

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

Civil Case No.39 of 2007

BETWEEN: KALO MORRISON

Claimant

AND: REPUBLIC OF VANUATU

Defendant

Coram: Vincent Lunabek Chief Justice

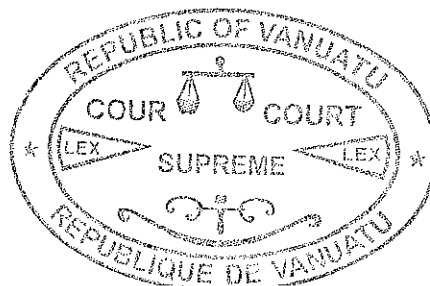
Counsel: Mr. Daniel Yawah for the Claimant

Mr. Frederick Loughman for defendant

JUDGMENT

Introduction

1. Kalo Morrison says that on the 12th of December 2005, he was arrested by the Police without reasonable cause and thereby wrongly imprisoned for 22 hours.
2. He says this was repeated on 15th May 2006 when he was again arrested by the Police without cause. On that occasion he was unlawfully imprisoned for 33 hours. He now sues the Commissioner of Police through the Republic of Vanuatu seeking damages for these two occasions of false imprisonment. He seeks VT 2.000.000 for damages in total. The damages sought are not divided between the individual causes of action.

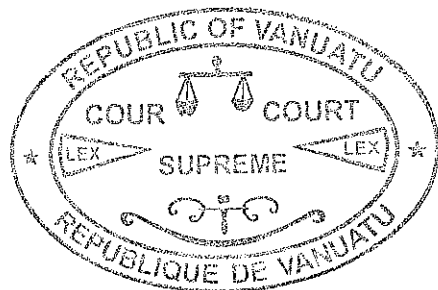


3. The Police Commissioner's case is that both arrests arose from reasonable cause. Any imprisonment was therefore lawful and on both occasions Kalo Morrison was appropriately bailed by the Courts.

Background Facts

4. Kalo Morrison was in Emae Island between 8 and 9 December 2005 attending a soccer tournament. Members of the Police came to the tournament on Emae intending to arrest Mr. Morrison. Mr. Morrison says that he strongly protested to the Police officers that they had no grounds to arrest him. He told them that any arrest would be unlawful. The Police did not proceed with the arrest that day. Mr. Morrison returned to Port Vila and to his work on 12th of December 2005. At about 12:45pm on 12th December 2005, the Police arrived at Mr. Morrison's place of work and arrested him. He was taken to the Police station and released on bail after a Court appearance at about 1:30pm the following day. He says that he was not given food or water during this time in custody and that he was not given his asthma medication. He submits this is relevant to the quantum of damages the Court should award him.

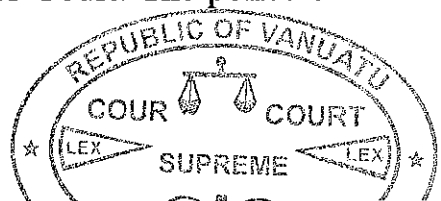
5. When Mr. Morrison apparently appeared in Court on 13th December he was charged with unlawful assembly, threatening to kill, abusive language and threatening a police officer arising from the events on Emae on 9th December. Ultimately the prosecution did not proceed with these charges in Court and they were dismissed. Mr. Morrison says his arrest on 12th December was without proper cause and so his imprisonment until bailed by Court on 13th December was unlawful.



6. Mr. Kalo Morrison says that on 15th May 2006 he was again arrested by the Police. He says the police had no reason to do so and he was kept in custody until late the following day when he came before the court and was further bailed. He says this arrest was also unlawful and resulted in his false imprisonment.

The Police Commissioner's case

7. The Commissioner says that the police officers who arrested Kalo Morrison had reasonable cause to do so on both occasions and therefore any imprisonment arising from that arrest was justified. The Commissioner says that the both arrests arose from a dispute between various people in the village of Makatea on Emae Island. On 2nd December 2005, the Magistrates Court at Port Vila, arising from proceedings issued by Chief Maatuimakatamoa John William, made a restraining order against Kalo Morrison (and others). The order prohibited Kalo Morrison and the others from entering the Makatea Village without the consent of the Chief. The Magistrate's order required the Police to urgently serve a copy of the order on Mr. Morrison (and the others) and ensure that any breach of the orders would result in the immediate arrest of the person who had breached the order.
8. On 8th December 2005, the Police understood that Mr. Kalo Morrison and others were at the Makatea village they believed in breach of the Magistrate's order. There is some doubt at this stage as to whether or not a copy of the Magistrates Court order of the 2nd of December had been served on Mr. Morrison and the others. The police went from Port Vila to Emae and to the Makatea village. They told Mr. Morrison and the other men about the orders made by the Magistrates Court. The police officers



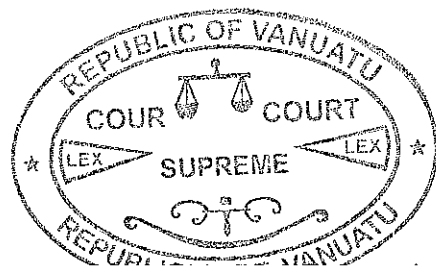
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told the men including Mr. Morrison that if they did not leave the area they would be arrested and would be in contempt of Court for disobeying the orders of the Magistrates Court.

9. The police officers evidence at trial was that those present including Mr. Morrison refuse to leave the village. The police officers decided they could not arrest Mr. Morrison and the others because the officers were threatened by the men present. The officers said some of the men present had brought knives. The police officers decided it was too dangerous to arrest the men. The officers then left Emae for Port Vila.

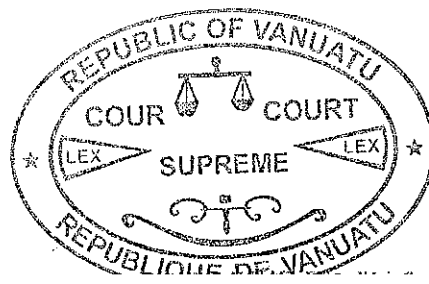
10. A few days later on 12th December Mr. Morrison arrived back in Port Vila. The police then went to his place of work and arrested him both for his breach of the Magistrates Order prohibiting his presence at the village and what the police believed were Mr. Morrison's criminal acts at Makatea on 9th December. Mr. Morrison then appeared in the Magistrates Court the following day (13th December) and was granted bail by the court on restrictive terms.

11. As to his arrest on 15th May 2005, after Mr. Morrison was arrested on 12th December he was granted bail in the Magistrates Court on conditions which included a prohibition on him travelling to Emae and other restrictions. The police say that Mr. Morrison breached these conditions of bail shortly before his arrest on 15th May. He was arrested for the breach of his bail conditions. He appeared on the Magistrates Court on 16th May and was released again on bail by the Court but with significantly more stringent conditions. The bail conditions contain a warning to Mr. Morrison that any further breach of bail would likely result in him being remanded in custody.



The Issues and Decision

12. The pivotal question in this case is whether the two arrests of Mr. Morrison and his consequent imprisonment were with reasonable cause. It is the case for Mr. Morrison to prove that his arrests and imprisonment were without reasonable cause and therefore his imprisonment was false and unlawful.
13. I am not satisfied on the balance of probabilities that Mr. Morrison has proved that his arrests on 12th December and 15th May 2005 were without reasonable cause nor has he proved that the two periods he was kept in custody were false imprisonment.
14. I am satisfied on the evidence that the first arrest of Mr. Morrison on 12th December 2005 arose after Mr. Morrison had been prohibited from entering the Makatea village by the Magistrate's Court Order. I am satisfied that on the 9th of December the police told Mr. Morrison about Magistrate's Court Order. There is also other evidence that prior to the 8th December Mr. Morrison had been told about the Magistrate Court prohibition order. However, by 9th December there could be no doubt that Mr. Morrison knew about the order prohibiting him from being at Makatea.
15. Mr. Morrison did not deny, as I understood his evidence, that he had been told about the prohibition by the police. Mr. Morrison however said that there was a Supreme Court order which allow him and others to be at the Village and that order would take precedence over any Magistrates Court order.



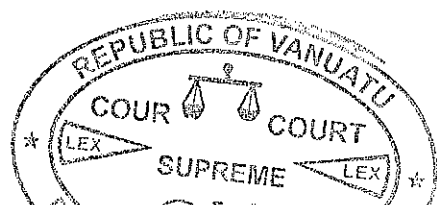
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16. Whatever Mr. Morrison's interpretation of the legal position the real issue is whether police officers on 12th December had reasonable grounds for his arrest arising from the events of 8/9 December. The police officers had in their possession an order of the Magistrate's Court prohibiting Mr. Morrison from being at the Makatea Village. As far as the police officers were concerned Mr. Morrison was, on 9th December, in breach of that order. The police officers told Mr. Morrison about the terms of the Court order. They told him he was in breach of the order. Mr. Morrison had the opportunity to leave the Makatea Village but he did not do so. Mr. Morrison was then liable to be arrested in terms of the Magistrate's order.

17. The Court order also told Mr. Morrison that he may be in contempt of Court if he refused to leave Makatea. The police officers who arrested Mr. Morrison believed that Mr. Morrison may have been in contempt of Court.

18. I am satisfied that Mr. Morrison's arrest on 12th December was therefore based on reasonable grounds. I am satisfied the police officers had reasonable grounds to believe that Mr. Morrison was in breach of the Magistrates Court order of 2nd December and that he may have been in contempt of Court.

19. There was a further ground to justify the 12th December arrest. The police officers believed that Mr. Morrison together with the others had committed criminal acts through threatening and disorderly behaviour on 9th December. While Mr. Morrison denied that he had been involved in the threats and disorderly behaviour and, accepting ultimately the charges he faced were withdrawn, it seems likely the police officers were



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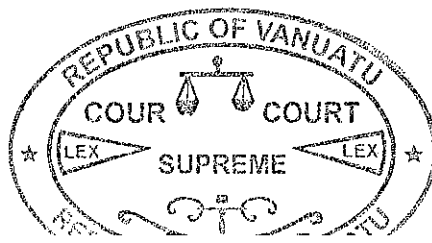
harassed and threatened on 9th December. Mr. Morrison was clearly present at that time.

20. I am satisfied that the police officers also had reasonable grounds to believe that Mr. Morrison was part of those who had acted aggressively and criminally toward the police officers.

21. These reasonable grounds would have been sufficient grounds to have arrested him even if he was only a party to the alleged criminal offending encouraging those by his presence to threaten the police. Both these circumstances also provided reasonable grounds to arrest and charge Mr. Morrison. Mr. Morrison has not therefore established on the balance of probabilities that his arrest and imprisonment on 12/13 December was unlawful nor has he established he was subjected to false imprisonment.

22. As to the arrest on 15th May Mr. Morrison called no evidence to establish this arrest was unlawful. The police's evidence was that they believed that Mr. Morrison had breached his terms of bail shortly before 15th May. And so they arrested him for the breach and brought him before the Court. It seems probable from the new, far more stringent terms of bail, imposed by the Magistrate after Mr. Morrison's arrest and appearance in Court on May 2006 that the Magistrate accepted that Mr. Morrison had been in breach of his bail conditions. That fact would have justified Mr. Morrison's arrest and justified him being kept in custody until a Court was available to reconsider his bail.

23. I am satisfied therefore that the police on both occasions had reasonable grounds to arrest Mr. Morrison. Mr. Morrison has not established that



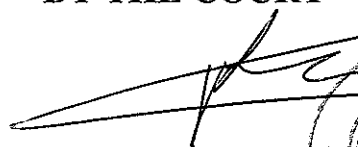
either his arrest was unlawful nor his subsequent imprisonment unlawful. For the reasons given therefore Mr. Morrison's claim fails.

Costs

24. I order costs in favour of the Republic against Mr. Morrison on the standard basis to be agreed or determined. If the costs must be determined (or taxed), the Republic should file a memorandum detailing the amount of costs sought within 14 days from the date of this judgment, Mr. Morrison can reply within a further 14 days.

DATED at Port Vila, this 10th December 2014.

BY THE COURT


Vincent Lunabek
Chief Justice

