

BETWEEN: PARMOD ACHARY
Appellant

AND: OMBUDSMAN OF THE REPUBLIC OF
VANUATU
Respondent

Date of Hearing: 2 February 2026

Before: Hon. Chief Justice Vincent Lunabek
Hon. Justice Mark O'Regan
Hon. Justice Michael Wigney
Hon. Justice Oliver Saksak
Hon. Justice Dudley Aru
Hon. Justice Maree Mackenzie

Counsel: Mr D K Yawha for the Appellant
Mr D Jonah and Mr F Bong for the Respondent

Date of Decision: 13 February 2026

JUDGMENT OF THE COURT

1. In December 2023, the appellant, Mr Parmod Achary, commenced proceedings against the respondent, the Ombudsmen of the Republic of Vanuatu. In those proceedings, Mr Achary sought damages from the Ombudsman for trespass and conversion arising from the execution of a search warrant at Mr Achary's employer's offices. He also sought damages for a separate cause of action said to be for "*unlawful and unwarranted prosecution*". The Ombudsman in due course conceded liability in respect of the causes of action for trespass and conversion, though Mr Achary maintains that the Ombudsman conceded liability in respect of his claim generally. The proceedings came before the primary judge for an assessment of damages. The judge awarded Mr Achary VT500,000 in damages for trespass and conversion, but declined to award any damages for unlawful prosecution, or any separate damages in respect of pain and suffering and legal fees.
2. The appellant appealed the judgment awarding him VT500,000 in damages. He contended, in essence, that the award of damages was manifestly inadequate and that the trial judge erred in not awarding damages for unlawful prosecution in light of the Ombudsman's concession of liability.



3. For the reasons that follow, the primary judge's assessment of damages miscarried, mainly as a result of the approach taken by the primary judge to plainly misconceived written submissions that had been filed by the Ombudsman. In the circumstances it is appropriate for this Court to assess the appropriate damages.

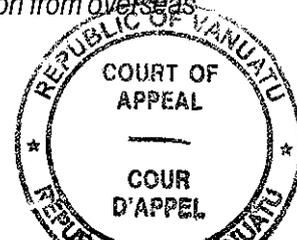
Mr Achary's claim against the Ombudsman

4. The basic facts underlying Mr Achary's claim against the Ombudsman were not in dispute.
5. Mr Achary was the General Manager of the Vanuatu National Provident Fund.
6. In August 2019, the Ombudsman was conducting an investigation into whether Mr Achary and other members of the Fund's board had committed various serious offences, including misuse of public moneys, undue influence and bribery.
7. On 26 August 2019, the Ombudsman applied to the Magistrate's Court for the issue of a search warrant. That warrant, which was issued by the Magistrates Court, purported to authorise the search of the Fund's offices, including Mr Achary's office, and the seizure of material relevant to the investigation. The warrant was executed on the same day. Police and Ombudsman officers attended the Fund's offices and conducted a search, including of Mr Achary's office. Documents and other material were seized purportedly pursuant to the warrant. During the search, which extended over a period of about three and a half hours, Mr Achary was required to remain in the Fund's conference room.
8. On 11 September 2019, the Ombudsman commenced civil proceedings against Mr Achary and applied ex parte for interlocutory orders. Those orders, which were made on 13 September 2019, restrained Mr Achary from engaging in certain specified conduct, including: dealing with the Fund's assets; convening a board meeting or initiating discussions with board members concerning the use of the Fund's assets; making any public comment about the search warrant; harassing the Fund's management and staff; leaving the country; and interfering with the Ombudsman's investigation. Those orders were made by the Court and in due course served on Mr Achary.
9. On 18 September 2019, the Ombudsman discontinued the proceeding against Mr Achary with the effect that the ex parte orders ceased to operate.
10. On 13 October 2019, the Office of the Public Prosecutor laid criminal charges against Mr Achary. On 18 October 2019 the Magistrates Court ordered that certain bail conditions be imposed on Mr Achary.
11. On 29 October 2021, the Supreme Court handed down judgment in *August v Ombudsman of the Republic of Vanuatu* [2021] VUSC 293. The Court held that the Supreme Court was the only court authorised to issue a search warrant to the Ombudsman. It followed that a search warrant issued to



the Ombudsman by the Magistrate's Court in the course of its investigation in that case was invalid. It also followed that the search warrant issued to the Ombudsman by the Magistrates Court in the course of the investigation into Mr Achary, which was issued in almost identical circumstances to the warrant in *August v Ombudsman*, was likely invalid.

12. On 19 November 2021, this Court handed down judgment in *August v Ombudsman of the Republic of Vanuatu* [2021] VUCA 59. In that judgment, the Court not only upheld the Supreme Court's judgment concerning the validity of search warrants issued to the Ombudsman by the Magistrates Court, but also held that, before applying for a search warrant pursuant to s 24 of the *Ombudsman Act*, the Ombudsman was required to serve a notice under s 22 of that Act. That had not been done in respect of the search warrant obtained by the Ombudsman in the course of the investigation into Mr Achary. It accordingly provided another basis for concluding that that warrant issued in the course of investigating Mr Achary was likely invalid and unlawful.
13. Following the judgments of the Supreme Court and Court of Appeal in the *August* cases, the Prosecutor withdrew the criminal charges against Mr Achary. The decision to withdraw the charges was no doubt based on the Prosecutor's recognition, following the decisions of the Court to which reference has just been made, that any evidence obtained pursuant to the search warrant had been unlawfully obtained.
14. Mr Achary's filed a civil claim against the Ombudsman on 11 December 2023. In that claim, which is the claim the subject of this appeal, Mr Achary alleged that the Ombudsman was liable to pay him damages arising from three separate causes of action.
15. The first two causes of action were for trespass and conversion arising from the execution of the unlawful search warrant at the Fund's premises on 26 August 2019 and the seizure of documents pursuant to that warrant. Not surprisingly, given the decision in *August v Ombudsman*, Mr Archary pleaded that the search warrant that had been issued to the Ombudsman by the Magistrates Court and executed at the premises of the Fund on 26 October 2019 was unlawful and that officers of the Ombudsman who entered the premises and seized material purportedly pursuant to that warrant had committed the torts of trespass and conversion. He pleaded that the actions of the Ombudsman's officers in executing the warrant had caused him to suffer stress, humiliation trauma and reputational damage, though the pleading contained scant particulars of that damage.
16. The third cause of action, or asserted cause of action, was said to be a cause of action for the "unlawful laying of charges and prosecution" or "unlawful and unwarranted prosecution". Mr Achary alleged that the Ombudsman was the "main Complainant" in the criminal charges that were laid against him in October 2019. He contended, apparently on the basis that the Prosecutor applied to withdraw the charges after the Supreme Court and Court of Appeal decisions in *August v Ombudsman*, that his prosecution was unlawful and had caused him to suffer "unnecessary legal costs". He also claimed that the Ombudsman's "unlawful complaint and prosecution of him" by the Ombudsman had caused him to suffer a "severe health ailment and cost of medication from overseas due to stress, worry and trauma experienced from the unlawful prosecution".



The Ombudsman's concession of liability

17. The Ombudsman initially defended Mr Achary's claim. On 11 September 2024, however, the Ombudsman filed a Memorandum in relation to liability. It stated:

- 1) *The Defendant has filed a defence to the Claim, disputing the entire Claim.*
- 2) *After the filing of the Defence, the Defendant carried out further legal assessments on the Claim and the Defence in light of the findings of the Court of Appeal in Ombudsman of the Republic of Vanuatu v Letlet [2023] VUCA 1; Civil Appeal Case 07 of 2022 (17 February 2023). This Court of Appeal decision is binding on the Defendant and the Defendant admits liability to the Claimant's Claim as the search warrant was unlawfully obtained at the Magistrate Court.*
- 3) *However, the Defendant disputes the quantum of damages as pleaded in the relief of the Claimant's Claim.*
- 4) *Accordingly, it is the Defendant's position that the matter should not proceed to trial as the Defendant will negotiate with the Claimant to settle the matter.*

18. In *Ombudsman of the Republic of Vanuatu v Letlet* [2023] VUCA 1, the Court of Appeal upheld a judgment of the Supreme Court which held that the Ombudsman was liable for damages for trespass and conversion as a result of the execution of an invalid search warrant. The claim in that case, however, did not include any claim of unlawful prosecution or any cause of action arising from a failed prosecution.

19. It might perhaps be observed that the Ombudsman's memorandum in respect of the concession of liability was expressed in somewhat unclear and ambiguous terms. While the decision in *Ombudsman v Letlet*, which provided the basis for the concession, concerned only causes of action in trespass and conversion, the memorandum did not, in terms, state that the concession only related to those causes of action. The primary judge's subsequent minute and orders, dated 11 September 2024, was similarly somewhat unclear and ambiguous. It referred to the Ombudsman's memorandum "admitting liability as alleged in the claim as the search warrant was unlawfully obtained".

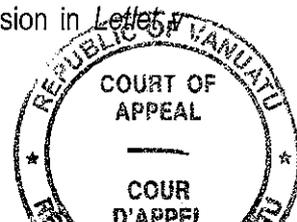
20. Nevertheless, as will be seen, the Ombudsman's submissions resolved that potential ambiguity and made it tolerably clear that the Ombudsman had not intended to and had not conceded liability in relation to the other elements of Mr Achary's claim, including the claim relating to the alleged unlawful prosecution. In particular, the Ombudsman's submission included a submission to the effect that Mr Achary had not pleaded or proved malice on the part of the Ombudsman (or the Prosecutor) and that therefore Mr Achary had not made out, and was not entitled to any damages for, a cause of action for malicious prosecution. That the Ombudsman was not conceding liability in respect of the



supposed cause of action for unlawful prosecution must have been readily apparent to Mr Achary by the time the matter came before the primary judge for the assessment of damages.

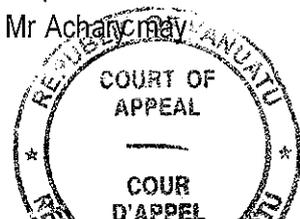
The evidence and the parties' submissions in respect of damages in the Court below

21. Mr Achary filed a sworn statement in support of his claim for damages. He also filed written submissions. It is unnecessary to consider Mr Achary's evidence and submissions in detail. The critical points that emerge from the evidence and submissions may be summarised as follows.
22. First, Mr Achary claimed that he was entitled to VT19,000,000 in general and exemplary damages. It should be noted, however, that Mr Achary's claim did not plead that he was entitled to exemplary damages or contain any particulars of the basis upon which he claimed that exemplary damages should be awarded.
23. Second, Mr Achary's evidence and submissions did not clearly delineate between the damages he sought in respect of the causes of action in trespass and conversion and the damages he sought in respect of the alleged unlawful prosecution.
24. Third, the evidence and submissions contained a series of broad and general assertions to the effect that Mr Achary had suffered emotional and mental distress as a result of the Ombudsman's actions. Those assertions, being devoid of any meaningful particulars, were deserving of little if any weight.
25. Fourth, Mr Achary's evidence and submissions focussed on claims of loss or damage arising from events that occurred well after the execution of the search warrant, or events which had little if anything to do with the search warrant, such as his inability to travel.
26. Fifth, the submissions included claims for damages for causes of action which were not pleaded in the claim, such as the cause of action in defamation supposedly arising from the posting of the search warrant on Facebook.
27. Sixth, the submission referred to damages assessments in several cases which involved causes of action other than trespass and conversion and facts and circumstances which were plainly distinguishable from the facts and circumstances of his case.
28. Overall, much of Mr Achary's evidence was irrelevant or deserving of little or no weight and his submissions were at best unhelpful.
29. Regrettably, the Ombudsman's written submissions in respect of the assessment of damages were perhaps equally unhelpful, though for other reasons.
30. In respect of the causes of action in trespass and conversion, the Ombudsman's submissions focussed almost entirely on the award of damages in the Supreme Court's decision in *Letter #*



Ombudsman of the Republic of Vanuatu [2022] VUSC 173. In that case, the Court assessed the claimant's damages for trespass and conversion at VT2,000,000. The Ombudsman submitted that the "intrusion" in Mr Achary's case "lacked the same degree of personal violation" as the intrusion in *Letlet v Ombudsman* because the execution of the search warrant in that case proceeded over several days and involved the claimant's private residence, not his place of employment. The Ombudsman accordingly submitted that an appropriate award for trespass in Mr Achary's case was VT1,500,000. It may be inferred that that amount also included damages for conversion because the submissions in relation to that amount appeared under the heading "Trespass/Conversion".

31. As discussed later in these reasons, there was and is some apparent merit in the Ombudsman's submission that the award of damages in Mr Achary's case should be less than the award in *Letlet v Ombudsman*. That said, the assessment of damages in other supposedly similar cases may not always provide a reliable guide to the assessment of damages in the case under consideration. Each case must be considered having regard to the particular facts and circumstances of the case.
32. The Ombudsman's submissions next addressed Mr Achary's claims in respect of unlawful prosecution. The Ombudsman also submitted that the cause of action for malicious prosecution required a claimant to prove that the prosecutor acted with malice, and yet Mr Achary had failed to adduce any evidence or prove that the Ombudsman had acted maliciously. The Ombudsman submitted, in that context, that the "thrust" of his admission of liability was that the "search warrant was unlawfully obtained" and that it would be "wrong in law" for an admission of liability to be taken to "extend to cover alleged claim and/or damages where there is no evidence to prove and to establish such claim in damages". The Ombudsman submitted that on that basis Mr Achary was not entitled to any damages for malicious prosecution.
33. It was at this point that the Ombudsman's submissions went awry. Despite maintaining that Mr Achary was not entitled to any damages arising for malicious prosecution, the Ombudsman submitted that "in a practical sense the Claimant had suffered and experienced emotional distress and pain and suffering throughout the periods of the criminal proceeding which he is entitled to an award for pain and suffering". The Ombudsman went on to submit that an appropriate award of damages for pain and suffering and emotional distress "during the criminal proceedings" would be in the sum of VT2,000,000.
34. That submission was and is entirely misconceived. Damages cannot be awarded for pain and suffering unless the pain and suffering arose from a cause of action that has been pleaded and proved or admitted.
35. In Mr Achary's case, it might be said that his assessment of damages could involve a component for pain and suffering if it was established that the admitted causes of action in trespass and conversion had caused him pain and suffering. If, however, as the Ombudsman had submitted, Mr Achary had not proved (and it might be added had not pleaded) a cause of action for malicious prosecution, he was not entitled to an award of damages for pain and suffering flowing from the failed prosecution. In those circumstances it was and is entirely irrelevant that as a "practical matter" Mr Achary may

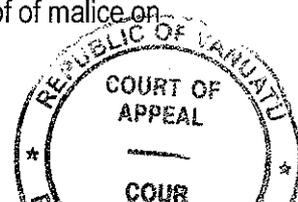


have suffered loss or damage as a result of or during the failed prosecution.

36. The same can be said in respect of the Ombudsman's submission that an award of VT400,000 would be appropriate for the legal costs incurred in the "unwarranted prosecution". That submission or concession was and is misconceived. If Mr Achary wanted to be compensated for his costs of the withdrawn criminal proceeding, it was a matter for him to make an application for costs in that proceeding. Moreover, once it is accepted that Mr Achary was not entitled to damages for malicious prosecution, there was no basis for an award of damages in respect of his legal costs of the failed prosecution. That is the case even though it might be said, in a broad sense, that the prosecution followed or flowed from the execution of the impugned search warrant.
37. As for the remaining elements of Mr Achary's claim in respect of the quantum of damages, the Ombudsman submitted that Mr Achary was not entitled to any damages in respect of his medical expenses as he had not proved that he had incurred any such expenses. The Ombudsman also submitted that Mr Achary's claims in respect of damages for matters such as "*character assassination*", "*false allegations*", "*defamation*" and exemplary damages had not been pleaded and that, in respect of the claim for exemplary damages, Mr Achary had not pleaded or sought to prove that the Ombudsman's actions were "*high-handed, insolent, vindictive or malicious*": cf *Republic of Vanuatu v Emil* [2015] VUCA 16 at [30].

The primary judge's assessment of damages

38. The primary judge's judgment (J) in respect of the assessment of damages was short and to the point.
39. In relation to the assessment of damages for trespass and conversion arising from the execution of the unlawful search warrant, the primary judge referred to the assessment of damages of VT2,000,000 in *Letlet v Ombudsman* and observed that in that case the search warrant had been executed at Mr and Mrs Letlet's residence and took over three days: J [24]. In contrast, the search warrant in Mr Achary's case only occurred in the morning of 26 August 2019 and at office premises "*which is less obtrusive than if it had occurred in a residential home*: J [25]". The primary judge also noted that all seized materials had been returned to Mr Achary. Those considerations led the primary judge to conclude that an award of VT500,000 damages for trespass and conversion was appropriate: J [25].
40. The primary judge rejected Mr Achary's claim for exemplary damages in respect of the execution of the search warrant and the causes of action for trespass and conversion, essentially on the basis that there had been no award of exemplary damages in *Letlet v Ombudsman*: J [26].
41. As for Mr Achary's claim in respect of damages for unlawful and unwarranted prosecution, the primary judge observed that she was not aware of any cause of action for unlawful and unwarranted prosecution and noted that the cause of action for malicious prosecution required proof of malice on

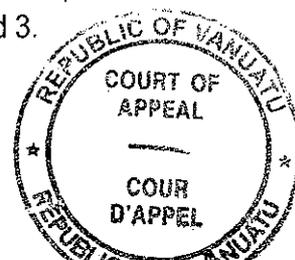


the part of the prosecution; J [30]-[31]. The primary judge pointed out that Mr Achary had not pleaded malice and that, in any event, it was the Public Prosecutor who instituted and carried on the prosecution, not the Ombudsman: J [32]. It followed, the primary judge concluded, that Mr Achary's claim in respect of damages for the failed prosecution must fail. It also followed that his claim for legal expenses in respect of the failed prosecution and damages medical pain and suffering, "*health ailment*", medical costs and overseas medical treatment due to stress, worry and trauma must also fail: J [35]. Those claims were all effectively tethered to Mr Achary's claims in respect of the unlawful prosecution which had not been made out: J [36].

42. Finally, the primary judge rejected Mr Achary's claims in respect of damages for character assassination, false allegations and defamation essentially because they had not been pleaded: [37]. The primary judge also rejected Mr Achary's damages claims relating to the threats to and embarrassment suffered by his wife and children essentially because his wife and children were not parties to the proceeding.
43. There is one additional point that should be made concerning the judgment of the primary judge. While the primary judge referred to the filing of the Ombudsman's written submissions, she did not engage with those submissions or indicate that she rejected or did not accept or agree with them. That is significant because the primary judge's assessment of the appropriate damages was significantly less than the amount the Ombudsman had submitted was appropriate. The primary judge's reasoning in respect of the assessment of damages referable to the failed prosecution also departed from and at least implicitly rejected the Ombudsman's submissions. While it was noted that counsel made oral submissions at the hearing, the primary judge did not indicate that she had engaged with the Ombudsman's counsel about those aspects of the submissions with which she plainly disagreed. There is no indication that the Ombudsman withdrew or resiled from his written submissions at the hearing as a result of any engagement between the primary judge and counsel.

Grounds of appeal and submissions

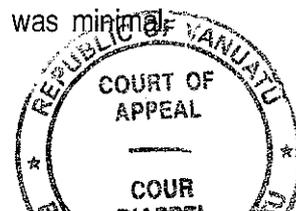
44. Mr Achary's notice of appeal identified 12 lengthy and discursive grounds of appeal. The notice of appeal was supported by equally prolix and discursive written submissions. The grounds and submissions may be summarised as follows.
45. First, it was contended that the primary judge failed to give effect to the Ombudsman's "*unequivocal admitted liability*" and proceeded to determine issues that had been resolved by the admitted liability: grounds 1 and 2. These grounds of appeal proceeded upon the premise that the Ombudsman's memorandum in respect of liability amounted to an admission of liability in relation to all aspects of Mr Achary's claim, including the claim concerning the alleged unlawful prosecution.
46. Second, Mr Achary contended that the award of damages of VT500,000 was manifestly inadequate because it was "*disproportionate to precedent*" and the circumstances of the case: ground 3.



47. Third, Mr Achary contended that the primary judge erred in not finding and awarding damages for unlawful and unwarranted prosecution or malicious prosecution: grounds 4, 5 and 6. Mr Achary's arguments in support of these grounds were essentially premised on the proposition that the Ombudsman had admitted liability in respect of the alleged action for unlawful prosecution.
48. Fourth, Mr Achary contended that the primary judge erred in not awarding damages in respect of a number of Mr Achary's claims, including pain and suffering, medical costs, stress, humiliation, reputational harm, false allegations, legal costs and aggravated and exemplary damages: grounds 8, 9, 10 and 11.
49. Fifth, Mr Achary claimed that the primary judge erred by undermining "*constitutional supremacy*" and trivialising "*enforceable remedies*". This ground and the written submissions advanced in support of it, are extremely difficult to understand and were not developed in oral submission. It appears to be no more than an amorphous "catch-all" ground that adds little if anything to the earlier grounds.
50. The Ombudsman's written submissions on the appeal are remarkable because, while they seek to uphold the primary judge's assessment of damages of VT500,000 they make no mention whatsoever of the Ombudsman's written submissions before the primary judge. That is remarkable given that those submissions were to the effect that a larger sum for damages would be appropriate and yet there is no indication that those submissions were ever withdrawn or resiled from. As has already been noted, the Ombudsman's written submissions before the primary judge included submissions to the effect that an award of damages of VT1,500,000 would be appropriate for the causes of action in trespass and conversion and that Mr Achary was entitled to damages of VT2,000,000 for pain and suffering endured during the prosecution and legal costs in respect of the failed prosecution in the sum of VT400,000.

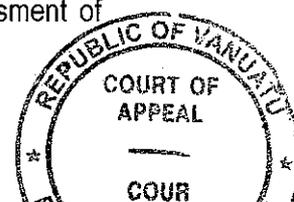
Did the primary judge's assessment of damages miscarry?

51. Were it not for the Ombudsman's written submissions that were filed and apparently relied upon before the primary judge, we would not have been persuaded that the primary judge's award of damages of VT500,000 for trespass and conversion was manifestly inadequate, or that the primary judge's assessment of damage for those causes of action had miscarried. While it may be accepted that VT500,000 is a fairly very meagre and effectively nominal amount, we are unable to accept that the award of that amount in and of itself manifests error on the part of the primary judge, or that the facts and circumstances of the case necessarily compelled an award of a larger sum.
52. Putting to one side for the moment Mr Achary's generalised and somewhat hysterical assertions about the stress, humiliation and trauma that he suffered as a result of the execution of the search warrant, the fact of the matter is that the search warrant was executed at Mr Achary's place of employment, not his home. The Ombudsman's concession of liability for trespass is, in those circumstances, somewhat curious if not questionable, though it was not and has not been withdrawn. The fact remains that any intrusion on Mr Achary's property by way of trespass was minimal.



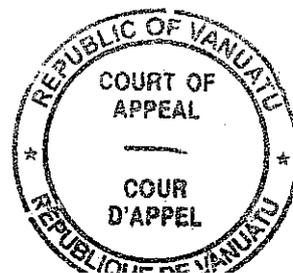
Similarly, there is nothing to suggest that the material that was seized and retained for some time following the search warrant included material owned by Mr Achary, as opposed to material owned by the Fund. Any damages referable to conversion must therefore be nominal or minimal.

53. Returning then to Mr Achary's claims concerning stress, humiliation, trauma and the like, it is difficult to disentangle his claims in that regard from his claims concerning the stress, humiliation, trauma and other similar claims resulting from the prosecution. We are not persuaded that Mr Achary's claims and evidence concerning those aspects of the harm he was said to have suffered as a result of the execution of the search warrant (as opposed to the broader prosecution) necessarily compelled an award of damages higher than VT500,000.
54. The difficulty for the Ombudsman, however, is that in the hearing before the primary judge he had filed written submissions that indicated that a total award of VT3,900,000 was appropriate, comprising an award of VT1,500,000 for trespass and conversion, VT2,000,000 for pain and suffering during the failed prosecution and VT400,000 for legal costs of the failed prosecution. There is no indication that he withdrew or resiled from those submissions. For the reasons we have already given, the Ombudsman's submissions concerning damages in respect of pain and suffering during the prosecution, and damages representing the legal costs of the prosecution, were and are misconceived. They are based on the erroneous proposition that, while Mr Achary did not plead or prove any cause of action for malicious prosecution, he is nevertheless entitled to damages for pain and suffering and legal costs arising from the failed prosecution. That is erroneous because, as the primary judge correctly found, there is no cause of action for "*unlawful and unwarranted prosecution*" (absent a plea of malice) and in any event the Ombudsman did not institute or carry on the prosecution. Damages are not at large and can only be awarded in respect of a recognised cause of action that has been made out or admitted.
55. The primary judge was not obliged to accept the Ombudsman's submissions concerning the assessment of damages. It was open to the primary judge to reject them, as she obviously did. Indeed, for the reasons that have already been given, the primary judge was entirely correct to reject the Ombudsman's submissions concerning the award of damages for pain and suffering and legal costs arising from the failed prosecution.
56. The difficulty, however, is that procedural fairness effectively required the primary judge to put Mr Achary on notice that she might not accept the Ombudsman's submissions and might award a lesser sum of damages for trespass and conversion and not award any damages in respect of Mr Achary's claims based on unlawful prosecution. Without being put on notice that the primary judge may depart from the Ombudsman's submissions, Mr Achary would effectively have been entitled to assume that the primary judge would not award any lesser sum than had been put forward in the Ombudsman's submissions. Mr Achary was therefore effectively denied the opportunity to submit, for example, that the Ombudsman should be held to his submissions and that the primary judge should accept them.
57. There is no indication in the judgment of the primary judge that Mr Achary was put on notice that the primary judge may not accept the Ombudsman's submissions in respect of the assessment of



damages, or might award a lesser amount. Indeed, in her judgment the primary judge made no reference to the position in respect of damages that had been advanced by the Ombudsman. In his submissions on appeal, the Ombudsman did not contend that the primary judge did so put Mr Achary on notice. We would, in the circumstances, infer that she did not.

58. It follows that, in the unfortunate and unusual circumstances of this case, we would conclude that the primary judge's assessment of damages miscarried. The primary judge's assessment of damages must accordingly be set aside. While the matter could be remitted to the primary judge to reassess damages, the more efficient and economical course is for this Court to reassess damages. We reiterate that, but for the Ombudsman's erroneous submissions and the primary judge's failure to put Mr Achary on notice that she might not accept them, we would have upheld the judgment of the primary judge.
59. In the circumstances it is unnecessary to address in detail Mr Achary's grounds of appeal and his submissions in support of them. It suffices to note that we reject Mr Achary's contention that, in his Memorandum in respect of liability dated 11 September 2024, the Ombudsman admitted liability in respect of the supposed cause of action for unlawful and unwarranted prosecution. While the Memorandum is somewhat ambiguous, read fairly and in context it is apparent that the Ombudsman was only admitting liability in respect of the causes of action directly related to the execution of the search warrant, namely trespass and conversion. That is apparent from the reference to the Ombudsman being bound by the decision in *Ombudsman v Lettet*, a case which concerned only the causes of action for trespass and conversion. It was also clear from the Ombudsman's written submissions in the Court below that the Ombudsman did not intend to admit liability in respect of the allegedly unlawful prosecution, or any cause of action for malicious prosecution. That must have been apparent to Mr Achary. In any event, it would have been wrong for the primary judge to accept the Ombudsman's admission in respect of liability and award damages for a purported cause of action which was not known to the law.
60. It follows that we reject Mr Achary's contention that the primary judge erred by failing to give effect to any admission by the Ombudsman in respect of liability for any cause of action for unlawful and unwarranted prosecution or malicious prosecution. There was no such admission. For the reasons that have already been given, we also reject the submission that the primary judge erred in failing to award damages for pain and suffering and legal costs arising from the failed prosecution. We also consider that the primary judge was correct to reject Mr Achary's various claims in respect of damages for stress, humiliation, trauma, character assassination, false allegations, defamation and reputational damages. Those claims were for the most part not properly pleaded, were unsupported by any cogent or reliable evidence and in any event primarily related to the impacts on Mr Achary of the prosecution, not the execution of the search warrant.
61. It follows that the only damages to which Mr Achary was entitled were damages for trespass and conversion arising from the execution of the search warrant.



Reassessment of damages

62. Counsel for the Ombudsman in the appeal was unable to sensibly explain the disparity between the Ombudsman's submissions before the primary judge concerning the appropriate award of damages for trespass and conversion and the submissions concerning damages for those causes of action advanced on appeal. More significantly, he did not advance any meaningful or persuasive submissions for why we would not accept the submission advanced by the Ombudsman below that an award of VT1,500,000 would be appropriate and would adequately take into account the differences between this case and *Ombudsman v Letlet* in which the Court awarded damages of VT2,000,000.
63. While for the reasons given earlier we are not persuaded that the primary judge's award of damages of VT500,000 was manifestly inadequate, we nonetheless consider that an award of damages of VT1,500,000 would be an appropriate award in the unusual circumstances of this case, particularly given the approach taken by the Ombudsman in the proceeding to date. To be clear, that award takes into account any pain, suffering, embarrassment and humiliation that Mr Achary was likely to have suffered as a result of the execution of the warrant. It does not, however, take into account any loss or damage that Mr Achary may have suffered as a result of the prosecution instigated and maintained by the Public Prosecutor.

Conclusion and disposition

64. The appeal will be allowed. The primary judge's award of damages will be set aside and in lieu thereof the Court will order the Ombudsman to pay Mr Achary damages of VT1,500,000 for trespass and conversion.
65. Mr Achary has achieved partial success in the appeal, largely as a result of the Ombudsman's misconceived submissions before the primary judge. In the circumstances we consider that it is appropriate to order the Ombudsman to pay Mr Achary's costs of the appeal assessed in the sum of VT50,000.

DATED at Port Vila, this 13th day of February 2026

BY THE COURT



Honourable Chief Justice Vincent Lunabe

