

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

**Civil
Case No. 18/2267 SC/CIVL**

BETWEEN: Johnny George
Claimant

AND: Republic of Vanuatu
Defendant

Date of REVIEW: 28th day of September, 2020

Before: Justice S Felix

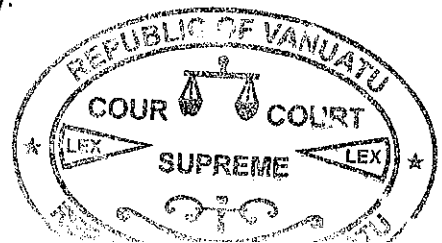
In Attendance: Counsel - Roger Tevi for the Claimant

***Counsel – Sakiusa Kalsakau for the
Defendant***

JUDGMENT

A. Introduction

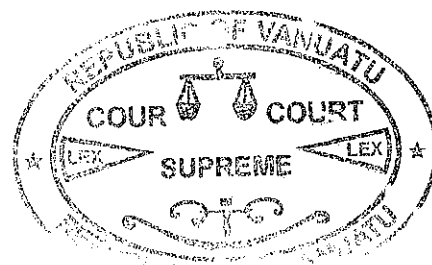
1. Mr Johnny George was a resident of a small village not far away from the Isangel Police Station on West Tanna.
2. On the 24th of Aril 2015, a team of some police officers stationed on Tanna responded to a report about a fight and the burning of homes by people from Mr Johnny George's village.
3. Mr Johnny George complained that in the course of the police intervention, one of the police officers assaulted him and caused injury to his body.



4. He is therefore seeking compensation in the amount of VT 8,000,000 together with costs.

B. Discussion

5. The Claimant Mr Johnny George was the only witness for the claimant. In his evidence, Mr George confirmed that on April 24th 2015, a man who was living with him in the same house died. He said that some Vanuatu Mobile Force (VMF) officers came to his home and arrested him. They took him to the Police Station and on their way one of the VMF officers by the name of Romety Jack assaulted him on the mouth, which resulted in two of his top front teeth being knocked out and two of his bottom front teeth becoming loose and later also being lost.
6. Mr George had made a criminal complaint against officer Romety Jack but the Magistrate's Court acquitted the officer for lack of evidence. Mr George then instituted this proceeding against the Republic claiming damages for injuries which he said were caused by the Vanuatu Mobile Force Officer Romety Jack.
7. Three witnesses were called for the defence and they were the VMF Officers who attended Mr George's house and took him to the Tanna Police Station.
8. The first witness was Mr Romety Jack. He said in his evidence that when he arrived at the Claimant's house together with the other officers, Mr George had already been assaulted by a group of people who were assembled there. The group of people in the village where the claimant lives had accused him of causing the death of their family member using witchcraft. The witness said, Mr George was obviously injured and unconscious when he responded and rescued him from the crowd.
9. In cross-examination about the allegation that he, Mr Romety Jack, had assaulted the claimant in the truck while they were travelling back to the Police Station, he denied that assault and said that he was sitting in the front passenger seat while Mr George was sitting in the back seating the middle of two other officers.



10. The other two witnesses were both VMF officers, who also confirmed the evidence of Mr Romety Jack.

11. In assessing the evidence adduced by Claimant and the evidence adduced by the defendant, I am not satisfied that the claimant has discharged his evidential burden of proof on the balance of probabilities.

12. There is no dispute as to the injuries he had sustained but the issue was who had caused those injuries. I am not satisfied that it was the officer Romety Jack in the course of his official duties.

13. The claimant was the only witness. He could have called other witness such as his wife or another member of his family to support his allegation that he was assaulted by the officer Romety Jack. His failure to do so can also indicate that he was unsure about the truthfulness of his story: see the case of Bonex Sinclair v. Cormak [1999] VUCA 11.

14. Having found that the officer Romety Jack is not responsible for the claimant's injuries, I do not need to address the issue of vicarious liability against the State, nor the assessment of damages for the Claimant's injuries.

C. Conclusions

15. The claimant has failed to prove his case on the balance of probabilities. His claim is therefore dismissed.

16. He must also pay costs on the standard basis.

DATED at Port Vila this 30th day of October, 2020

BY THE COURT

Justice GA Andrée Wiltens for Justice S. Felix

Justice GA Andrée Wiltens for Justice S. Felix

