

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

Civil
Case No. 18/2461 SC/CIVL

BETWEEN: Dorianne Naliupis

Claimant

AND: Prosper Buletare

First Defendant

AND: Sanma Provincial Council

Second Defendant

AND: Republic of Vanuatu

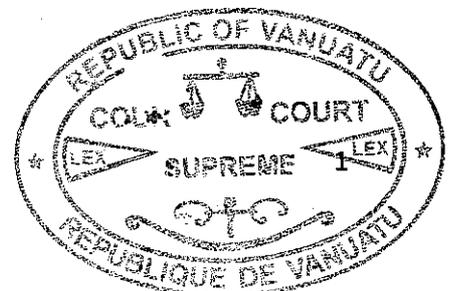
Third Party

Date of Hearing: 7 March 2025
Before: Justice V.M. Trief
In Attendance: Claimant – Mr J. Boe, via video link
First Defendant – Mr H. Vira
Second Defendant – Mr H. Tabi
Third Party – Ms J. Toa Tari, via video link
Copy to: Mr W. Kapalu
Date of Decision: 17 February 2026

JUDGMENT

A. Introduction

1. The Claimant Dorianne Naliupis is seeking an order for damages against the First Defendant Prosper Buletare in respect of sexual assault and battery that she



alleges that he committed on her person from 2015-2017. Mr Buletare was at the time employed by the Second Defendant the Sanma Provincial Council (the 'Council) hence Mrs Naliupis' case against the Council is that it is vicariously liable for Mr Buletare's acts. The Council in turn filed a third party notice against the Third Party the State that the State was the employer of Mr Buletare hence it must bear any vicarious liability for Mr Buletare's and the Council's acts or omissions.

2. This is the judgment following trial.

B. Background

3. Mrs Naliupis is a resident of Luganville, Santo.

4. From 2010 to 2018, she was employed by the Council as the Sanma Province Disability Officer.

5. At all material times, Mr Buletare was employed as the Sanma Provincial Planner and on occasion, as the Acting Secretary General of the Council.

6. On 12 June 2018, Mrs Naliupis resigned from her employment with the Council.

7. In 2019, Mr Buletare was convicted of two charges of indecency without consent committed in 2015 against Mrs Naliupis at the Council's premises: *Public Prosecutor v Buletare* [2019] VUSC 18 (Verdict); *Public Prosecutor v Buletare* [2019] VUSC 21 (Sentence).

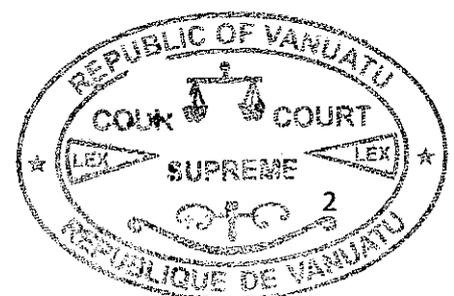
8. The Court of Appeal dismissed Mr Buletare's appeal against his convictions and sentence: *Buletare v Public Prosecutor* [2019] VUCA 38.

9. On 12 September 2018, Mrs Naliupis filed the Claim in the present proceeding.

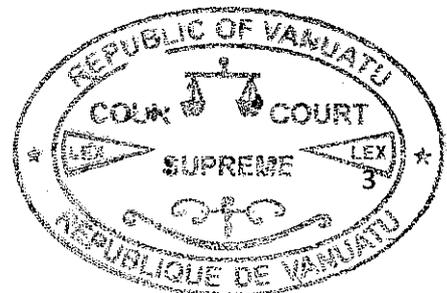
10. This matter proceeded to trial. On 17 September 2021, Judgment issued: *Naliupis v Buletare* [2021] VUSC 229.

11. Mrs Naliupis appealed. The Court of Appeal allowed the appeal in part and remitted her claim of sexual harassment by Mr Buletare and the claim that the Council is vicariously liable in respect of his conduct to this Court for further consideration: *Naliupis v Buletare* [2022] VUCA 2.

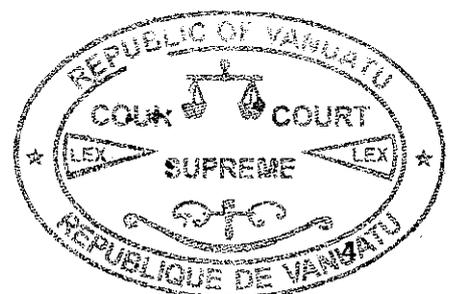
12. Subsequently, I granted Mrs Naliupis leave to amend the claim. On 4 November 2022, she filed the Amended Claim.



13. I also permitted the parties to lead further evidence with respect to the Amended Claim and the subsequent pleadings.
- C. The Pleadings
14. By the Amended Claim filed on 4 November 2022, Mrs Naliupis is seeking damages against the First Defendant Prosper Buletare for assault and battery against her person from 2015-2017. Mr Buletare was then the Provincial Planner and on occasions, the Acting Secretary General of the Council. In 2019, he was convicted after trial and then imprisoned on two charges of committing indecent acts without consent on Mrs Naliupis. She alleged that Mr Buletare's actions caused her to suffer physical, emotional and mental damage, an unjustifiably long period of suspension from employment, loss of her Land Cruiser vehicle and her farm property.
15. It is also alleged that during the period 2015-2017, the Council was aware of Mr Buletare's actions of assault and battery on her, but chose not to take any disciplinary action against him hence causing her damage, therefore the Council is vicariously liable for Mr Buletare's actions.
16. The relief sought is as follows:
- a) An order that the First and Second Defendants be jointly and severally liable to pay the Claimant damages for assault and battery (sexual harassment) committed on the Claimant's person.
 - b) An order that the First and Second Defendants be jointly and severally liable to pay the Claimant's loss which followed as a consequence of the First and Second Defendants' assault and battery committed on the Claimant's person.
 - c) Interest of 10% per annum.
 - d) Costs and expenses.
 - e) Such further orders as the Court deems just.
17. Mr Buletare relied on his Defence to the Amended Claim filed on 27 March 2023 in which he denied all allegations against him. Further, he said that he never used violence or manipulations or threatened assault as alleged. He alleged that the Council, not him, suspended Mrs Naliupis' employment for the reasons set out in her letter of suspension. Subsequently, the Council decided to reinstate Mrs Naliupis to work but she then resigned from her employment with the Council.

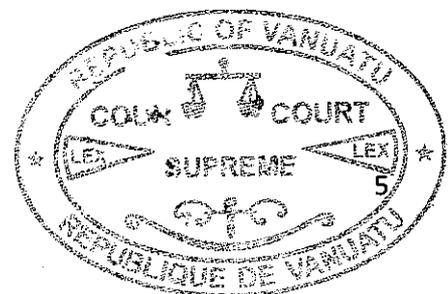


18. On 8 September 2023, the Council filed its Amended Defence to the Amended Claim and Third Party Notice against the Third Party the State. It referred in that document to a "Cross Claim" against the State. On 18 July 2024, I ordered that the "Cross Claim" be renamed "Third Party Notice" to reflect its contents seeking contribution against the State.
19. In the Amended Defence, the Council denied being vicariously liable for Mr Buletare's actions on the basis that Mr Buletare's actions of sexual assault and battery committed against Mrs Naliupis were not part of his employment duties and/or committed within the course of his employment.
20. The Council alleged in the Third Party Notice that at all material times, Mr Buletare was employed by the Public Service Commission ('PSC') therefore the State is vicariously liable for his actions.
21. On 12 February 2024, Mrs Naliupis filed her Reply to the Second Defendant's Amended Defence to the Amended Claim. She alleged that the Council never disciplined Mr Buletare for the assault and battery he committed on her person therefore the Council is vicariously liable for his actions. This document contains pleadings stated to be in response to the Council's Cross Claim (subsequently renamed Third Party Notice) against the State. As the third party notice is against the State only, I have no further regard to Mrs Naliupis' pleadings which are stated to be in response to the Council's Third Party Notice.
22. On 26 May 2024, the State filed a Defence to the Second Defendant's Third Party Notice. It alleged that Mr Buletare's actions of sexual harassment were not within his course of employment, including his duties and responsibilities. In addition, that Mrs Naliupis and the Council did not report Mr Buletare's actions to his employer the PSC therefore it is not vicariously liable for Mr Buletare's or the Council's actions (or omissions).
23. Mrs Naliupis must prove on the balance of probabilities that Mr Buletare committed assault and battery on her person during the period 2015-2017. If I find that Mrs Naliupis has proved her claim for assault and battery, I will then consider what damages Mrs Naliupis is entitled to from Mr Buletare for his actions of assault and battery on her person? Finally, I will consider whether or not the Council and the State are vicariously liable for Mr Buletare's actions of assault and battery on Mrs Naliupis' person?



D. Evidence

24. The Claimant Mrs Naliupis relied on her Sworn statements filed on 4 March 2024 [**Exhibit C1**], on 5 December 2023 [**Exhibit C2**], on 19 June 2023 [**Exhibit C3**], on 13 December 2024 in response to Johnson Vuti [**Exhibit C4**], on 13 December 2024 in support of her psychiatric medical report [**Exhibit C5**], on 13 December 2024 in response to Mr Buletare's sworn statement [**Exhibit C6**] and on 19 June 2024 [**Exhibit C7**].
25. The heading of **Exhibit C5** is that it is Mrs Naliupis' sworn statement in support of her psychiatric medical report. Ms Toa Tari objected to para. 20 and Attachment "Q" containing the medical report because the doctor who made that report has not sworn a statement in the present matter hence it is hearsay. Mr Boe submitted that counsel should have raised this before trial, not at trial. I stated that Ms Toa Tari was entitled to make such objection to the admissibility of evidence at trial once the document has been tendered (which it had). Mr Boe then submitted that the Claimant would leave it to the Court to rule on the objection. I ruled that the doctor who made the report has not given evidence in this matter hence para. 20 and Attachment "Q" were struck out for hearsay.
26. Mr Vira stated that Mr Buletare accepted liability therefore did not cross-examine Mrs Naliupis.
27. Mr Tabi and Ms Toa Tari cross-examined Mrs Naliupis.
28. The balance of Mrs Naliupis' evidence consisted of the Sworn statements of Tony Naliupis filed on 22 September 2020 [**Exhibit C8**] and on 11 October 2023 [**Exhibit C9**], Pedro Naliupis filed on 12 October 2023 [**Exhibit C10**], Dephunny Naliupis filed on 12 October 2023 [**Exhibit C11**], Clera Buletare filed on 13 October 2023 [**Exhibit C12**], Juliet Tahenakarai filed on 1 November 2023 [**Exhibit C13**] and Dr Andrina KL Thomas filed on 6 May 2019 [**Exhibit C14**]. None of them were cross-examined.
29. The First Defendant Mr Buletare relied on his Sworn statement filed on 12 August 2024 [**Exhibit D1**]. The Council relied on the Sworn statement of Johnson Vuti filed on 19 March 2021 [**Exhibit D2**].
30. They were both cross-examined.
31. The Third Party the State relied on the Sworn statement of Stephane Bong filed on 6 March 2025 [**Exhibit 3P1**].

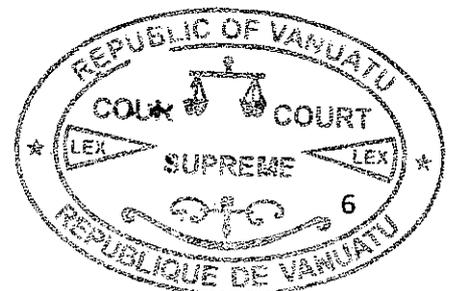


32. He was cross-examined.
- E. Whether or not Mr Buletare committed assault and battery on Mrs Naliupis' person during the period 2015-2017?
33. At the commencement of trial, Mr Vira stated that Mr Buletare admitted liability. Mr Vira therefore did not cross-examine Mrs Naliupis. However, Mr Tabi and Ms Toa Tari cross-examined her.
34. Even though Mr Buletare is admitting liability, I must determine whether or not Mrs Naliupis has proved on the balance of probabilities that Mr Buletare committed assault and battery on her person during the period 2015-2017.
35. Mrs Naliupis' claim for assault and battery is pleaded as follows in the Amended Claim at [5]-[9]:

5. *At all material time, the First Defendant by way of assault and battery has subjected the Claimant to abusive and demoralizing sexual assault and battery for the period 2015.*
6. ...

PARTICULARS OF ASSAULTS AND BATTERY COMMITTED ON THE CLAIMANT'S PERSON BY THE FIRST DEFENDANT DURING 2015 PERIOD.

- A. *On several occasions during the year 2015, at the Third Defendant Building premises, the First Defendant unlawfully entered the Claimant's office located within the Third Defendant Building and without the permission of the Claimant, touched and groped the Claimant's breast and body forcing the Claimant to masturbate the First Defendant until the First [sic] ejaculated.*
- B. *On the occasions when the First Defendant entered the Claimant's office premises, the First Defendant would immediately shut and locked the door behind him and proceeded to demand that he has sex with the Claimant and when the Claimant refused, the First Defendant would grope the Claimant breast and grab the Claimant hands and directed her to masturbate the First Defendant whilst the First continued to grope the Claimant breast until the First Defendant ejaculated.*
- C. *During the occasions that the First Defendant entered the Claimant's office premise and begun assaulting and unjustifiably groping the Claimant's breast and body, the Claimant never agree to the First Defendant intentional entry to her office and intentional assault on her nor did the Claimant consented to the First Defendant grabbing her hands and forcing her to masturbate the First Defendant.*
- D. *The First Defendant unlawful assault and battery on the Claimant's person occurred several times during the period of 2015.*



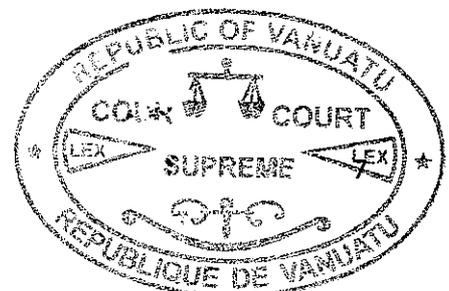
7. At all material time, the First Defendant by way of assault and battery has subjected the Claimant to abusive and demoralizing sexual assault and battery for the period 2016.

PARTICULARS OF ASSAULTS AND BATTERY COMMITTED ON THE CLAIMANT'S PERSON BY THE FIRST DEFENDANT DURING 2016 PERIOD.

- E. On several occasions during the year 2016, at the Third Defendant Building premises, the First Defendant unlawfully entered the Claimant's office located within the Second Defendant Building and without the permission of the Claimant, touched and groped the Claimant's breast and body forcing the Claimant to masturbate the First Defendant until the First [sic] ejaculated.
- F. On the occasions when the First Defendant entered the Claimant's office premises, the First Defendant would immediately shut and locked the door behind him and proceeded to demand that he had sex with the Claimant and when the Claimant refused, the First Defendant would grope the Claimant breast and grab the Claimant hands and directed her to masturbate the First Defendant whilst the First continued to grope the Claimant breast until the First Defendant ejaculated.
- G. During the occasions that the First Defendant entered the Claimant's office premise and begun assaulting and unjustifiably groping the Claimant's breast and body, the Claimant never agree to the First Defendant intentional entry to her office and intentional assault on her nor did the Claimant consented to the First Defendant grabbing her hands and forcing her to masturbate the First Defendant.
- H. The First Defendant unlawful assault and battery on the Claimant's person occurred several times during the period of 2016.
8. At all material time, the First Defendant by way of assault and battery has subjected the Claimant to abusive and demoralizing sexual assault and battery for the period 2017.

PARTICULARS OF ASSAULTS AND BATTERY COMMITTED ON THE CLAIMANT'S PERSON BY THE FIRST DEFENDANT DURING THE 2017 PERIOD.

- I. On several occasions during the year 2016, at the Third Defendant Building premises, the First Defendant unlawfully entered the Claimant's office located within the Second Defendant Building and without the permission of the Claimant, touched and groped the Claimant's breast and body forcing the Claimant to masturbate the First Defendant until the First [sic] ejaculated.
- J. On the occasions when the First Defendant entered the Claimant's office premises, the First Defendant would immediately shut and locked door behind him and proceeded to demand that he had sex with the Claimant and when the Claimant refused, the First Defendant would grope the Claimant breast and grab the Claimant hands and directed her to masturbate the First Defendant whilst the First continued to grope the Claimant breast until the First Defendant ejaculated.
- K. During the occasions that the First Defendant entered the Claimant's office premise and begun assaulting and unjustifiably groping the Claimant's breast



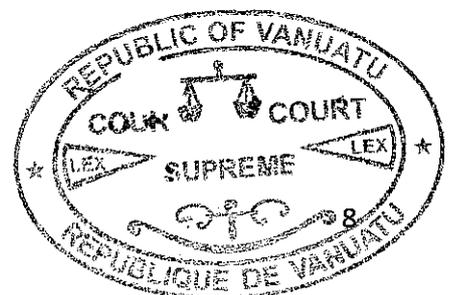
and body, the Claimant never agree to the First Defendant intentional entry to her office and intentional assault on her nor did the Claimant consented to the First Defendant grabbing her hands and forcing her to masturbate the First Defendant.

The First Defendant unlawful assault and battery on the Claimant's body occurred several times during the period of 2017.

9. As a consequence of the First Defendant's assaults and battery on the Claimant's person, the Claimant suffered physical damage, emotional damage and mental damage.

[PARTICULARS provided...]

36. The claimed assault and battery in the Amended Claim is alleged to have been committed on Mrs Naliupis' person in identical manner on several occasions in each year from 2015-2017 – namely, that Mr Buletare forced Mrs Naliupis to masturbate his penis until he ejaculated and his touching of her breasts and body.
37. Mrs Naliupis alleged in the Amended Claim that Mr Buletare's actions caused her to suffer physical damage (her husband physically assaulted her resulting in her seeking medical treatment), emotional damage (irritation at her children and aggression towards her husband), mental damage, unjustifiably long period of suspension from employment, loss of her Land Cruiser vehicle and farm property.
38. In Mr Buletare's Defence to the Amended Claim filed on 27 March 2023, he denied all allegations against him. That Defence does not contain any admission that in 2019, he was convicted of two charges of committing acts of indecency without consent on Mrs Naliupis on a number of occasions in 2015.
39. However, I take judicial notice of Mr Buletare's convictions and sentence: *Public Prosecutor v Buletare* [2019] VUSC 18 (Verdict); *Public Prosecutor v Buletare* [2019] VUSC 21 (Sentence). The relevant conduct comprised Mr Buletare forcing Mrs Naliupis to masturbate his penis and his touching of both of her breasts. Mrs Naliupis also referred to the Verdict in **Exhibit C2** and attached a copy of it to **Exhibit C3**.
40. The claim for assault and battery in the Amended Claim for the year 2015 alleges that Mr Buletare forced Mrs Naliupis to masturbate his penis until he ejaculated and his touching of her breasts and body. There is no reference in the Amended Claim to Mr Buletare's convictions for offending committed on Mrs Naliupis' person however, the conduct alleged in the pleading of assault and battery for the year 2015 is identical to the conduct for which Mr Buletare was convicted.



41. Mrs Naliupis' claim for assault and battery in the years 2016 and 2017 is alleged to have occurred in exactly the same manner as the assaults and batteries which occurred in 2015: Amended Claim at [7]-[9].
42. *Bullen & Leake & Jacob's Precedents of Pleadings* (13th ed., Sweet & Maxwell) at p. 53 contains the following description of assault and battery (trespass to the person):

Right of action. *An assault is an act involving an imminent threat to touch another in a hostile manner with the capability to carry out such threat: a menacing attitude, such as holding up a hand or a stick to strike a person who is within reach at the time, constitutes an assault (Stephens v Myers [1830] 4 C. & P. 349). A person may commit an assault without committing a battery (see Jones v Sherwood [1942] 1 K.B. 127).*

Battery requires physical touching, whether with hand, weapon or missile. The act must be intentional, but an intent to injure is not an essential element of the tort (Wilson v Pringle [1987] Q.B. 237). An element of hostility is necessary for battery: hostility is not to be equated with ill-will, but evidence is required of an act contrary to the plaintiff's right to freedom from unwarranted physical contact (ibid.)...

[emphasis added]

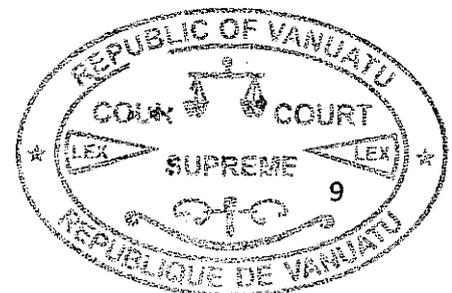
43. In *Naliupis v Buletare* [2022] VUCA 2 at [48], the Court of Appeal referred to assaults and battery as follows:

... assaults (the making of the threats) and battery (the forced physical contact). These are recognised torts which, if established, sound in damages.

[emphasis added]

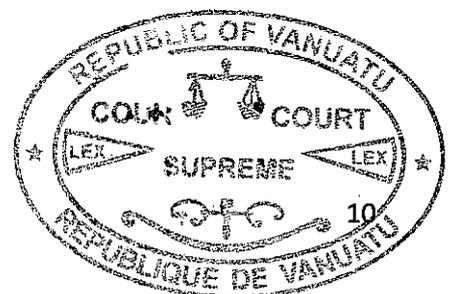
44. The Court of Appeal then stated at [49] and [51] of its judgment as follows:

49. *In his filed defence, Mr Buletare admitted that acts of indecency between the appellant and himself had occurred on more than one occasion in 2015, being those for which he had been convicted by the Supreme Court in 2019. Other evidence indicated that Mr Buletare had been convicted on two charges of committing acts of indecency without consent on the appellant on a number of occasions in 2015. The relevant conduct comprised his forcing of the appellant to masturbate his penis and his touching of both of the appellant's breasts. On 1 March 2019, Mr Buletare had been sentenced to imprisonment for three years for these offences.*
50. *Mr Buletare's pleaded admission of some acts of indecency made surprising the submission on his counsel on appeal that there was no evidence independent of that of the appellant supporting the truth of her claims.*
51. *It is not clear why the appellant did not plead directly the torts of assault and battery. If she had, the nature of her claim would have been more apparent. Nevertheless, it is sufficiently clear that the appellant was alleging a form of sexual harassment constituted not just of sexual suggestiveness and sexual importuning but of conduct comprising the torts of assault and battery. Mr Buletare's admission of at least some of the conduct alleged against him indicates that the appellant would be entitled to damages in respect*



of the assaults and batteries and those damages should take account of the emotional effects which that conduct has had on her.

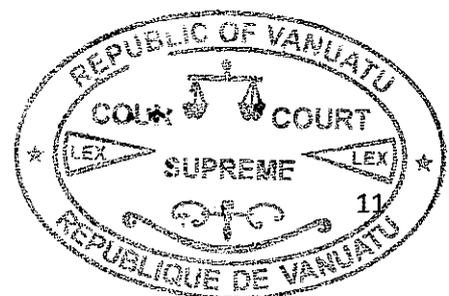
45. The Court of Appeal held at [51] of its judgment in *Naliupis v Buletare* [2022] VUCA 2 that Mr Buletare's admission of at least some of the conduct alleged against him indicates that the appellant would be entitled to damages in respect of the assaults and batteries and those damages should take account of the emotional effects which that conduct has had on her.
46. Has Mrs Naliupis proved her claim for assault and battery?
47. In **Exhibit C7** at [1] and [12], Mrs Naliupis deposed that in the years 2015-2017, Mr Buletare entered her office inside the Sanma Provincial Building during working hours, closed and lock the door behind him and even though she told him to leave, he ignored that and asked her for sex. She refused, but he walked round the table to sit down on her desk in front of her. She told him to leave but he blocked her moth and told her not to make noise, not to be scared and not to worry as everything was under control. Then he grabbed her right hand and forced her to masturbate his penis until he ejaculated, whilst he groped her breasts. She did not consent to this and her hands got tired but she had to continue until he ejaculated. She did not like his groping her breasts because he squeezed them and she felt pain.
48. In **Exhibit C3** at [4]-[11] and **Exhibit C7** at [4], Mrs Naliupis deposed that Mr Buletare's actions were against her will and many times, she feared that someone, including her husband or daughter, would catch them in the act. Sometimes he would open the door and clients were waiting outside her door. She stated that after each incident, she cried from the pain and the fear, and her heart and mind would not settle. Sometimes, she was left physically shaking after an incident then become tired, and would have to leave the office. She could no longer concentrate on her work and could not serve clients who came to her office. She refused to let her husband enter her office because of the smell of sperm. In **Exhibit C6**, she deposed that she suffered emotional distress and mental anguish from the sexual abuse. She could not concentrate on her work or at home. She became hysterical and at times scolded her children, shouting at them for misbehaviour.
49. Mrs Naliupis also deposed in **Exhibit C3** at [13]-[14] and **Exhibit C5** at [7]-[8] that from 2015-2017 until she was suspended from employment on 20 November 2017, that Mr Buletare would not approve any work plans or activities of hers unless she masturbated him. This caused her fear, stress, humiliation, shame, guilt, broken heart and assault by her husband. This was a suffocating experience and affected both her work and her health.



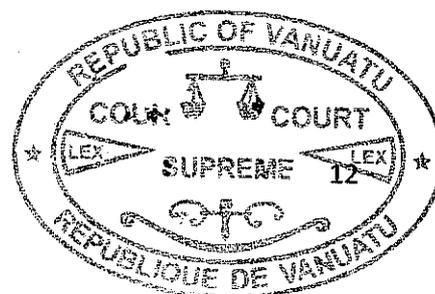
50. Mr Buletare has not contested any of this evidence by way of cross-examination. He did not address any of the allegations of assault and battery in his own sworn statement [**Exhibit D1**].
51. I therefore accept Mrs Naliupis' evidence set out above. I find on this evidence that on several occasions in each year 2015-2017 (up until 20 November 2017 when Mrs Naliupis was suspended from employment), that Mr Buletare entered her office and locked the door, asked her for sex, she refused but he continued round her desk, sat on her desk in front of her, grabbed her and forced her to masturbate his penis until he ejaculated whilst he groped her breasts and touched her body. Mr Buletare's actions constituted threatened and actual intentional application of force to the body of another, in this case, Mrs Naliupis.
52. I find that Mrs Naliupis did not consent to Mr Buletare's actions. She felt pain from the way he groped her breasts and in her hands from having to continue masturbating Mr Buletare until he ejaculated. She cried from the pain and the fear. Sometimes, she was left physically shaking and then tired. I find that Mr Buletare's actions caused Mrs Naliupis to experience emotional distress, her heart and mind could not settle, inability to concentrate on work, stress, humiliation, shame and guilt.
53. I find that Mr Buletare's actions when he approached Mrs Naliupis on her own in her office, locked the door, asked her for sex and in the face of her refusals, came round her desk and sat on it in front of her constituted assaults. I find that the forced physical contact he applied to Mrs Naliupis' body constituted batteries. Accordingly, I find that Mrs Naliupis has proved her claim for assault and battery by Mr Buletare on her person on several occasions each year in the period 2015-2017.

F. What damages Mrs Naliupis is entitled to from Mr Buletare for his actions of assault and battery on her person?

54. The relief sought in the Amended Claim is stated in the following terms:
- a) An order that the First and Second Defendants be jointly and severally liable to pay the Claimant damages for assault and battery (sexual harassment) committed on the Claimant's person.
 - b) An order that the First and Second Defendants be jointly and severally liable to pay the Claimant's loss which followed as a consequence of the First and Second Defendants' assault and battery committed on the Claimant's person.

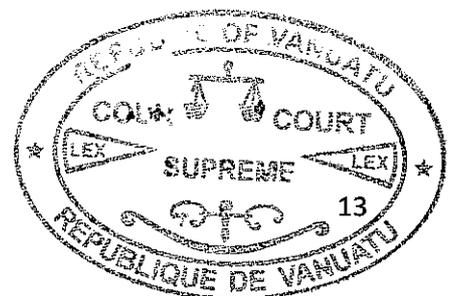


55. Paragraph 14 of the Amended Claim contains the following particulars of the damages sought:
- a) Suspension for an unjustifiably long period of time which was against the Provincial Council Staff Regulations, and reasons for her suspension were never made out;
 - b) The stoppage of her salary deductions towards her vehicle loan repayment on 1 December 2017 resulted in her losing her Land Cruiser vehicle, inability to pay school fees, outstanding land rent and could not maintain her farm so that cattle were killed, gardens destroyed, 1,000 kava plants stolen and 1,500 cocoa plants were damaged;
 - c) Trauma; and
 - d) Physical violence and verbal abuse by her husband.
56. In the Claimant's Closing Submissions filed on 14 March 2025, Mr Boe submitted that Mrs Naliupis be awarded VT30,000,000 damages for sexual assault and battery non-pecuniary loss; VT11,718,000 for loss of employment benefits (until retirement age of 60 years); VT952,221 for agriculture loan repayment; VT360,000 for Panpan land reimbursement; VT3,857,410 for damages to crops; VT14,090,000 for loss of cattle; VT10,000,000 exemplary damages against the Council; and costs on an indemnity basis. I now consider each of these matters asserted on Mrs Naliupis' behalf.
57. Mr Boe submitted that the Court award VT30,000,000 damages for pain and suffering and other non-pecuniary loss for assault and battery. However, there is no explanation how he arrived at the figure of VT30,000,000. Mr Boe has not cited any caselaw to justify this particular figure.
58. It is pleaded in the Amended Claim that the physical damage suffered by Mrs Naliupis as a result of Mr Buletare's assault and battery on her person included her husband physically assaulting her resulting in her seeking medical treatment, as well as her husband's verbal abuse against her. However, the physical damage caused by assault and battery by Mr Buletare must be physical damage caused to Mrs Naliupis by Mr Buletare's during the acts of assault and battery. Any violence by Mr Naliupis against Mrs Naliupis are acts of Mr Naliupis for which Mr Buletare cannot be held liable.
59. Mr Vira cited *Tanarango v Seule* [2019] VUSC 131 in which the Supreme Court awarded damages of VT595,000 for assault and battery where the defendant forcibly entered the claimant's room uninvited, and punched her on her head, neck and backside which caused her to fall to the floor. The claimant suffered pain and



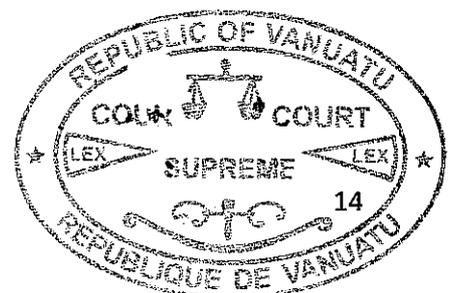
injury to her feelings. This was a one-off incident in a hotel room. Mr Vira also cited *Kenziye v Independent State of Papua New Guinea* [2013] PGNC 185. In his submission, Mrs Naliupis would be entitled at the most to damages between VT250,000 and VT400,000.

60. On the other hand, the assault and battery by Mr Buletare on Mrs Naliupis' person occurred at their workplace (albeit in private) and on several occasions each year over a 3-year period. I accept and find that Mrs Naliupis suffered pain and suffering, emotional distress and mental anguish not during the incidents of assault and battery, but in the intervals between incidents hence during that 3-year period.
61. Accordingly, I award general damages for assault and battery of VT1,500,000 to be paid by Mr Buletare.
62. Mr Boe also submitted that Mrs Naliupis be awarded VT11,718,000 damages for loss of employment benefits (until retirement age of 60 years).
63. Mrs Naliupis' case is that as a result of her continual rejections of Mr Buletare's requests for sex and to masturbate him in 2017, he took revenge by suspending her from work [**Exhibit C6** at [8]-[10]]. It is alleged in the Amended Claim at [14] that her suspension was for an unjustifiably long period of time which was against the Provincial Council Staff Regulations, and the reasons for her suspension were never made out.
64. However, there is no evidence of a judicial review proceeding in which a Court has found that Mrs Naliupis' suspension was for an unjustifiably long period of time or that her suspension breached the Provincial Council Staff Regulations. There is also no evidence of a disciplinary case or Court proceedings determining that the reasons for Mrs Naliupis' suspension were never made out.
65. In *Naliupis v Buletare* [2022] VUCA 2, the Court of Appeal held that there was no unlawful termination of Mrs Naliupis' employment with the Council. Her employment ceased following her resignation.
66. As I understand Mrs Naliupis' case now, it is that she resigned due to the toxic environment that she was experiencing with Mr Buletare's acts of assault and battery on her person and no disciplinary action taken against him by the Council.
67. However, the present matter is not a constructive dismissal case. It is not a case brought pursuant to s. 53 of the *Employment Act* [CAP. 160]. Given the findings made in the Judgment dated 17 September 2021 and the Court of Appeal's

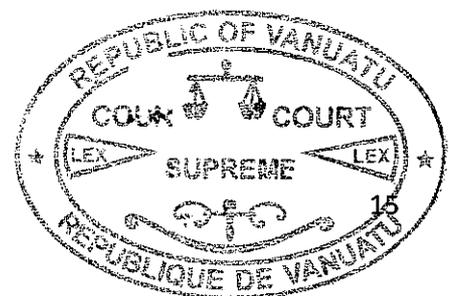


judgment in *Naliupis v Buletare* [2022] VUCA 2, any claim for constructive dismissal is now *res judicata* hence cannot be raised by Mrs Naliupis.

68. In the circumstances, I reject the claim for VT11,718,000 alleged loss of employment benefits (until retirement age of 60 years) and decline to make the award sought.
 69. Mr Boe also submitted that Mrs Naliupis be awarded damages for the following economic loss: VT952,221 for agriculture loan repayment; VT360,000 for Panpan land reimbursement; VT3,857,410 for damages to crops; and VT14,090,000 for loss of cattle.
 70. It is alleged in the Amended Claim that the stoppage of Mrs Naliupis' salary deductions towards her vehicle loan repayment on 1 December 2017 resulted in her losing her Land Cruiser vehicle, inability to pay school fees, outstanding land rent and could not maintain her farm so that cattle were killed, gardens destroyed, 1,000 kava plants stolen and 1,500 cocoa plants were damaged.
 71. However, as set out above, the present matter is not a constructive dismissal case nor can I make any findings about Mrs Naliupis' suspension from work. Accordingly, I reject the claims for VT952,221 agriculture loan repayment; VT360,000 Panpan land reimbursement; VT3,857,410 damages to crops; and VT14,090,000 loss of cattle, and decline to make the awards sought.
 72. I will deal with the claim for VT10,000,000 exemplary damages against the Council in the next section, together with the claim that the Council is vicariously liable in respect of the assault and battery by Mr Buletare.
 73. As for costs, Mr Boe has not given any explanation in his submissions as to the basis for costs to be ordered on an indemnity basis. I cannot see that any of the circumstances in rule 15.4(4) and (5) of the *Civil Procedure Rules* apply for the Court to order indemnity costs. Accordingly, I decline to order indemnity costs.
- G. Whether or not the Council and the State are vicariously liable for Mr Buletare's actions of assault and battery on Mrs Naliupis' person?
74. As I understand Mrs Naliupis' case, she is claiming that the Council and/or the State be held vicariously liable for Mr Buletare's actions of assault and battery on her as they were his employer.
 75. However, who was Mr Buletare's employer and over what period of time?



76. I find on Johnson Vuti's evidence [**Exhibit D2**] and Stephane Bong's evidence [**Exhibit 3P1**] that on 7 July 2017, Mr Buletare was employed by the PSC as the Sanma Provincial Planner, effective as of 30 June 2017. I also find on their evidence that on 17 July 2017, the PSC appointed Mr Buletare as Acting Secretary General of the Council.
77. Mr Buletare accepted in cross-examination that prior to the PSC appointing him as the Sanma Provincial Planner, that he was employed by the Council.
78. Accordingly, I also find that during 2015 through to 29 June 2017, Mr Buletare was employed by the Council as a Planning Officer.
79. In [13] of the Amended Claim, it is alleged that the Sanma Councillors were fully aware that Mr Buletare was assaulting and committing battery on Mrs Naliupis, but chose not to take disciplinary action against him. However, none of the Sanma Councillors as a group or individually have been named as a defendant to the present matter. Accordingly, I have no further regard to the claim made in [13] of the Amended Claim.
80. Mrs Naliupis alleges in the Amended Claim at [12] and [14] that during 2015-2017, the Council was aware of Mr Buletare's ongoing assault and battery on Mrs Naliupis' person but chose not to take any disciplinary action against him. As a result, she suffered damage and therefore the Council should be held vicariously liable for Mr Buletare's actions of assault and battery.
81. Mrs Naliupis' evidence in **Exhibit C5** at [3]-[5] is that in 2015 and 2016, she told the former Secretary General of the Council Zakaraia Daniel Loi about Mr Buletare's sexual abuse of her but he and the Council did not take any disciplinary action against Mr Buletare. However, the sexual abuse worsened in 2016 so she insisted that they must take action. As a result, at the end of 2016, the Council's Division heads decided that she could move to the Disability Centre, located 100 metres away from the Provincial Government Building. In early 2017, she moved her office to the Disability Centre.
82. In **Exhibit C4** at [11]-[12], Mrs Naliupis deposed that when she complained to Mr Loi about Mr Buletare's sexual abuse, she stated that they take disciplinary action against Mr Buletare or move her office out of the Council's Administrative Building. By Mrs Naliupis' own evidence, at the end of 2016, the Council's division heads decided that she could move to the Disability Centre, located 100 metres away from the Provincial Government Building.



83. I find, therefore, that in raising her complaint with Mr Loi about Mr Buletare's sexual abuse, that Mrs Naliupis proposed 2 options. That is, that the Council take disciplinary action against Mr Buletare or move her office out of the Council's main building to another building 100 metres away. The Council chose to implement the latter option. Accordingly, I find that it cannot be laid at the Council's feet that it chose not to or refused to take disciplinary action against Mr Buletare. I therefore reject this as a basis on which to hold the Council vicariously liable for Mr Buletare's actions of assault and battery on Mrs Naliupis' person.
84. In cross-examination by Ms Toa Tari, Mr Buletare agreed that sexual harassment was not part of his duties and responsibilities as Provincial Planner. I so find.
85. I also find that sexual harassment was not part of Mr Buletare's duties and responsibilities as Planner when employed by the Council.
86. In *Naliupis v Buletare* [2022] VUCA 2 at [78] and [79], the Court of Appeal held as follows:

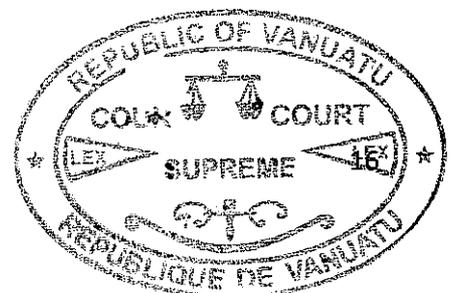
[78] ... the position with respect to vicarious liability of an employer for the intentional criminal acts of its employees requires a careful evaluation of the circumstances, in particular of the position in which the defendant had been placed by the employer in relation to the victim. So much is made plain by the conclusion of French CJ, Kiefel, Bell, Keane and Nettle JJ in the decision of the High Court of Australia in *Prince Alfred College Inc v ADC* [2016] HCA 37; (2016) 335 CLR 134. Having reviewed a number of authorities in Australia, the United Kingdom, Canada and elsewhere bearing on the vicarious liability of an employer for the sexual abuse of children by an employee, their Honours concluded:

[80] In cases of the kind here in question, the fact that a wrongful act is a criminal offence does not preclude the possibility of vicarious liability...

[81] Consequently in cases of this kind, the relevant approach is to consider any special role that the employer has assigned to the employee and the position in which the employee is thereby placed vis-à-vis the victim. In determining whether the apparent performance of such a role may be said to give the "occasion" for the wrongful act, particular features may be taken into account. They include authority, power, trust, control and the ability to achieve intimacy with the victim. The latter feature may be especially important. Where, in such circumstances, the employer takes advantage of his or her position with respect to the victim, that may suffice to determine that the wrongful act should be regarded as committed in the course or scope of employment and as such render the employer vicariously liable.

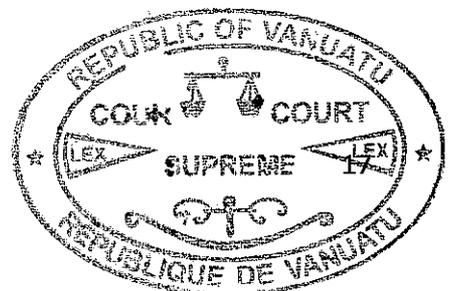
(Citation omitted)

[79] This decision indicates the importance of a close evaluation of the authority, power, trust, control and ability to achieve intimacy with the victim which is required in the ascertainment of vicarious liability in cases of an analogous kind. In our view, that evaluation in the present case is best performed by the trial judge



and for this reason, we will also remit to the trial Judge the issue of the claimed vicarious liability of the Council for the sexual harassment conduct alleged by the appellant against Mr Buletare.

87. The excerpts included in [78] of the Court of Appeal's judgment are from the High Court of Australia's decision in *Prince Alfred College Inc v ADC* [2016] HCA 37; (2016) 335 CLR 134, which was concerned with the vicarious liability of an employer for the sexual abuse of children by an employee. In the present case, however, both Mrs Naliupis and Mr Buletare were adults.
88. There is no evidence that the Council assigned to Mr Buletare any special role such as to place him in a position vis-à-vis Mrs Naliupis, the apparent performance of which could be said to give the "occasion" for the wrongful act. Mrs Naliupis asserted that Mr Buletare was her superior therefore in a position of authority and power over her. However, there is no evidence that the Sanma Disability Officer (Mrs Naliupis' position) reported to and was managed by the Physical Planner (Mr Buletare's position up until 29 June 2017). Mr Johnson attached a copy of Mrs Naliupis' appointment letter for the position of Sanma Disability Officer [**Exhibit D2 – Attachment "JV1"**]. In that letter, it is stated that she will report to the Sectoral Division manager. There is no evidence as to who occupied the position of Sectoral Division manager.
89. Mrs Naliupis deposed that after Mr Loi passed away, that Mr Buletare acted as the Secretary General of the Council. However, no dates are given as to when this occurred.
90. On 17 July 2017, the PSC appointed Mr Buletare as Acting Secretary General of the Council. However, by Mrs Naliupis' own evidence, from then on, she continuously refused Mr Buletare's requests for sex and to masturbate him which in turn led to him taking revenge by suspending her from work on 20 November 2017. I am not satisfied on the evidence that the Council or the State placed Mr Buletare in a position vis-à-vis Mrs Naliupis that was of such authority, power, trust, control and ability to achieve intimacy with Mrs Naliupis, both of them being adults in a public workplace to the same extent as children who are sexually abused by an employee entrusted with their care such that Mr Buletare's wrongful acts should be regarded as committed in the course or scope of employment.
91. For the foregoing reasons, I find that the Council is not vicariously liable for Mr Buletare's actions of assault and battery on Mrs Naliupis' person.
92. Given my finding that the Council addressed Mrs Naliupis' complaint about Mr Buletare by moving her office to another building 100 metres away, I cannot see any basis on which to award exemplary damages against the Council. There has



not been any contumelious disregard for her rights. Accordingly, I decline to award exemplary damages.

93. As no vicarious liability has been found on the part of the Council, I need not determine the Council's Third Party Notice seeking a contribution from the State.
94. Accordingly, I find that the State is not vicariously liable for Mr Buletare's actions of assault and battery on Mrs Naliupis' person.

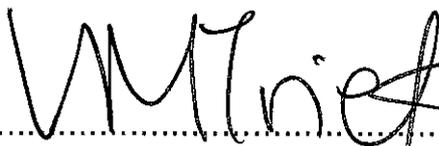
H. Result and Decision

95. Judgment is **entered** for the Claimant and it is ordered that the First Defendant is to pay to the Claimant general damages in the sum of VT1,500,000 (the 'judgment sum').
96. The First Defendant is to pay interest of 5% per annum on the judgment sum until fully paid.
97. Costs must follow the event. The First Defendant is to pay the costs of the Claimant, the Second Defendant and the Third Party on a standard basis as agreed or taxed by the Master. Once set, the costs are to be paid within 28 days.

I. Enforcement

98. Pursuant to rule 14.37(1) of the *Civil Procedure Rules*, this matter is listed for Conference at **8.30am on 23 March 2026**, including by video link to the Luganville Court House, to ensure the judgment has been executed or for the First Defendant to explain how it is intended to comply with the Court's Orders. For that purpose, this judgment must be personally served on the First Defendant and proof of service filed.

**DATED at Port Vila this 17th day of February, 2026
BY THE COURT**


Justice Viran Molisa Trief

