

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

Civil
Case No. 23/3387 SC/CIVL

BETWEEN: Parmod Achary
Claimant

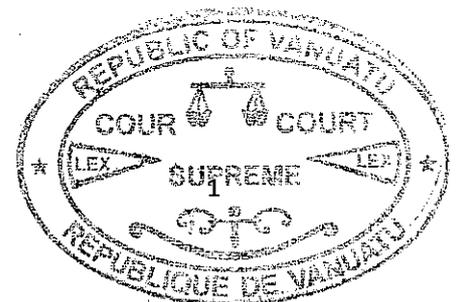
**AND: Ombudsman of the Republic of
Vanuatu**
Defendant

Date of Hearing: 16 December 2024
Before: Justice V.M. Trief
In Attendance: Claimant – Mr D.K. Yawha & Ms S. Shah
Defendant – Mr S. Aron
Date of Decision: 6 November 2025

DECISION AS TO ASSESSMENT OF DAMAGES

A. Introduction

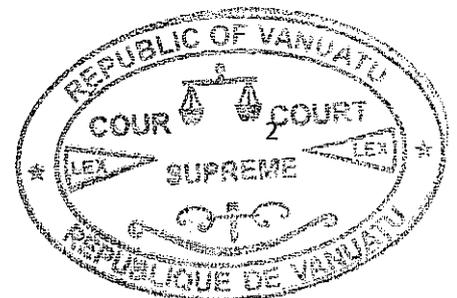
1. On 26 August 2019, officers of the Office of the Defendant Ombudsman and the Police executed a search warrant obtained from the Magistrates' Court at the premises of the Vanuatu National Provident Fund ('VNPF').
2. The Claimant Parmod Achary was at that time the General Manager of the VNPF.
3. Subsequently, the Magistrates' Court issued a Minute dated 11 May 2023 stating that it had not had jurisdiction to issue that search warrant and dismissing the charges which had been laid subsequent to that search.



4. By the Claim filed on 11 December 2023, Mr Achary is seeking damages for trespass and conversion, for unlawful and unwarranted prosecution, for pain and suffering, interest, costs and any other Order deemed just.
5. On 31 January 2024, the Ombudsman filed a Defence. On 6 March 2024, the Claimant filed Reply to Defence.
6. I listed this matter for trial in September 2024.
7. On 11 September 2024, the Defendant filed a Memorandum in relation to Liability to the effect that in light of the Court of Appeal judgment in Ombudsman of the Republic of Vanuatu v Letlet [2023] VUCA 1, the Defendant admitted liability as the search warrant was unlawfully obtained from the Magistrates' Court. However, that the quantum of damages sought was disputed.
8. I then listed the matter for hearing as to assessment of damages.

B. The Pleadings

9. It is alleged that Mr Achary was not given any notice prior to the execution of the search warrant that the Ombudsman was investigating him. They searched the VNPF premises and removed his personal documents, chattels and other materials including VNPF documents. In addition, that he was not allowed to go anywhere including to the toilet from 8.30am to 12pm. It is alleged that the search and confinement of Mr Achary was degrading treatment in front of all his staff. He was finally allowed to go home at 4pm. His wife and children became aware of the search on social media and were shocked, worried, ashamed and traumatized to this day.
10. It is also alleged that the search warrant was unlawfully obtained from the Magistrates' Court. Consequently, the Defendant wrongfully entered Mr Achary's office on 26 August 2019 and wrongfully removed his goods and chattels. It is alleged that as a result of the high handed and arbitrary conduct by the Defendant's officers, that Mr Achary suffered loss and damage including stress, humiliation, trauma and reputational damage.
11. It is also alleged that civil proceedings *Ombudsman v Achary*; Civil Case No. 2461 of 2019 ('CC 19/2461') were instituted restricting Mr Achary from travelling overseas. This proceeding was discontinued on 18 September 2019. Then on 18 October 2019, criminal proceedings *Public Prosecutor v Achary*; Criminal



Case No. 2837 of 2019 ('CRC 19/2837') commenced and Mr Achary was granted bail with conditions restricting his overseas travel. That proceeding ended on 11 May 2023 with the Public Prosecutor entering a *nolle prosequi* in respect of the charges. It is alleged that the proceedings constituted unlawful prosecution of Mr Achary for 3 years and 6 months. In addition, that he has suffered the loss of VT400,000 legal fees and the criminal proceedings affected his health resulting in stress, worry, trauma and medical treatment overseas.

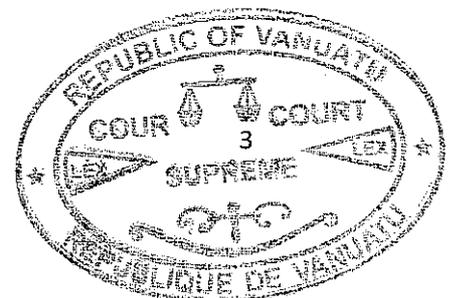
12. The issues for determination are first, whether Mr Achary is entitled to VT5,000,000 damages for trespass and conversion? Secondly, whether he is entitled to exemplary damages? Thirdly, whether Mr Achary is entitled to VT8,000,000 damages for unlawful and unwarranted prosecution and legal costs of VT400,000? Finally, is he entitled to VT5,700,000 damages for intensified medical pain and suffering, and medical costs?

C. Evidence and Submissions

13. Mr Achary relied on his Sworn statement filed on 1 December 2023, each of his Sworn statements filed on 26 July 2024 in reply to the Defendant's 5 sworn statements, and his Sworn statement filed on 9 December 2024.
14. He also filed submissions on 30 September 2024 and 9 December 2024.
15. The Ombudsman relied on the Sworn statements of Hamlison Bulu and Eric Csiba filed on 8 February 2024, John Meake and Ronnie Boe filed on 12 February 2024, and Jackson Lessa filed on 20 February 2024. He also relied on the Sworn statement of Ken Massing filed on 12 November 2024.
16. The Ombudsman's submissions were filed on 13 December 2024.
17. Counsel also made oral submissions at the hearing on 16 December 2024.

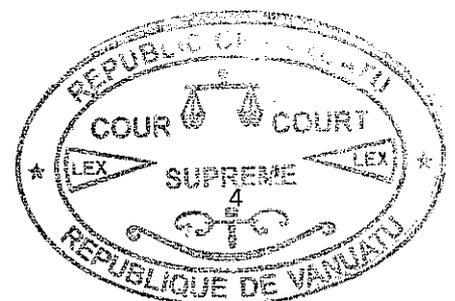
D. Consideration

18. The execution on 26 August 2019 of the unlawful search warrant issued by the Magistrates' Court gave right to Mr Achary's claims for damages for trespass and conversion. First, the search warrant was unlawful in that the application for it was made to the wrong Court. Section 1 of the *Ombudsman Act* defines clearly that "Court" referred to in s. 24 of the Act means, "the Supreme Court." Secondly, the search warrant was unlawful because there was no prior notice served on

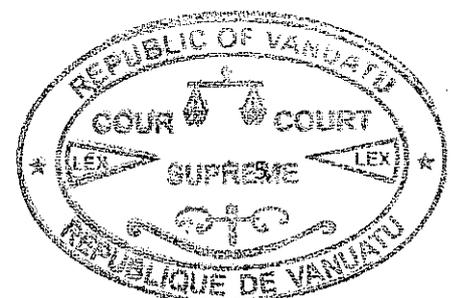


Mr Achary pursuant to s. 22 of the Act. As the General Manager of the VNPF, Mr Achary was a leader. He should have been served with a written notice: Ombudsman of the Republic of Vanuatu v Letlet [2023] VUCA 1 at [7]-[23] and August v Ombudsman of the Republic of Vanuatu [2021] VUCA 59.

19. The obvious effect is that the search warrant was not authorized by law and therefore it was void from the beginning. Consequently, all the actions that followed or were done by the agents of the Ombudsman on 26 August 2019 at the VNPF premises were not lawfully authorized. All those actions amounted to trespass and conversion entitling Mr Achary to damages.
20. The Ombudsman relies on the evidence of John Meake, Ronnie Boe and Jackson Lessa to show that the execution of the search warrant was done in a proper fashion. Even if it was, with the warrant being unlawful from the beginning there was no authority to be at the VNPF premises on 26 August 2019 and conducting a search and seizing documents and other materials. All those actions amounted to trespass and conversion by the Ombudsman's agents.
21. The Ombudsman has therefore correctly conceded liability in the present matter.
22. It is accepted that on 22 March 2020, the Ombudsman returned to Mr Achary all the documents seized from the VNPF premises.
23. Mr Achary is seeking VT5,000,000 damages for trespass and conversion. The Ombudsman submitted that an appropriate damages award for trespass and conversion is VT1,500,000.
24. However, in Letlet v Ombudsman of the Republic of Vanuatu [2022] VUSC 173, the Supreme Court awarded VT2,000,000 damages for trespass and conversion where an unlawful search warrant was also obtained from the Magistrates' Court and executed at Mr and Mrs Letlet's residence, was extended to Mr Letlet's office as well, and took over 3 days.
25. In contrast, the search and seizure at the VNPF premises occurred only in the morning of 26 August 2019 and at office premises which is less intrusive than if it had occurred in a residential home. In addition, all seized materials were returned to Mr Achary. Accordingly, I consider that an award of VT500,000 damages for trespass and conversion is appropriate. That is my answer to the first issue.



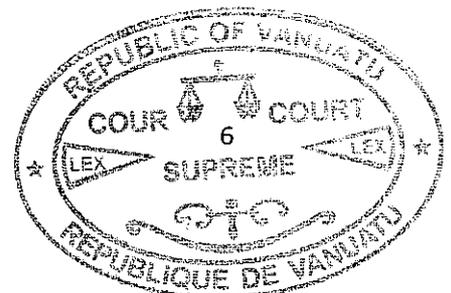
26. Exemplary damages are also sought for the alleged high handed and arbitrary conduct by the Ombudsman and his agents in obtaining the unlawful search warrant and the manner of its execution. However, the search warrant obtained and executed in respect of Mr Achary was similar to the one executed in respect of Mr and Mrs Letlet. There was no award of exemplary damages in Letlet v Ombudsman of the Republic of Vanuatu [2022] VUSC 173. Accordingly, I decline to award exemplary damages. That is my answer to the second issue.
27. Next, damages are sought for unlawful and unwarranted prosecution of VT8,000,000 and legal costs of VT400,000.
28. It is alleged in the Claim that the civil proceedings CC 2019/2461 were instituted from 11-18 September 2019 restricting Mr Achary from travelling overseas and he has suffered loss from not attending overseas meetings due to the restraining orders. I am not aware of a cause of action for the institution of civil proceedings much less one that could sound in damages. This aspect of the Claim must fail.
29. Otherwise, the criminal proceedings CRC 19/2837 were commenced on 18 October 2019 and ended on 11 May 2023 by *nolle prosequi*. This followed the Court of Appeal judgment in Ombudsman of the Republic of Vanuatu v Letlet [2023] VUCA 1 dated 17 February 2023.
30. I am not aware of a cause of action for 'unlawful and unwarranted prosecution.'
31. However, there is a cause of action for malicious prosecution. The Court of Appeal set out the following elements for malicious prosecution in Republic of Vanuatu v Patunvanu [2015] VUCA 9 at [12]-[14], cited in Tambe v Commissioner of Police [2017] VUSC 115 at [34]-[35]:
- a) The proceedings must have been instituted or continued by the defendant;
 - b) He must have acted without reasonable and probable cause; and
 - c) He must have acted maliciously.
32. The criminal proceedings were instituted by the Public Prosecutor, not the Ombudsman. Hence the first element is not satisfied. In addition, there is no pleading in the Claim as to the third element of malicious conduct. This aspect of the Claim must also fail.



33. It follows that Mr Achary also cannot succeed on his claim for VT400,000 legal costs incurred. He should be seeking his legal costs in the proceedings in which he incurred those legal costs.
34. The foregoing is my answer to the third issue.
35. Finally, Mr Achary is seeking damages for intensified medical pain and suffering, and medical costs of VT5,700,000. It is alleged in the Claim at [36] that by reason of the unlawful complaint and prosecution by the Defendant, that Mr Achary suffered severe health ailment and costs of overseas medical treatment due to stress, worry and trauma.
36. Given that Mr Achary has not succeeded on his claim in relation to the criminal proceedings CRC 19/2837 against him, it follows that he is not entitled to damages for 'medical' pain and suffering, and medical costs.
37. In Mr Achary's submissions as to quantum of damages, it was submitted that he is also entitled to damages for character assassination, false allegations and defamation. His submissions referred to Facebook posts which caused him reputational damage. However, there is no pleading of defamation in the Claim. The posts alleged to have been defamatory have not been expressly pleaded nor that the Ombudsman was responsible for the publication of those posts. It was submitted that provisions in the search warrant were false allegations. However, that is not for the Ombudsman to answer as he did not issue the search warrant; the Magistrates' Court did. Accordingly, there cannot be any damages award for character assassination, false allegations and defamation.
38. Finally, Mr Achary's submissions sought damages for the challenges, threats and embarrassment faced by his wife and children. However, they are not parties to the present proceeding hence there cannot be any damages award in relation to them.

E. Conclusion

39. For the reasons given, I now answer the issues raised specifically as follows:
 - a) Whether Mr Achary is entitled to damages for trespass and conversion of VT5,000,000? The answer is "No, he is entitled to VT500,000 damages for trespass and conversion."



- b) Whether Mr Achary is entitled to exemplary damages? The answer is, "No."
- c) Whether Mr Achary is entitled to damages for unlawful and unwarranted prosecution of VT8,000,000 and legal costs of VT400,000? The answer is, "No."
- d) Whether Mr Achary is entitled to damages for intensified medical pain and suffering, and medical costs of VT5,700,000? The answer is, "No."

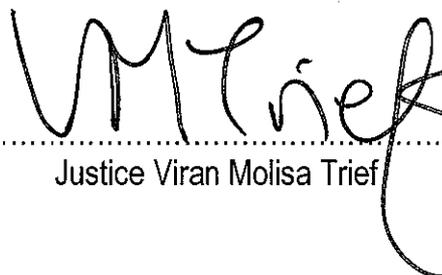
F. Result and Decision

- 40. In the circumstances, judgment is entered for the Claimant and he is awarded the sum of VT500,000 (the 'judgment sum').
- 41. Interest is to be paid on the judgment sum at the rate of 5% per annum until fully paid.
- 42. Costs must follow the event. The Defendant is to pay the Claimant's costs on the standard basis as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

G. Enforcement

- 43. This matter is listed for Conference **at 1.30pm on 8 December 2025** 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.
- 44. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 6th day of November, 2025
BY THE COURT**


Justice Viran Molisa Trief

