

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

Civil
Case No. 20/1405 SC/CIVL

BETWEEN: Hezekiah Loloi
First Claimant

AND: Mathew Vuraina
Second Claimant

AND: Harry Loloi
Third Claimant

AND: Hopkins Vuraina
Fourth Claimant

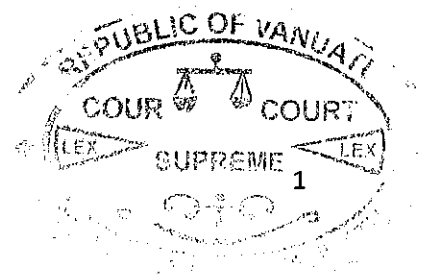
AND: Luke Loloi
Fifth Claimant

AND: Ellis Vuraina
Sixth Claimant

AND: John James Vira Leo
Defendant

Date: 4 June 2024
Before: Justice V.M. Trief
Counsel: Claimants – Mr E. Macreveth
Defendant – in person

DECISION AS TO ASSESSMENT OF DAMAGES

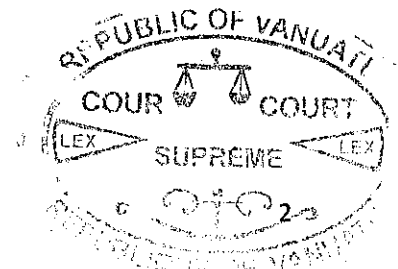


A. Introduction

1. By Decision dated 26 October 2021, summary judgment was entered in this matter: *Loloi v Leo* [2021] VUSC 289. The Defendant John James Vira Leo appealed against the summary judgment. By judgment dated 18 November 2022, the Court of Appeal dismissed the appeal: *Viraleo v Loloi* [2022] VUCA 33.
2. I now assess the quantum of damages.

B. Background

3. The parties were at all material times resident on Pentecost island.
4. On or about 10 December 2015, Mr Leo alleged that the Claimants Hezekiah Loloi, Mathew Vuraina, Harry Loloi, Hopkins Vuraina, Luke Loloi and Ellis Vuraina) had breached a customary ban imposed on the collection of *beche de mer* (which alleged breach the Claimants denied) and committed various acts against the Claimants.
5. Mr Leo was subsequently charged in Criminal Case No. 2745 of 2016 ('CRC 16/2745') with the following 44 allegations of criminal misconduct:
 - *Forcible Entry, contrary to section 71 of the Penal Code [CAP. 135] (x1);*
 - *Intentional Assault, contrary to section 107(b) of the Penal Code (x1);*
 - *Threatening to Kill, contrary to section 115 of the Penal Code (x12);*
 - *Rioting, contrary to sections 68(3) and 70 of the Penal Code (x1);*
 - *Unlawful Entry, contrary to section 143(1) of the Penal Code (x14);*
 - *Malicious Damage, contrary to section 133 of the Penal Code (x6)*
 - *Arson, contrary to section 134(1) of the Penal Code (x8); and*
 - *Theft, contrary to section 122(1) of the Penal Code (x1).*
6. By judgment dated 28 May 2018, Andrée Wiltens J rejected the preliminary submission that the Supreme Court had no jurisdiction to hear the criminal trial; *Public Prosecutor v Leo* [2018] VUSC 75.
7. After trial, Mr Leo was convicted of the following charges: *Public Prosecutor v Leo* [2018] VUSC 277:
 - *1x Rioting, contrary to section 70 of the Penal Code – maximum penalty 10 years imprisonment;*



- 12x Malicious damage, contrary to section 133 of the Penal Code – maximum penalty 1 year imprisonment;
- 7x Arson, contrary to section 134 of the Penal Code – maximum penalty 15 years imprisonment;
- 6x Threatening to kill, contrary to section 115 of the Penal Code – maximum sentence of 15 years imprisonment;
- 1x Intentional assault, contrary to section 107 of the Penal Code – maximum sentence of 5 years imprisonment; and
- 12x Unlawful entry, contrary to section 143 of the Penal Code – maximum sentence of 20 years imprisonment.

8. On 22 February 2019, Mr Leo was sentenced to the following concurrent sentences of imprisonment: *Public Prosecutor v Leo* [2019] VUSC 11:

- Rioting: 18 months imprisonment;
- 12x Malicious damage: 9 months imprisonment;
- 7x Arson: 3 years 9 months imprisonment;
- 6x Threatening to kill: 3 years imprisonment;
- Intentional assault: 6 months imprisonment; and
- 12x Unlawful entry: 2 years imprisonment.

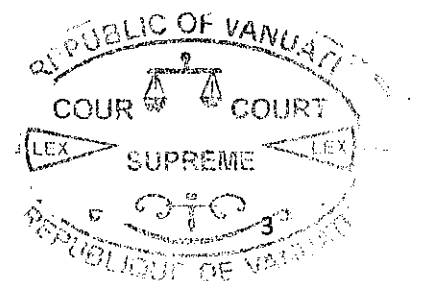
9. By judgment dated 19 July 2019, the Court of Appeal dismissed the appeal against conviction and sentence: *Leo v Public Prosecutor* [201] VUCA 50.

10. On 4 February 2021, the Claimants filed the Amended Claim alleging that on 10 December 2015, Mr Leo committed various tortious acts against the Claimants including threats to kill, rioting, trespass, burning down their houses and destroying and stealing their personal belongings causing them great physical and psychological pain and loss. Further, that the liability of Mr Leo has been demonstrated in Criminal Case No. 2745 of 2016. The Claimants are seeking VT7,000,000 compensation for the loss of 7 houses burnt down, VT4,000,000 compensation for damage to personal belongings, VT1,000,000 damages for psychological trauma suffered and VT1,000,000 costs.

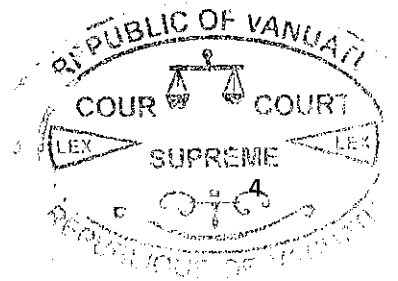
C. Evidence

11. On 19 July 2023, the Claimants filed the sworn statements of the following as to quantum of damages:

- Hezekiah Loloi;
- Mathew Vuraina;

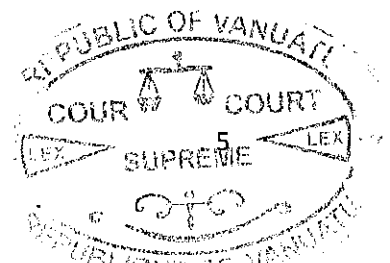


- c) Harry Loloi;
 - d) Hopkins Vuraina;
 - e) Luke Loloi; and
 - f) Ellis Vuraina.
12. The First Claimant **Hezekiah Loloi** deposed in his Sworn statement filed on 19 July 2023 that he owned 3 houses at Nageha village (2 houses with natangura (thatch) roofing and 1 semi-concrete blocks house) built in 2013. The semi-concrete blocks house was used as a church centre and some of the items in there were items that he had brought from Israel including candle sticks, the covenant box and anointing oils.
13. He deposed that his belongings in the 3 houses were worth around VT700,000. Throughout the case, he spent around VT2,000,000 for legal fees over 3 cases in the Supreme Court and Court of Appeal as well as the criminal case.
14. He also deposed that he has spent money for transportation by plane (tickets and charters) and ship for the 6 Claimants and accommodation of over VT2,000,000 throughout all the cases. He is therefore claiming VT4,700,000 total expenses.
15. The Second Claimant **Mathew Vuraina** deposed in his Sworn statement filed on 19 July 2023 that due to the Defendant and his followers' actions in 2016 of burning houses and property, his sleeping house, kitchen, toilet, market house and nakamal were destroyed. He estimated their value as follows: sleeping house VT20,000, kitchen VT12,000, toilet VT15,000, nakamal VT16,000, 10 mattresses and beddings vT6,000, pillows VT700, 20 bed sheets VT20,000, 15 blankets VT13,500, 10 cooking pots VT18,000, 20 plates VT2,400, 15 cups VT2,250, 10 spoons VT250, 12 glasses VT390, 5 spades VT6,800, 5 axes VT4,800, 3 hammers VT2,190, 5 knives VT4,500, 2 sharpening files VT900, 10 pigs VT47,000, 20 chickens VT29,000, 20 red custom mats VT30,000, 15 smaller custom mats VT25,000, 1 hectare kava garden VT100,000, 2 gardens of 200 yams VT200,000, and 100 heads of bananas VT50,000, totalling vT626,680.
16. He deposed that Mr Leo's actions put him and his wife and 6 children at risk of death and they feared for their lives. Mr Leo was walking around with a gun hanging from his shoulder while he burnt and destroyed their houses and property, and told him (Mr Vuraina) that he would shoot him dead with the gun. He and his family escaped at night to find refuge in another village.
17. He also deposed that he was made homeless as Mr Leo's acts destroyed everything that he owned. They were like refugees in the other village. He and his



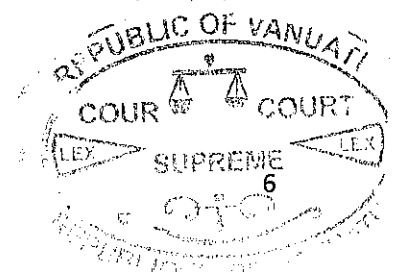
family suffered great stress, trauma and loss and damage. They could not enjoy life like they had previously. He claims an amount of VT1,000,000.

18. The Third Claimant **Harry Lolo** deposed in his Sworn statement filed on 19 July 2023 that he was the pastor at their village church. The Defendant and his followers burnt down his house, kitchen and toilet in 2016. He estimated the value of his property loss as follows: 3 buckets VT1,890, 2 rakes VT450, 2 spades VT1,850, 1 hoe VT1,900, 2 shovels vT2,095, 1 gardening fork VT1,080, 2 axes VT2,840, 1 bushman saw VT1,500, 1 tent VT19,000, 2 washing dishes VT1,680, 1 baby dish, VT1,680, 8 cooking pots VT34,000, 20 plates VT5,000, 15 cups VT2,250, 25 spoons VT3,500, 2 scrapers VT1,240, 5 bush knives VT1,740, three small knives VT750, 2 tables VT49,500, 3 chairs VT2,700, 6 mattresses VT8,800, 10 bed sheets VT6,000, 12 pillows VT6,000, 15 blankets VT13,500, 10 mats VT30,000, 3 solar lights VT39,000, 6 Chinese bags VT200, 100 clothes VT43,000, 7 beds VT29,000, 9 pieces of iron roofing VT2,900, 1 gun VT3,500, 10 diving masks VT2,000, 13 diving wire VT3,530, 1 tent VT3,000, 1 sleeping bag VT3,000, three school bags VT1,000, 5 hand bags VT2,000, 1 suitcase VT7,000, 2 pigs VT49,000, 200 chickens VT43,000, 2 yam gardens VT300,000, 40 bananas VT20,000, 25 sugarcane VT5,000, corn VT1,000, 200 fiji taro VT120,000, 100 manioc VT50,000, 10 wild yam VT10,000, 5 naviso VT5,000, 150 kava VT150,000, 2 church houses VT100,000, TOD worship centre altar decoration VT50,000, 20 nylon calico VT8,000, 1 table VT49,500, TOD uniforms and 100 clothes VT100,000, 2 Vanuatu flags VT6,000, 1 solar panel VT139,000, 2 preparation rooms for worship VT10,000, 2 guitars VT6,000 and bedding VT20,000, totalling VT1,462,400.
19. He deposed that Mr Leo's actions put him and his wife and 6 children at risk of death and they feared for their lives. Mr Leo was walking around with a gun hanging from his shoulder while he burnt and destroyed their houses and property, and Mr Leo told him that he would shoot him (Mr Lolo) dead with the gun. He and his family escaped at night to find refuge in another village Avanguresi but then the next morning, heard word from Mr Leo that they must move uphill to Aute. He and his children had to climb up hills in heavy rain and wind to go to Aute, with his children crying from the wind and cold.
20. He also deposed that he and his family were made homeless as Mr Leo's acts destroyed everything that they owned. They were like refugees in the other village. He and his family suffered great stress, trauma and loss and damage. They could not enjoy life like they had previously. He claims VT1,000,000 damages for suffering.
21. The Fourth Claimant **Hopkins Vuraina** deposed in his Sworn statement filed on 19 July 2023 that in 2016, Mr Leo and his followers burnt down his 7-metre long sleeping house, kitchen and toilet. He estimated the value of his property loss as follows: 4 suitcases VT7,000, clothing VT1,300, bedding VT600, 14 bed sheets



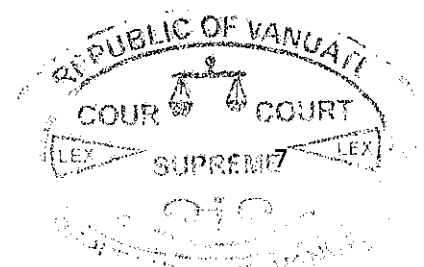
VT1,000, 9 pillows VT4,500, 6 mats VT1,350, torch VT700, mattress VT6,000, 2 spades VT6,800, 2 hoes VT1,900, 5 hammers VT730, 4 bush knives VT900, 1 roll hose pipe VT30,000, 2 water taps VT8,070, plates VT7,310, 42 spoons VT250, 6 cooking pots VT9,000, 8 dishes VT12,000, 22 cups VT3,300, 4 buckets VT1,920, 274 yams VT274,000, 134 manioc VT67,000, 400 banana plants VT200,000, 3 pigs VT49,000 and 15 chickens VT29,000, totalling VT713,630.

22. He deposed that Mr Leo's actions put him and his wife and 6 children at risk of death and they feared for their lives. Mr Leo was walking around with a gun hanging from his shoulder while he burnt and destroyed their houses and property, and Mr Leo told him that he would shoot him (Mr Vuraina) dead with the gun. He and his family escaped at night to find refuge in another village Avanguresi but then the next morning, heard word from Mr Leo that they must move uphill to Aute. He and his children had to climb up hills in heavy rain and wind to go to Aute, with his children crying from the wind and cold.
23. He also deposed that he and his family were made homeless as Mr Leo's acts destroyed everything that they owned. They were like refugees in the other village. He and his family suffered great stress, trauma and loss and damage. They could not enjoy life like they had previously. He claims VT1,000,000 damages for suffering.
24. The Fifth Claimant Luke Lolo deposed in his Sworn statement filed on 19 July 2023 that in 2016, Mr Leo and his followers burnt down his sleeping house. He estimated the value of his property loss as follows: armchair VT50,000, 5 cushions VT4,000, clothing VT190,000, 8 chairs VT9,000, solar lights VT39,000, 13 mats VT16,500, 25 pillows VT12,500, 15 bedsheets VT600, 20 blankets VT9,000, 1 carton staples VT800, 2 rolls of wire VT2,200, 4 kg nails VT2,200, 3 hammers VT2,190, 3 shovels VT1,095, 3 tables VT49,500, 5 suitcases VT7,000, 12 mattress VT8,800, 10 Chinese bags VT200, 2 school bags VT1,000, 2 sport shoes VT1,800, 5 diving masks VT10,000, 3 hard rubber VT300, 4 flippers VT8,000, 2 bulina VT3,280, 8 mosquito nets VT2,800, 5 bush knives VT900, 7 beds VT4,500, 2 talos VT12,000, 1 mould VT20,000, calico VT1,040, 1 tape measure VT4,600, 10 shovels VT8,400, 2 hoes VT1,900, 2 rakes VT900, 6 spades VT11,100, 10 cooking pots, VT15,000, 5 small knives VT1,250, 2 cooking irons VT2,740, 2 bins VT1,400, 3 containers vT1,820, 10 empty bags VT2,970, 50 drinking glasses VT390, 3 kettles VT1,650, 2 graters VT350, 1 baby dish VT900, 1 baby mosquito net VT550, 60 plates VT12,900, 10 dishes VT2,500, 20 spoons VT5,000, 15 forks VT260, 8 trays VT3,600, 5 bags VT650, 5 buckets VT480, 2 tea mouses VT1,480, 2 washing dishes VT9,000, 1 bicycle VT15,000, 21 heads of cattle VT1,680,000, 5 pigs VT49,000, 150 chickens VT39,000, 2 yam gardens VT600,000, 1,500 kava plants VT1,500,000, 100 manioc VT50,000, 400 heads of taro VT240,000, 100 Fijian taro VT66,000, 40 island cabbage plants VT8,000, 50 water melons VT50,000, 1,000



kava plants VT1,000,000, 500 natangura plants VT250,000,000 and 2,000 coconut trees VT20,000,000, totalling VT275,789,290.

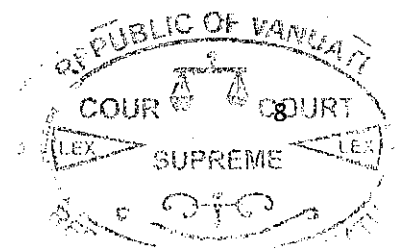
25. He deposed that Mr Leo's actions put him and his wife and 6 children at risk of death and they feared for their lives. Mr Leo was walking around with a gun hanging from his shoulder while he burnt and destroyed their houses and property, and Mr Leo told him that he would shoot him (Mr Lolo) dead with the gun. His wife was 7-months pregnant and nearly went into labour on the road. His son was just 2 years old and it was risky as they lost everything they owned.
26. He deposed that he and his family escaped at night to find refuge in another village Avanguresi but then the next morning, heard word from Mr Leo that they must move uphill to Aute. He and his children had to climb up hills in heavy rain and wind to go to Aute, with his children crying from the wind and cold.
27. He also deposed that he and his family were made homeless as Mr Leo's acts destroyed everything that they owned. They were like refugees in the other village. He and his family suffered great stress, trauma and loss and damage. They could not enjoy life like they had previously. He claims VT1,000,000 damages for suffering.
28. The Sixth Claimant **Ellis Vuraina** deposed in his Sworn statement filed on 19 July 2023 that in 2016, Mr Leo and his followers burnt down his sleeping house and kitchen. He estimated the value of his property loss as follows: 10 blankets VT9,000, 7 bed sheets VT4,200, 10 mattresses VT8,800, 10 pillows VT5,000, 19 mats VT20,000, 6 cooking pots VT18,000, 12 plates VT5,160, 20 spoons VT240, 10 cups VT1,500, 10 dishes VT3,500, 5 trays VT2,250, 5 knives VT4,500, 2 spades VT6,800, axes VT4,800, shovels VT17,000, 20 chickens VT29,000, 8 pigs VT49,000, 5 cartons of tinned fish VT5,760, 6 bags of rice VT16,800, 3 cartons of biscuits VT3,120, 2 cartons of clothing VT39,000, solar lights VT39,000, 1 generator VT40,000, 1 speaker VT13,000, 2 taro gardens VT200,000 and 1 hectare kava garden (1,000 plants) VT1,000,000, totalling VT1,534,670.
29. He deposed that Mr Leo's actions put him and his wife and 6 children at risk of death and they feared for their lives. Mr Leo was walking around with a gun hanging from his shoulder while he burnt and destroyed their houses and property, and Mr Leo told him that he would shoot him (Mr Lolo) dead with the gun. His wife was 7-months pregnant and nearly went into labour on the road. His son was just 2 years old and was put at risk as they lost everything they owned.
30. He deposed that he and his family escaped at night to find refuge in another village Avanguresi but then the next morning, heard word from Mr Leo that they must move uphill to Aute. He and his children had to climb up hills in heavy rain and wind to go to Aute, with his children crying from the wind and cold.



31. He also deposed that he and his family were made homeless as Mr Leo's acts destroyed everything that they owned. They were like refugees in the other village. He and his family suffered great stress, trauma and loss and damage. They could not enjoy life like they had previously. He claims VT1,000,000 damages for suffering.
32. Despite the opportunity given, the Defendant has not filed sworn statements as to quantum of damages hence the Claimants' evidence has not been contradicted.

D. Findings and Consideration

33. I accept the Claimants' evidence and find on their evidence, that Mr Leo by his acts (for which he has been convicted) caused them to suffer the loss of their houses and all of their personal belongings. The decision in *Public Prosecutor v Leo* [2018] VUSC 277 confirms the damage suffered by the Claimants.
34. Normally receipts and valuations of property should be adduced into evidence. However, I accept that the Claimants could not do so in this matter because all of their belongings were destroyed.
35. I find that the Claimants are entitled to compensation for the loss of their houses and personal belongings as follows:
 - a) Hezekiah Loloi – VT1,000,000 for houses and VT700,000 personal belongings, totalling VT1,700,000;
 - b) Mathew Vuraina – VT600,000;
 - c) Harry Loloi – VT1,400,000;
 - d) Hopkins Vuraina – VT700,000;
 - e) Luke Loloi – VT1,400,000; and
 - f) Ellis Vuraina – VT1,500,000.
36. I also find on the evidence that Mr Leo caused the Claimants to suffer fear for their lives and trauma. No medical evidence of psychological trauma has been adduced however I consider that anyone who experienced the harrowing experiences that the Claimants suffered as a result of Mr Leo's actions would have suffered trauma. Accordingly, I find that the Claimants are entitled to general damages for suffering and trauma of VT1,000,000 each.
37. Hezekiah Loloi's evidence included that he spent on legal fees over 3 cases in the Supreme Court and Court of Appeal. Each of those sets of costs should be claimed



in the proceeding to which it related. They might have otherwise been awarded in the present proceeding but no invoices or receipts were adduced into evidence to prove this alleged loss.

38. Mr Loloï also deposed that he spent money on transportation and accommodation for the Claimants. However, no receipts have been adduced into evidence to prove this either. I note that these might still be able to be claimed as disbursements.

E. Result and Decision

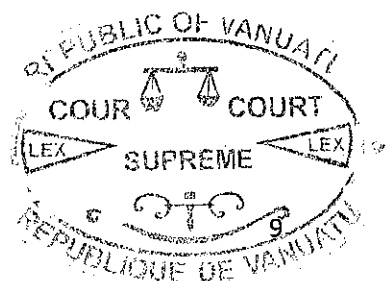
39. For the reasons given, the Defendant is to pay the following sums to the Claimants totalling VT13,300,000 (the 'judgment sum'):

- a) Hezekiah Loloï: VT1,700,000 compensation and VT1,000,000 general damages;
- b) Mathew Vuraina: VT600,000 compensation and VT1,000,000 general damages;
- c) Harry Loloï: VT1,400,000 compensation and VT1,000,000 general damages;
- d) Hopkins Vuraina: VT700,000 compensation and VT1,000,000 general damages;
- e) Luke Loloï: VT1,400,000 compensation and VT1,000,000 general damages; and
- f) Ellis Vuraina: VT1,500,000 compensation and VT1,000,000 general damages.

40. The Defendant is to pay the Claimants interest of 5% per annum on the judgment sum until fully paid.
41. The Defendant is to reimburse the Claimants their Court filing fee of VT20,000 and pay their costs of the proceeding and other disbursements as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.


F. Enforcement

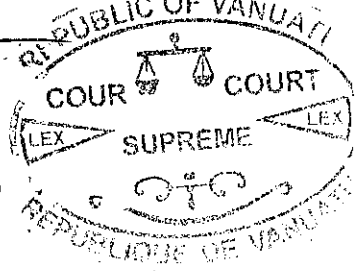
42. This matter is listed for Conference **at 1pm on 15 July 2024** for the Defendant to inform the Court: (i) that he has paid the judgment sum or (ii) to explain how he intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.



43. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 4th day of June 2024
BY THE COURT**


Justice Viran Molisa Trief



The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The text 'REPUBLIC OF VANUATU' is written along the top inner edge, and 'REPUBLIQUE DE VANUATU' along the bottom inner edge. The words 'COUR' and 'COURT' are positioned on either side of the scale, and 'SUPREME' is centered below it. The word 'LEX' appears on two small banners flanking the central text.