

BETWEEN: Numanien Jean Pascal
First Claimant

AND: Nalmen Joseph
Second Claimant

AND: Tom Silas
First Defendant

AND: Johnny Silas
Second Defendant

Before: Justice Oliver A. Saksak

Counsel: Mr Eric Molbaleh for the Claimants/ Respondents
Mr Daniel Yawha for the Defendants/ Applicants

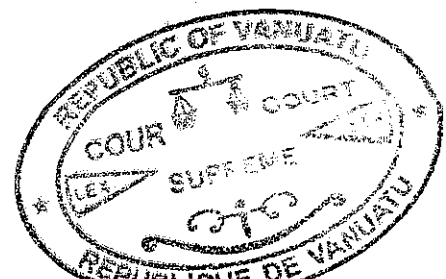
Date of Hearing: 3rd October 2024

Date of Judgment: 9th October 2024

JUDGMENT

Introduction and Background

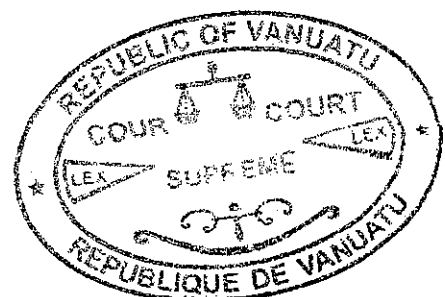
1. This is a damages claim for a total of VT 2,300,000 against the First and Second Defendants (as applicants) for an alleged defamatory statement made on 14 January 2024, and pursuant to the First Defendant's conviction on a charge of criminal defamation by the Magistrates Court on 10th May 2023.
2. In their defence the defendants made admissions in part and denied in part that the words uttered on 9th August 2019 and 14 January 2024 were defamatory and therefore denied any liability for damages as claimed.
3. As a result, the defendants applied to have the claims and proceedings struck out on two grounds. First that the claim discloses no cause of action and is without merit. Second, for the



claimants and their Counsel's non-appearances at previous conferences and their non-compliance of Court orders to pay wasted costs as ordered against them.

Discussion

4. Mr Yawha submitted orally that since the date of filing of their claim on 19th January 2024 the claimants failed to take active steps to prosecute their claims, and that they had failed to pay wasted costs of VT 5,000 as ordered on 3rd July 2024. Mr Molbaleh was absent on that date
5. Mr Molbaleh in response acknowledged the claimants and his non-appearances at previous conferences, including the non-payment of wasted costs of VT 5,000 for which Counsel apologised. Further counsel submitted that from the claimant's evidence they had established a cause of action based on the first defendant's guilty plea in the Magistrates Court for which he was convicted and sentenced to a fine.
6. In the claim the claimants plead 2 different dates, the first being on 9th August 2019 pleaded in paragraph 4. The defamatory statement alleged is not specified. However in Criminal Case 21/3532 PP v Tom Silas in paragraph 4 of the sentence the Magistrate recorded that the complaint made was in relation to the statement made in August 2019 being "*Pikinini blong rod.*" This was the result of the hearsay evidence of James Glen.
7. In paragraph 5 of the claim the claimants plead the defamatory statement made by the Second Defendant on 14th January 2024. The alleged defamatory statement is "*yu pikinini blong rod yu no blong ples ia*" uttered to the second claimant.
8. The Second Defendant's evidence by sworn statement dated 2nd May 2024 is that on 13th February 2024 he and the second claimant attended a boxing tournament then later, went to drink kava until morning. At 5:00am he decided to drink beer and the second claimant came to join him. They both got very drunk and started to have arguments. It started over their dispute about a chiefly title. Then it was the second claimant who started accusing Johnny Silas by saying: "*Yu no blong Tasikamine tribe, yu blong Timahmine.*" At this, they both stood up to fight each other. Johnny Silas then said to the second claimant: "*yu apu blong you Tom Kaso blong middle Bush. Yu no blong Tasikamine tribe.*"



9. David Peau's sworn statement dated 2nd May 2024 confirms the Second Defendant's evidence. See in particular paragraph 6.
10. From the evidence, the statement complained about in the criminal case against Tom Silas that the First claimant is "*Pikinini blong rod....*" is and were not the First and Second Defendant's words. Those were the words of James Glen and it is he who should have been sued by the Claimants.
11. The words actually used by the Second Defendant were: "*yu apu blong yu Tom Kaso blong middle Bush*" (or Central Tanna, according to the evidence of David Peau). These words do not convey the same meaning as interpreted and conveyed by James Glen as recorded by the Magistrate.
12. The issue therefore is whether the claimants have established a cause of action against the two defendants? The answer is "No".
13. Secondly, whether the claimants have failed to take active steps to ensure their proceedings continue and whether they have failed to attend Court and pay the wasted costs ordered against them?. The answer is "yes". These claims are therefore misconceived.

Conclusion

14. For the foregoing reasons, I allow the defendant's application and accordingly the claims and proceeding of the claimants are hereby struck out in its entirety.
15. The claimants are ordered to pay the Defendant's costs on the standard basis as agreed or taxed.

DATED at Port Vila this 9th day of October 2024

BY THE COURT


Hon. OLIVER A SAKSAK

Judge

