

**BETWEEN:** GEORGE REUBEN PAKOA, FRED  
REUBEN and JOEL JACK  
Claimants

**AND:** THE REPUBLIC OF VANUATU  
Defendant

**Coram:** Justice JP Geoghegan

**In attendance:** Counsel – C.Leo for Claimants  
Counsel – S. Kalsakau for Defendant

**Date of Trial:** March 1<sup>st</sup>, 2018

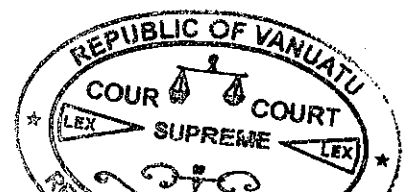
**Date of Judgment:** March 12<sup>th</sup>, 2018

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## JUDGMENT

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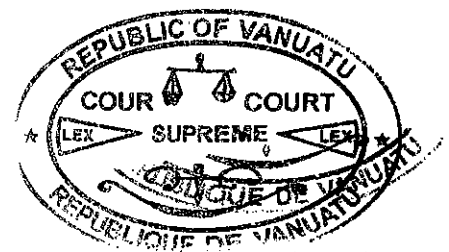
1. The claimants in this proceeding seek damages from the State in respect of their alleged unlawful arrest and detention by police officers in Port Vila on December 18<sup>th</sup>, 2012.
2. The claimants claim that their arrest amounted to trespass and that their subsequent detention for a period of approximately 24 hours was contrary to their constitutional rights pursuant to Article 5(1)(b) of the Constitution. They each seek damages of VT1 million for alleged trespass together with damages of VT2,4 million for “injury of liberty” and VT500,000 in damages for “injury to feelings”.
3. There is no dispute that the claimants were all arrested on December 18<sup>th</sup>, 2012 on suspicion of intentional assault and that they were released on December 19<sup>th</sup>, 2012.
4. Prior to the commencement of the hearing the issues agreed by counsel as being issues for determination in these proceedings were:
  - (a) Whether the claimants’ arrest was unlawful;
  - (b) Whether the claimants’ detention was unlawful;
  - (c) Whether the police officers effecting the arrest of the complainants required the consent of the claimants to enter their work premises in order to effect that arrest.
5. At the outset of the hearing Mr Leo advised the Court that the claimants were no longer pursuing a cause of action based on trespass. He also conceded that the claimants case was effectively a “one issue” case namely whether or not the arrests were lawful. If the



claimants could not establish that their arrests were unlawful then nothing further needed to be considered.

### The Evidence

6. The claimants were not required for cross-examination and accordingly their evidence is set out in their sworn statements. There is no dispute as to the matters referred to in those statements.
7. The Court heard oral evidence from four of the six police officers who were involved in the investigation of this matter. Those officers were Edmon Williams, Clinton Kalfabun, John Marango and Terry Malapa. Officer Bakon Sylvano, who had sworn evidence in respect of the matter had died prior to this trial. With reference to two other officers who had sworn statements in the proceedings, Constable Pakoa Saling and Corporal John Tawii neither of those officers appeared at the trial. I was advised by Mr Kalsakau that officer Saling had retired and was living on Epi Island and hard to locate. Corporal Tawii, despite apparently being told of the need to appear in court simply did not appear. In the absence of any exceptional circumstances preventing Constable Tawii's presence in court that is an extremely poor reflection on the Vanuatu Police Force. It also prevented Mr. Leo, for the claimants from exploring under cross-examination what prompted a decision to arrest the claimants.
8. The arrest of the claimants arose as a result of a complaint of assault laid by Mr. John Bell with the Vila Police at the Port Vila Central Police Station on December 18<sup>th</sup>, 2012. Mr. Bell alleged that he had been assaulted by the claimants and one other person a Mr. George Amos. The assault was alleged to have taken place on December 14<sup>th</sup>, 2012. In his sworn statement the officer in charge of the case, Corporal Tawii stated that upon the complaint being lodged by Mr. Bell he instructed Constable Saling to proceed with an investigation as a result of which due inquiry was undertaken of the complaint and the claimants were arrested.
9. The claimants were detained after their arrest, however no further steps were taken against them after it became clear to the police that they were not involved in the assault of Mr. Bell. Mr. Amos was subsequently charged in respect of the assault on the complainant, pleaded guilty and on August 6<sup>th</sup>, 2013 was sentenced to 4 months imprisonment suspended for a period of 12 months. He was also sentenced to community work.
10. Mr. Bell's complaint was recorded in a general Daily Occurrence Book. The relevant extract of that book produced for the court referred in very brief terms to the nature of the assault and recorded the names Pakoa Amos, Toby, Joel Jack, Fred Reuben and George Reuben as being persons responsible. It would appear that no formal statement was taken from Mr. Bell.

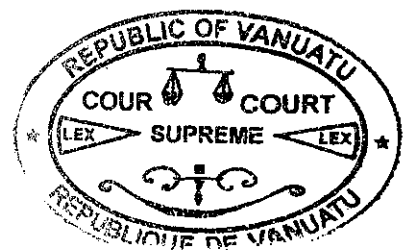


11. In Constable Pakoa's sworn statement he stated that he assessed the complaint justified police action to arrest and detained the suspects "*as the allegation made was serious*". After discussions with Corporal Tawii it was determined that the complaint alleged a serious offence and as such the assistance of members of the Tactical Response Group of the Vanuatu Police Force was engaged in order to arrest the suspects identified by the complainant. It had appeared that the assault of Mr. Bell had arisen over a dispute over chiefly title and the assault perpetrated involved the striking of Mr. Bell's head with an axe.
12. Officers Terry Malapa, Edmond Williams and Bakon Sylvano were then tasked to effect the arrest of the claimants. The evidence of officers Malapa and Williams was that approximately 10:30am on December 18<sup>th</sup> they attended Mr. Reuben's work place at the Statistics Office. Mr. Reuben was informed by officer Malapa of the reasons for their attending his office at which point Mr. Reuben began arguing with the officers and stating that there were other persons who should also be brought down to the police station as the matter was in respect of a chiefly title dispute. Mr. Reuben was then placed under arrest and was detained pending further inquiry.
13. The officers then proceeded to the work place of Mr. Pakoa at Customs and Inland Revenue. The evidence was that Mr. Pakoa was cooperative with them and his arrest was effected shortly after 10:37am. Mr. Pakoa was advised of the reasons for the officers' presence at his work place prior to the arrest.
14. From there the officers then proceeded to Mr. Jack's workplace in Freshwater 1 at approximately 10:55am. A number of men were working at the construction site and Officer Williams called out for Mr. Jack who then approached the police officers and identified himself. Mr. Jack was informed of the reason for the officers' presence at his workplace at which point Mr. Jack then stated that he was not involved in the assault on the complainant and that the dispute was in respect of a chiefly title and that the police should not interfere. Mr. Jack was placed under arrest and taken to Port Vila Station.
15. There is no dispute that each of the claimants was then detained in cell 6 until the following morning when they were interviewed. Mr. Reuben was interviewed by Corporal John Marango, Mr. Jack was interviewed by Corporal Clinton Kalfabun. It is not clear who interviewed Mr Pakoa.

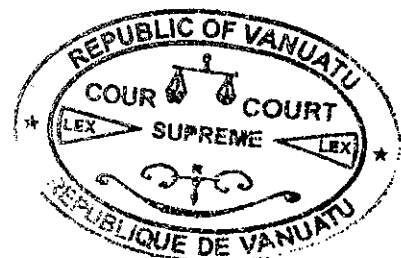
### Discussion

16. The arrest of a person without warrant is governed by Section 12 of the Criminal Procedure Code Act [CAP. 136] which provides that:

"(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".



17. Section 12(2) also stipulates circumstances in which a police officer may effect an arrest without warrant however it is irrelevant for the purposes of these proceedings.
18. Section 18(1) of the Criminal Procedure Code requires the officer in charge to enquire into the case within 24 hours of detention and also requires the officer in charge to release the detained person on his own recognisance unless an offence appears to be of the serious nature. Where a person is kept in custody there is a requirement that he be brought before the court as soon as practicable.
19. Section 18(2) provides that the officer in charge may release a person arrested on suspicion of committing an offence, "*when after due police inquiry, insufficient evidence is, in his opinion disclosed on which to proceed with the prosecution of the offence*".
20. Cognisable offences are those set out in the schedule to the Criminal Procedure Code. Those offences include an offence under Section 107 of the Penal Code [CAP. 135] of intentional assault. There can be no doubt in this case that the complaint made against the claimants was one involving the alleged commission of a cognisable offence.
21. What this case really boils down to is whether it could be said whether the arresting officers had formed a suspicion upon reasonable grounds that the claimants had committed the offence referred to.
22. It is accordingly important to understand exactly what happened and what provided the basis for the decision to effect an arrest. In this regard it is very unfortunate that neither Constable Pakoa Saling nor Corporal John Hendry Tawii were present for cross-examination.
23. The fact that Mr. Tawii and Mr. Saling did not appear does not render their evidence inadmissible. What it creates however is a situation where the weight to be attached to that evidence is a matter for the court. In situations where the evidence given is relatively non-controversial then the weight given to the evidence will almost always be significantly greater the weight attached to evidence which is the subject of conflict.
24. The evidence led by the other police officers satisfies me that a complaint was recorded in what is called the Daily Occurrence Book regarding the alleged assault. Officer Terry Malapa was invited to translate the entry which was written in Bislama and produced as an exhibit to his statement. No objection was made to the admissibility of the document which might be properly considered as a business record.
25. Column 1 records "*John Mark Bell native of Tongoa, Teouma, Efate*". The adjacent column records "*intentional assault. This man has reported the following: Pakoa Amos Tobby, Joel Jack, Fred Reuben, George Reuben and Pakoa Henry, native of Tongoa. Said they have committed the above offence against him (on 14<sup>th</sup> December 2012)*".



26. That appears to be the record of the complaint acted upon by the police. Officer Malapa identified the handwriting as that of Saling Pakoa. Officer Malapa was asked whether or not a statement was made by the complainant Mr. Bell and he confirmed that such a statement had been made and that he had seen it but he could not recall when he had seen the statement other than that it was after the arrests were effected. He could not recall what the statement said.

27. The evidence of Pakoa Saling was as follows:

*"4. On 18 December 2012, a complaint was lodged with the VPF, Port Vila Station, by John Mark Bell ("the complainant") against George Amos Pakoa, George Reuben Pakoa, Fred Reuben and Joel Jack for committing intentional assault against the complainant (these "complainants") which was alleged to have taken place on 14 December 2012 (the "date of the alleged assault"). A true copy of the General Duty Occurrence Book entry 02 recording the entry of the complaint as attached and marked "PS1".*

*5. I was at that time an office supervisor with the Uniform Investigation Branch (the "UIB") stationed in Port Vila when the complainant lodged the complaint.*

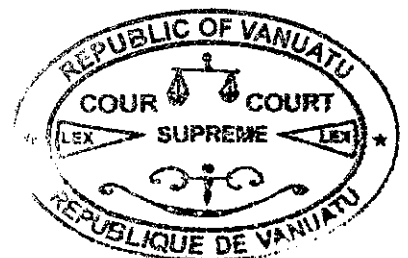
*6. I was instructed by my office supervisor, Corporal John Tawii to proceed with the investigation of the complaint.*

*7. Given the instructions received, I assessed that the complaint justified police action to arrest and detain the suspects as the allegation may be serious.*

*8. I then had some discussions with my supervisor John Hendry Tawii and it was determined that the complaint alleged to serious offence was committed and that a dangerous weapon was involved. As such, we requested the assistance of members of the Tactical Response Group (the "TRG") of the VPF to arrest the suspects as identified in the complaint which included the claimants".*

28. Clearly Officer Saling could not be cross-examined as to how he came to assess that the arrest was justified given that the only apparent record of the complaint was that referred to in the Daily Occurrence Book. That provides no details of the assault, of the part the claimant played in it and whether or not there was any weapon involved.

29. Officer Tawii's statement stated that he was the officer in charge of the case and was, at that time, an office supervisor with the Uniform Investigation Branch when the complainant lodged the complaint. He stated:



*“6. The complainant appeared at the police station with injuries, as a result of an assault alleged to have been taken place on 14 December 2012.*

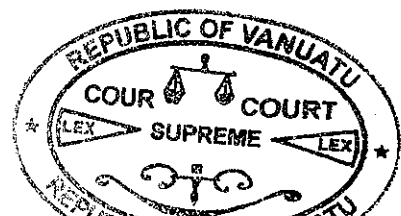
*7. I then instructed Constable Pakoa Saling to proceed with the investigation of the complaint.*

*8. Police then acted upon the complaint received and due inquiries has been carried out including the temporary detention of suspects as a result of the complaint lodged”.*

30. What cross-examination of Corporal Tawii may or may not have established was whether or not he had seen the injuries of the complainant, whether that he had spoken to the complainant or whether he was simply acting on other information received. Even if Corporal Tawii had not seen Mr. Bell personally however information received that Mr. Bell had been injured is something which Corporal Tawii would be entitled to take into account in formulating a view as to the seriousness of the offending and further action which might need to be taken. Constable Malapa had also given evidence that he recalled that the officer in charge had said that the complainant was cut in the head with an axe following a dispute over chiefly title. Constable Malapa’s evidence may accordingly be relied upon to establish that there was reason to believe that the complainant head suffered a head injury in the assault and that a weapon had ben involved,
31. I am satisfied therefore that what the evidence establishes is that prior to the arrest being made the complainant had attended the Police Station and had laid a formal complaint of intentional assault. I am satisfied that the police were aware prior to effecting the arrest of the claimants that the complainant had been injured in the assault and that the assault was one which involved the use of an axe and related to a dispute over a chiefly title. While the Daily Occurrence Book does not record that detail the evidence of other officers establishes this knowledge. In particular I refer to the evidence of Constable Malapa. It is clear also that the complainant specifically identified the claimants as, along with one other, the persons responsible for the assault.
32. The Court of Appeal considered what was necessary to provide the foundation for an arrest without a warrant in *Republic of Vanuatu v. Emil*<sup>1</sup>. In that case a formal complaint was received from the mother of a woman that the defendant (was the young woman’s father) had been engaged in a sexual relationship with the young woman. On the same day police officer spoke to the suspect and invited him to accompany them to the Police Station which he did. At the Police Station he was then advised of the complaint and was shown what was presumably a written complaint which he denied. He was then arrested. At paragraph 13 of the judgment the court stated:

*“13. There can be no doubt that the Police on receipt of the complaint from Mrs Tasaruru had sufficient evidence to form the requisite opinion justifying*

<sup>1</sup> [2015] VUCA 16



arrest, namely that there were "reasonable grounds to suspect" (in terms of section 12 of the Criminal Procedure Code) that an offence had been committed. Mr Stephens appears to suggest that on receipt of a complaint the Police had to treat it with scepticism and investigate it thoroughly before any arrest could be made. While that may be the ideal, in our view it is a counsel of perfection and overstates by a considerable margin the standard which the police must attain.

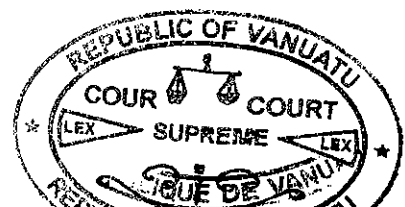
14. The well-established process in Vanuatu, and a large number of other countries around the world, is that to arrest a suspect the Police must have reasonable grounds to suspect an offence has been committed. The determination of whether or not that is correct is ultimately for the Court. Of course the defendant has the right to defend the charge including by giving evidence if he chooses".

33. Also worthy of note is the Australian authority of *Hyder v. Commonwealth of Australia* where it was said:

"(7) What constitutes reasonable grounds for forming a suspicion or belief must be judged against "what was known or reasonably capable of being known at the relevant time" ... Ruddock v. Taylor [2005] HCA 48; 2005 222 CLR 612 (at [40] per Gleeson CJ, Gummow, Hayne and Heydon JJ, whether the relevant person had reasonable grounds for forming a suspicion or belief must be determined not according to the subject of beliefs of the police at that time but according to an objective criteria: Anderson v. Judges of the District Court of New South Wales (1992) 27 NSWLR 701 (at 714) per Kirby P (Meager and Sheller JJA agreeing); see also: O'Hare v. Chief Constable of Royal Ulster Constabulary (at 298) per Lord Hope;

(8) The information acted on by the arresting officer need not be based on his own observations; he or she is entitled to form a belief based on what they had been told. The reasonable belief may be based on information which has been given anonymously or on information which turns out to be wrong. The question whether information considered by the arresting officer provided reasonable grounds for the belief depends on the source of the information and its context, seen in the light of the whole of the surrounding circumstances and, having regard to the source of that information, drawing inferences as to what a reasonable person in the position of an independent observer would make of it; O'Hare v. Chief Constable of Royal Ulster Constabulary at 298, 301, 303 per Lord Hope).

34. Applying those authorities I conclude that the arrest of the claimants were lawful.
35. While it may well have been appropriate for a full written statement to be made by the complainant setting out the circumstances in which the assault occurred and the part which each claimant allegedly played in the assault and while I would recommend to



the Vanuatu Police Force that that would be an appropriate way in which to commence an investigation, the fact that such a full statement was not taken does not make the arrest unlawful. The evidence establishes that the complainant himself attended the police station showing signs that he has been assaulted and complaining of an assault. He was able to state the date of the assault and he was able to state who was allegedly engaged in that assault. The fact that the claimants were not ultimately charged is neither here nor there. I consider that those facts gave the police a basis upon which to reasonably suspect that the claimants have been involved in a commission of a cognisable offence and therefore liable to arrest. Accordingly their arrest and subsequent detention as lawful. The evidence establishing these matters is able to be drawn from the evidence of the officers available for cross-examination at trial and without reference to the sworn statements of officers Saling and Tawii although their statements do serve to corroborate the evidence of the others.

36. For these reasons the claimants' claim is dismissed.
37. Costs are awarded to the defendant on a standard basis to be agreed within 21 days failing which costs are to be taxed.

**DATED at Port Vila, this 12<sup>th</sup> day of March, 2018.**

**BY THE COURT**

**JP GOGHEGAN**

**Judge.**

