendant. He was driving a bus with registration No 8173. The accident occurred when the two buses collided into each other.
5. As a result the claimant was taken to the hospital suffering from injuries to his legs and hip and lost several teeth.



## Claim

6. The claimant alleges in the claim that the defendant driving a vehicle on a public road owed a duty of care to road users like him and breached that duty by being negligent and causing the accident resulting in the claimant's injuries. The relief sought is VT7 million in general damages and VT1, 350, 000 in special damages.

## Defence and Counterclaim

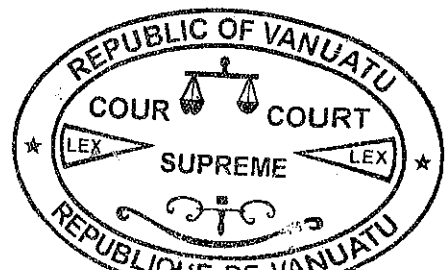
7. The defendant in his defence denied liability and filed a counterclaim alleging that the claimant was negligent in his driving and caused the accident. The counter claim sought unspecified damages against the claimant.

## Evidence

8. The claimant filed two sworn statements in support of the claim namely:-
  - Sworn statement of Reggie Benjamin filed on 26 July 2016 tendered as **Exhibit "C1"**; and
  - Sworn statement of Sam Lai filed on 27 November 2014 tendered as **Exhibit "C2"**.
9. For the defendant, the evidence filed and tendered in support of his defence and counterclaim are:-
  - Sworn statement of Timothy Noviel filed on 14 March 2016 tendered as **Exhibit "D1"**;
  - A Photograph of the defendant's bus after the accident tendered as **Exhibit "D2"**; and
  - Sworn statement of Ishmael Berry filed on 18 May 2016 and tendered as **Exhibit "D3"**.

## Submissions

10. The claimant submits that the defendant owed a duty of care and that duty was breached which resulted in the accident on 6 October 2010. It was submitted that the evidence of the claimant and Reggie Benjamin is confirmed by the Police Report annex "SLO 1" to Exhibit "C2". The sketch map of the accident measured by the



Police showed that the accident occurred on the claimant's side of the road as he was driving into town.

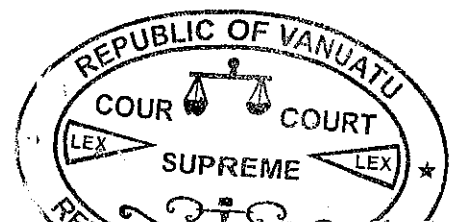
11. The claimant's overall submission is that there is overwhelming evidence that the defendant was negligent in his driving and therefore he should be held liable for his actions.
12. As earlier mentioned, the defendant did not file any submissions even though more than enough time was given to him to comply.

#### Discussion

13. When considering the evidence, the claimant's own evidence is that he was driving into town when the defendant drove into his vehicle resulting in the accident. He said there were no other vehicles on the road at the time of the accident. Reggie Benjamin confirms the claimant's evidence as he was sitting in the front passenger seat of the claimant's bus at the time of the accident. He did not suffer any injury. He said they did not overtake any vehicle before the accident. He said the defendant was travelling at speed towards them and hit the claimant's bus.
14. I accept this evidence as it corroborates the serious nature of the injuries suffered by the claimant as highlighted in the doctor's report at annex "SLO2" of Exhibit "C2". Furthermore the defendant's own evidence Exhibit "D2" shows serious damage to the driver's side of the defendant's bus which confirms that the defendant was traveling at speed. What the evidence so far reveals is that the defendant drove onto the opposite lane of on coming traffic and collided into the claimant's bus on the driver's side causing injuries to the claimant but not his passenger, Reggie Benjamin.
15. The claimant's evidence is confirmed by the Police Report annex "SLO 1" to Exhibit "C1". The sketch Map of the point of impact shows the claimant's bus lying in its right lane where he was driving into town. The Police Report concluded that:-

*"The collision occurred due to the fact that Vehicle Reg. #:8173 driven by Timothy Noviel had been travelling towards Pango on the opposite lane which is the actual right of way of Vehicle Reg. #:9827 and that was when the said Vehicle Reg. #:8173 driven by Timothy Noviel collides onto Vehicle Reg. #:9827 driven by Sam Lai."*

16. The defendant on the other hand says that the claimant overtook another vehicle before hitting him. I reject his evidence as no evidence was called to that effect. Similarly Ishmael Berry in support of the defendant says that the claimant overtook not one but three vehicles including himself before hitting the defendant. Not only does he contradict the defendant but no evidence was called from any witness to that



effect. This evidence is rejected as well. In the same vein the Police Report contradicts all the evidence in support of the defence case.

### Findings

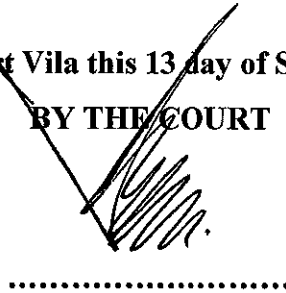
17. The findings I make are that on the 6 October 2010 when the defendant was driving towards Pango village in the evening he owed a duty of care to the claimant who was also driving along that road to drive with care. That duty was breached when the defendant drove his vehicle at speed on to the wrong side of the road and colliding with the claimant's bus causing him to suffer serious injuries.
18. On the balance of probabilities, I find that the accident was caused by the defendant driving on the wrong side of the road.

### Conclusion

19. I enter judgment on liability in favour of the claimant and the defendant's counterclaim is hereby dismissed. The claimant is entitled to costs to be agreed or taxed by the Master.
20. For the purposes of assessment of damages, a further conference is listed for 18 October at 2.00 pm.

**DATED at Port Vila this 13 day of September, 2018**

**BY THE COURT**



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**D. Aru**  
**Judge**

