

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

Civil Appeal Case No. 04 of 2013

BETWEEN: ROMEO LAUI

Appellant

AND: DAVID ARKSAI

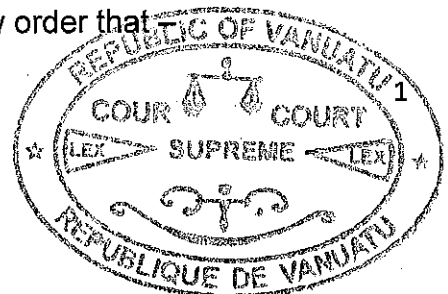
Respondent

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Lent Tevi for the Appellant
Ms Jane Tari for the Respondent*

JUDGMENT

1. This is an appeal against the Order of the Magistrate Court dated 12th October 2013 which ordered the appellant to pay the respondent the sum of VT190.000.
2. The only ground of appeal was that the Court below had erred in law and fact in deciding to give judgment against the appellant when the appellant had made good the damage by repairing the fence but, it transpired that another person damaged the fence again.
3. At the hearing of the appeal, both counsel indicated that they were simply relying on their respective written submissions without any need of additional oral submissions.
4. The Court then instantaneously delivered its oral decision that –
 - (i) The appeal be allowed.
 - (ii) The Order of the Magistrate Court dated 12th October 2013 be set aside.
 - (iii) The Order be substituted by the following new order that



- (a) There be judgment entered in favour of the Claimant, now respondent for the sum of VT120.000.
- (b) The appellant be liable to pay the respondent the sum of VT120.000.
- (c) Each party is to pay their own costs of the appeal.

5. The Court now publishes its reasons.

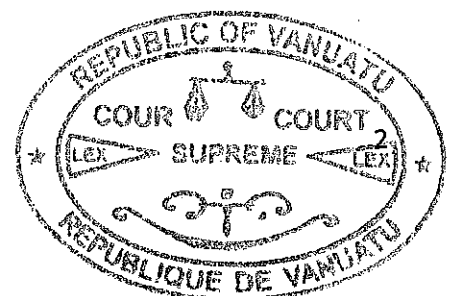
6. The claims by the respondent in the Court below as amended were for –

- (i) VT50.000 as damages for the damaged fence.
- (ii) VT50.000 as damages for trespass.
- (iii) VT60.000 as punitive damages; and
- (iv) VT30.000 as general damages and costs of the proceeding.

The total was therefore VT190.000.

7. The Court below found there was evidence of admission by the appellant that he had damaged the respondent's fence and that the fence was repaired by the appellant. There was clear evidence of admission also by Rovo Moli that he had damaged the fence again after the appellant had repaired it. Rovo Moli was not a party to the proceeding in the Court below. And neither the appellant nor the respondent applied to have Rovo Moli joined as a party. The Court below simply placed all responsibility and liability for the damaged fence on the appellant. Having done so, did the Court below err?

8. Mr. Tevi submitted that based on the case of Bobland v. Lau [2008] VUSC 59 the respondent was not entitled to damages where his damaged fence was repaired and made good. The Court accepts that submission and rules that the Court below had erred when it allowed damages for damaged fence in the sum of VT50.000. The appeal is allowed on that ground.



9. The appeal failed in relation to the award of damages for trespass of VT50.000 and punitive damages of VT60.000. When the appellant admitted he damaged the fence which he repaired, it was clear from the evidence the appellant had no claims of right to enter the land, the ownership of which is undisputedly the respondent's. When the appellant damaged the fence belonging to the respondent on his own land, he had committed trespass not just once but a couple of times according to the evidence of the appellant. In his evidence he said –

"I removed a post to allow people to go through. The post was in the middle of the road. I open the way. People were using the road for a while, then when I repaired it, then Rovo cut it again. It is true I should be liable for the damage."

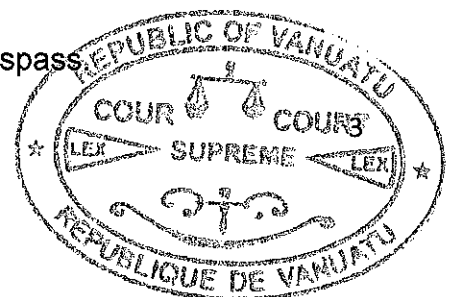
The evidence of Aline Tungun shows a long standing tension between these parties to support the award of punitive damages.

10. With that sort of evidence it was proper for the Court below to have awarded damages for trespass which amounts to a continuing trespass for which punitive damages were properly awarded. The Court below did not err in making those awards and the appeal fails in respect to those award of damages. The case of Moli v. Heston [2001] VUCA 3 supports this award being made.

11. However for the award of general damages and costs of proceedings in the sum of VT30.000, the Court is of the view that amount awarded was too high. The appropriate award should have been only VT10.000 comprising of VT8.000 as filing fees and VT2.000 as service fees. The Court below erred in that award and the appeal is allowed on this aspect.

12. In the final analysis, the appeal is allowed with judgment upheld in favour of the respondent, but for a lesser amount of VT120.000 made up as follows:-

- (i) VT50.000 as damages for trespass.
- (ii) VT60.000 as punitive damages for continuing trespass.



(iii) VT10.000 as costs of proceedings in the Court below.

Total VT120.000.

13. The enforcement of the substitution order will be done in the Magistrate Court.

DATED at Luganville this 7th day of May 2014.

BY THE COURT


OLIVER A. SAKSAK

Judge

