

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

Civil Case No 394 of 2018

**BETWEEN: GEORGE TWOMEY, TONY BERRY,
DONALD JAMES, TERRY SANDY AND
ALBERT FRANK**
Claimants

AND: THE REPUBLIC OF VANUATU
Defendants

Coram: Mr. Justice Oliver A. Saksak

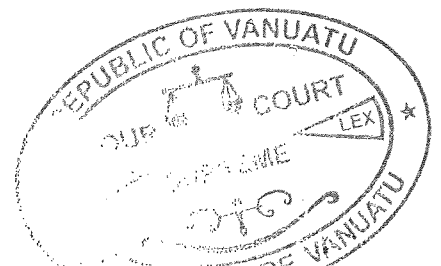
*Counsel: Colin Leo for the Claimants
Sakiusa Kalsakau for the Defendant*

Date of Hearing of Submissions: 9th April 2019

Date of Judgment: 18th April 2019

JUDGMENT

1. The Claimants Albert Frank, Donald James, Terry Sandy, Tony Berry, and Ray Jonathan were respectively suspended by the then Police Commissioner Aru Maralau on 21st November 2014. George Twomey, a Senior Officer was suspended by the then Prime Minister Joe Natuman 5 days later on 26th November 2014.
2. The Claimants say those suspensions were done in bad faith and/or with malice. As a result of their suspensions for a period of 10 months, they suffered loss and damages. They claim that as a result of the convictions of the then Prime Minister, Joe Natuman and Acting Police Commissioner Aru Maralau by the Court in March 2018, their suspensions were tainted with malice and bad faith. They say the Republic is vicariously liable for the conducts of its public officers.
3. The Republic denies all the claims and say the claimants have not disclosed any reasonable or any cause of action, that the claims are misconceived, frivolous and vexatious and should be dismissed with costs. The Republic filed its defence on 1st

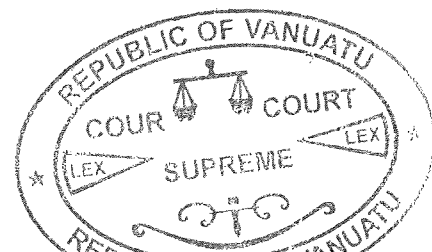


June 2018 to the Claimants' claims filed on 4th May 2018. They filed evidence by sworn statement from Kency Jimmy on 9th October 2018 in support of their defence.

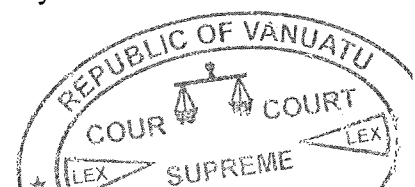
4. The Claimants on the other had filed sworn statements by George Twomey dated 19th March 2018 and 10th August 2018, by Donald James, Tony Berry Bule, and Terry Sandy dated 19th March 2018, by Albert Frank dated 26th July 2018, and by Jonathan Ray dated 17th August 2018.
5. The facts are not in dispute therefore there was no need for a trial hearing.
6. The legal issues raised by the Claimants are (a) Whether the suspensions made on 21st and 26th November 2014 were done in bad faith and/or with malice? and (b) Whether as such the Claimants are entitled to damages in law?
7. The defendants raised three issues (a) whether the claimants have a cause of action?, (b) If yes, whether the Republic is vicariously liable for the actions of Mr Natuman and Mr Maralau?, and (c) Whether the Claimants are entitled to damages and by how much (if any)?
8. Counsel for the defendant filed written submissions on 15th November 2018 and Mr Leo filed written submissions only on 8th April 2019. I heard Counsel orally on those submissions on 9th April 2019.

Discussion

9. First I consider whether the Claimants have any cause of action upon which they can usefully sue the defendant for damages. The starting point has to be Judicial Review Case 15/5 (JRC 15/5).
10. In JRC 15/5 the Claimants challenged their suspensions of 21 and 26 November 2014 respectively and sought a quashing order of those suspensions. Justice Mary Sey recorded at paragraph 3 of the Minute dated 26th May 2016 that the Claimants had “ *been reinstated as Police Officers following the Vanuatu Police Force PSU findings that the claimants’ suspension was wrong and without basis*”.



11. The Court did not quash the suspensions. Rather the Court struck out the claimants' claim for damages (paragraph 8) and ordered that the case file be closed (paragraph 10).
12. Neither the Claimants nor the defendant appealed. The Claimants instead filed this proceeding claiming damages as a result of their suspensions being wrong and without basis.
13. The Court in JRC 15/5 did not make any findings of whether or not the Claimants' suspensions were wrong in law. The Court at [3] simply recorded the conclusion of the Police PSU findings. This document is annexed to the sworn statement of George Twomey of 10/08/018 as " GT6" and to the sworn statement of Kency Jimmy of 09/10/018 as "AN7".
14. The PSU Report does not make any specific findings and conclusions that the claimants' suspension were " *wrong and without basis*". These words are not contained or found anywhere in the Report. The Claimants adopted the judge's words in paragraph 3 of the Minute of 26th May 2016 and used them in their pleadings at paragraph 4 and 6 of their claim filed on 12/02/018.
15. At paragraph 3 of the Claim the Claimants say they will rely on the pleadings in JRC 15/5 in support of their claims that their respective suspensions were wrong. JRC 15/5 is annexed as "AN 4" to the sworn statement of Kency Jimmy in support of the defendant's case. At paragraph 24 the Claimants plead bad faith as an alternative relief. In their new claim filed on 12/02/018 the Claimants did not plead malice and/or bad faith specifically, they merely say they rely on their pleadings in JRC 15/5.
16. I am of the firm view the Claimants were wrong to rely on their pleadings in JRC 15/5 because first, their claims were struck out (paragraph 8) and second, the file in JRC 15/5 is closed (paragraph 10).
17. In their written submissions dated 8/4/019 the Claimants raised two issues that their suspensions were done in bad faith and/or with malice. Unfortunately the Claimants



have not pleaded bad faith and/or malice in their claims. The words they have adopted instead are “ *wrong and without basis*”. Clearly this is the wrong approach. The Court will not go beyond the pleadings. The law is well established by the case of Republic. V .Emile [2015] VUCA 16.

18. Further the Claimants submit their suspensions were tainted with malice and/or bad faith. Again these are without pleadings and the Court cannot allow this approach to be followed on the basis of Emile’s case.

19. In the absence of proper pleadings or by omission, it means simply that the Claimants have not demonstrated any cause of action at all on which to base their claims for damages. Therefore I must accept the defendant’s submissions that those claims are frivolous and vexatious. Accordingly these claims fail and are dismissed, in their entirety.

20. All the other issues raised hinged on this preliminary important issue of cause of action. As there is no cause of action at all established, the other issues raised fall with it and it is not necessary to determine them.

21. The Claimants have put the defendant to costs. They must pay those costs on the standard basis as agreed or be taxed by the Master. These are costs of and incidental to this action.

DATED at Port Vila this 18th day of April 2019.

BY THE COURT


OLIVER.A.SAKSAK
Judge

