

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 20/3017 COA/CIVA

BETWEEN: Donald James
Appellant

AND: Republic of Vanuatu
First Respondent

AND: Commissioner of Police
Second Respondent

Date of Hearing: 16 February 2021

Before: Chief Justice V. Lunabek
Justice J. Mansfield
Justice J. Hansen
Justice O. Saksak
Justice G.A. Andrée Wiltens
Justice V. M. Trief

In Attendance: Mr E. Molbaleh for the Appellant
Mr S. Aron for the Respondents

Date of Decision: 19 February 2021

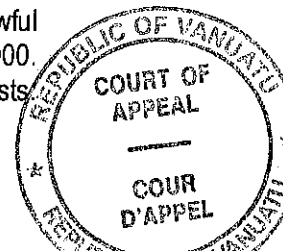
JUDGMENT

A. Introduction

1. This is an appeal against a Supreme Court decision entirely dismissing a Claim for damages arising out of an alleged unlawful arrest and detention, as well as assault by a Police Officer.

B. The Decision

2. It was agreed that Mr James had been arrested in Melcoffee on 10 December 2011 by two Police Officers. He was taken to the Central Police Station, detained overnight and was released the next day.
3. It was disputed that a complaint had first been made to the Police. It was contended that Mr James was arrested without cause, without warrant and then assaulted to his face before being detained for more than 24 hours without being taken to Court, all without having criminal charges laid against him.
4. Damages were sought for the alleged unlawful arrest of VT 5 million, for the unlawful detention of VT 5 Million, and for the alleged assault at the time of the arrest of VT 500,000. Additionally punitive damages of VT 500,000 were sought, together with interest and costs.



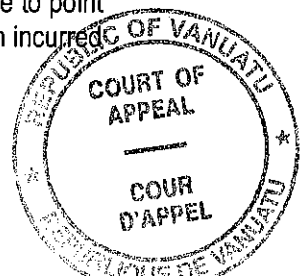
5. The primary judge made a number of factual findings, the more significant being as follows:
- There had been a prior complaint made to the Police, by Mr Andre Kasso, a security officer at WWW Shop in Melcoffee. He reported to the police that there was an intoxicated person inside the shop damaging merchandise and threatening the owner.
 - The 2 Police Officers attended the scene and arrested Mr James inside the shop. He was obviously drunk and was being aggressive towards them. Mr James was arrested for theft and damage to property. Both matters are cognisable offences which do not require arrest warrants to be first issued.
 - The Officers asked Mr James to get into their Police vehicle, but he refused. One Police Officer placed his hands around Mr James' neck to prevent further resistance, given his stature and his state of inebriation. This caused Mr James to fall to the ground. The Officer then picked Mr James up and put him into the back of the Police vehicle. The officers were entitled to use all means and reasonable force to achieve compliance with the arrest. They had not over-stepped the mark.
 - The injuries suffered by Mr James, as evidenced by him and a medical report prepared by a nurse at Vila Central Hospital were explicable by the fall and manhandling of Mr James into the Police vehicle.
 - Mr James was released from the Police Station at 6am the next morning.
 - Mr James was subsequently charged and prosecuted.
6. Those factual findings led to the dismissal of the entire claim, with costs imposed against Mr James. The primary judge pointed to the lack of particularisation and evidence supporting the claims for damages.

C. The Appeal

7. The appeal was advanced on the basis that the primary judge did not pay sufficient heed to the evidence and submissions of Mr James and his witnesses, and that he had wrongly accepted the evidence presented by the Respondents' witnesses.
8. The onus of establishing the errors of the primary judge lay with the appellant, so the basis for the appeal was always going to be problematic.

D. Discussion

9. Mr Molbaleh was critical of the primary judge's dealing with the medical certificate. We consider the primary judge to have correctly considered that the lack of the time of the medical examination was a relevant consideration, as was the fact that Mr James was not seen by a qualified Doctor. However, more significantly, Mr Molbaleh was unable to point to any evidence which eliminated the possibility of Mr James' injuries having been incurred by his fall to the ground, and his being man-handled into the Police vehicle.




10. Mr Molbaleh resorted to detailing Mr James' account of the events and submitting that that was the version of events that the primary judge ought to have accepted. However, as earlier stated, the primary judge was required to consider the evidence and make factual findings. He did so. They are recorded. Mr Molbaleh was unable to point to any errors by the primary judge in making those findings.
11. This was an appeal that should have not been brought, as the prospect of success was nil. The Court has been required to read considerable material to be able to deal with the appeal, but in the preparation of the Appeal Books it should have been obvious to Mr Molbaleh that his cause was hopeless. He should have discontinued at that stage, at the latest. Instead, Mr James has been given false hope, no doubt bolstered by the unnecessary volume of material assembled in support of his appeal.

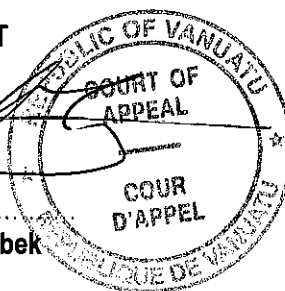
E. Result

12. The appeal is dismissed.
13. Costs are to follow the event. We set them at VT 25,000, and Mr James is to pay them within 21 days.

Dated at Port Vila this 19th day of February 2021

BY THE COURT


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Hon. Vincent Lunabek
Chief Justice



The seal is circular with the text 'REPUBLIC OF VANUATU' at the top and 'COURT OF APPEAL' in the center. Below the center, it says 'COUR D'APPEL' and 'REPUBLIQUE DE VANUATU' at the bottom. There are two small stars on either side of the bottom text.