

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

Civil Case No. 40 of 2013

**BETWEEN: JOHN JACK, FRED WOTAL, CHARLES ASWEL,
LARRY ASWEL, ANGELA ASWEL, ROBERT
NEW, KALO KEVIN, ALFRED WOTAL, NELSON
ROBERT, DANIEL WOTAL, CHARLIE ASWEL,
ATI ASWEL**

Claimants

AND: REPUBLIC OF VANUATU

Defendant

Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Lent Tevi for the Claimants
Kent Tari for the Defendant*

Hearing Date: *8th and 9th December 2015*

Judgment: *11th December 2015*

JUDGMENT

Introduction

1. The 12 Claimants sue in their individual names against the Republic for damages for emotional stress, anxiety, pain and suffering, exemplary damages punitive damages, aggravating damages and special damages.

Claims

2. Claimants John Jack, Fred Womal and Charlie Aswel claim a total of VT 7 million each and the remaining claimants namely Charles Aswel, Larry Aswel, Angela Aswel, Robert New, Kalo Kevin, Alfred Wotal, Nelson Robert, Daniel Wotal and Ati Aswel claim the sum of VT 5 Million each against the State.



3. Their total claim against the State is in the sum of VT 66 million.

Alleged Facts

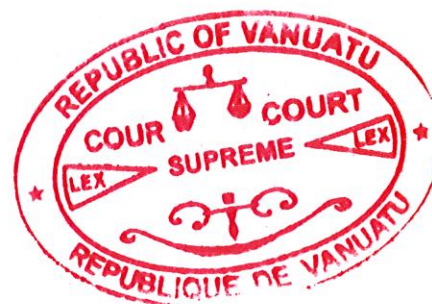
4. The claimants alleged they were unlawfully arrested by the Police on 7th February 2013 at Lerat Village on Merelava Island and subsequently taken by RVS Turoroa to Luganville, Santo and unlawfully detained in Cell No.6, having been released at 5pm on 8th February 2013. They alleged also that except for John Jack, the rest of the claimants were not and have never been charged. They alleged that as a result they lost their gardens, animals and birds, and continue to suffer losses.

Evidence

5. The following claimants filed sworn statements in support of their claims namely; John Jack, Fred Wotal, Charles Awel, Angela Aswel, Robert New, Kalo Kevin and Charlie Aswel. The following claimants did not give any evidence in support of their claims namely; Larry Aswel, Alfred Wotal, Nelson Robert, Daniel Wotal and Ati Aswel. The claimants' independent witnesses were Wycliff Tagar and Narry Aswel. Their sworn statements are Exhibits C1, C2, C3, C4, C5, C6 C7, C8, C9, C10, C11, C12 and C13.
6. The defendants relied on the evidence of Alick Walter and Roger Qwarani, Exhibits D1 and D2.

Issues

7. The issues as raised by the claimants are-
 - a) Whether the threats made and complained of warranted arrests of the claimants by the police?
 - b) What was the nature of the threats?



8. The issues as raised by the defence are-

- a) Whether the arrests made on 7th February 2013 were lawful and whether the claimants were unlawfully detained?
- b) Whether the claimants were assaulted during their arrests?
- c) Whether the claimants are entitled to damages as claimed by each of them?

Discussions

9. Mr Tevi submitted that the gist of the claimants' case is about their arrests by the Police on 7th February 2013, their being taken to Luganville and detained until 8th February 2013 at 5:00pm when they were released. Counsel submitted that the Court should not consider issues outside of this period.

10. Mr Tari on the other hand urged the Court to consider the issues in the totality of the case beginning with events that led to the issuing of the restraining order dated 19th December 2012 and the Minister's Order authorising the use of arms by the Police dated 30th January 2013.

11. The Court accepts the submission by Mr Tari that the totality of the case must be considered and taken into account in determining the issues raised.

12. I now turn to consider the issues raised as follows-

A) Whether the threats made warranted the arrests of the claimants by the Police on 7th February 2013?

12.1. Police Officer Roger Qwarani's evidence was that John Jack had threatened him over a mobile phone that he would shoot him dead and that only his dead body would be



returned to Sola on Vanua Lava. A verbal threat to kill with a gun is a very serious threat and could not be taken lightly by the Police Officer concerned. This threat was uttered by John Jack at a time when there was a lot of tension over the disputed airport on Merelava. It was made at a time when there was in existence a Magistrate Court Order restraining John Jack and others from certain unlawful actions on community institutions on Merelava issued on 19th December 2012. Sargeant Alick Walter's evidence was that during the arrests of the claimants a total of four (4) rifles were found and confiscated from the claimants specifically 3 from Robert New, John Jack's father and 1 from Fred Wotal. There was no evidence from John Jack rebutting Roger Qwarani's evidence about that death threat.

13 (B).The second limb of this issue is what was the threat for?

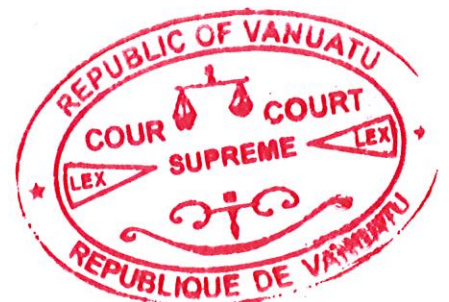
13.1.Roger Qwarani's evidence was very clear. The threat was to take his dead body would be returned to Sola.

Threats to kill a person is a very clear. The threat was to take his life and that only his dead body would be returned to Sola.

13.2.Threats to kill a person is a very serious offence under section 115 of the Penal Code Act [CAP.135] as it carries the maximum penalty of 15 years imprisonment. John Jack should consider himself fortunate that he was not charged with that offence.

13.3.When threats of that nature are made in the environment and circumstances existing at the time on Merelava, the Court is satisfied that those threats were very serious as it amounted to battery on the Police officer against whom those threats were made and more so as a breach of the peace in the community of Merelava Island.

13.4.The arrests of all the claimants on Merelava by the Police on 7th February 2013 were therefore warranted and those arrests were not unlawful. It follows logically also that the taking of the claimants by the Police to Luganville, Santo and their subsequent custody



in Cell No. 6 and at the Correctional Centre until 5:00pm on 8th February 2013 did not amount to false or unlawful imprisonment.

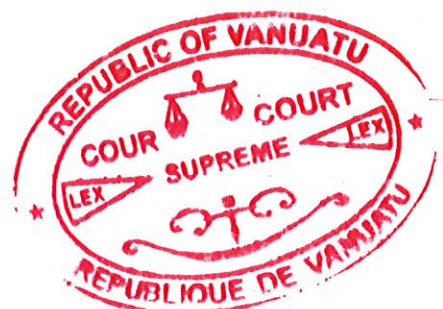
13.5. The Police have powers to arrest person without warrants under section 12 of the Criminal Procedure Code Act [CAP.136] (the CPC Act), when they suspect on reasonable grounds that those persons have committed cognisable offences.

The evidence of Roger Qwarani was that (a) John Jack and the others obstructed the police in the execution of their duties when they refused to be taken to Sola for their statements to be taken, (b) the claimants had committed unlawful assembly and (c) John Jack had committed threats to kill. These are cognisable offences for which the police have the power to arrest without a warrant.

13.6. Section 18 of the CPC Act provides for detention of persons arrested without a warrant and the period. The evidence was that subsequent to their arrests on 7th February 2013 RVS Turoroa left Merelava at 3:30pm arriving in Luganville at 8:30pm where the claimants were kept in custody at Cell No.6. The next morning they were taken to the Correctional Centre and kept under a Warrant of Remand and released at 5:00pm on 8th February 2013. I am satisfied that section 18 of the CPC Act was complied with by the Police and therefore there was no false imprisonment done by the Police as agents of the State.

14. (C) The next issue raised by Counsel for the Defendant was whether the claimants were assaulted by the Police?

14.1. The evidence of John Jack and Fred Wotal were that they were assaulted by the Police. However their evidence including the evidence of their witnesses fell short of identifying the police officers who caused the assault. The State cannot be responsible for unlawful actions of Police Officers falling outside the ambit of section 40 of the Police Act [CAP 105].



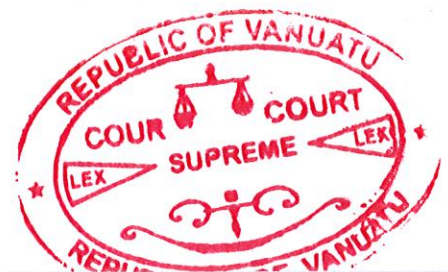
14.2. It is important that victims should identify their assailants and sue them personally. The evidence of the witnesses who said that the police broke a gun barrel on John Jack's neck is an over exaggeration and is not at all consistent with Dr Kasso's medical report dated 8th February 2013. According to that report there were no injuries to the neck in any way. The Court rejects those evidence. There is no medical evidence by Fred Wotal, Charlie Aswel and Ali to confirm their evidence that they too were assaulted by Police during the arrest.

14.3. I am therefore not satisfied that the claimants John Jack, Fred Wotal, Charlie Aswel and Ali are entitled to any damages for assaults they alleged were inflicted on them by the police.

15. (D) Finally as to whether or not the claimants are entitled to damages?

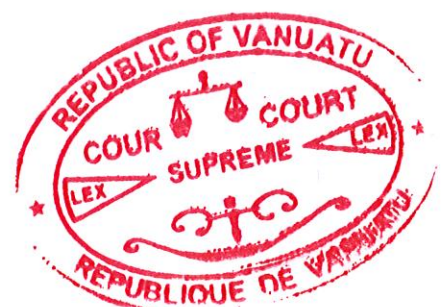
15.1. The answer to this issue is in the negative. First, the claimants Harry Aswel, Alfred Wotal, Nelson Robert, Daniel Wotal and Ati Aswel have not given any evidence substantiating their claims. Second, none of the remaining claimants have shown any evidence of their losses to gardens, animals and birds. Thirdly, claimants Robert New has not given any evidence showing he test fired the guns or rifles he took with him to Merelava. Fourthly Fred Wotal has no evidence showing he built any house. The Court draws the inferences that the purposes of Robert New, Fred Wotal, Daniel Wotal and Ali was to accompany John Jack in his endeavours to sort out the airport dispute. And it is their clear evidence that they took their guns with them. There is no evidence by Fred Wotal as to how many flying foxes he shot at the time. The evidence of Roger Qwarani is that he saw Fred Wotal with his rifle and there is no rebuttal of that evidence.

15.2. John Jack was charged with unlawful assembly and intentional assault. He was convicted on both charges but he was only sentenced to a minor fine for the intentional assault charge. He go away with the unlawful assembly charge which is a more serious charge without any sentence. The Public Prosecutor did not appeal that sentencing in any event. It is clear from the conviction and sentence order dated 19th December 2012 that all the other claimants were part of the unlawful assembly which occurred on 1st



December 2012. However they can consider themselves lucky that they were not charged with inciting and soliciting the offence of unlawful assembly under section 35 of the Penal Code Act. That possibility remains open for the prosecution.

16. The Court would pose another question of whether all the events complained of by the claimants would have happened if John Jack, Fred Wotal and Robert New had not gone to Merelava? The only possible answer would in my view be “NO”.
17. In all their evidence it is clear that they knew about the dispute of the airport and the current situation or tensions existing at the time. Yet despite their knowledge they took decisions to travel to Merelava and they travelled with guns. The evidence show 4 rifles taken by the Police from the claimants at the time of their arrests.
18. It is perhaps not surprising that a Ministerial order was issued on 30th January 2013 authorising the use of arms and pyrotechnics by the Police on Merelava specifically and in Torba Province generally to calm down any civil and criminal uprising.
19. It is clear therefore that John Jack, Fred Wotal, Robert New and all the other claimants who associated themselves to these men were the authors of their own fate or misfortune. As such they cannot now shift the blame of their misfortune on the police or the Republic by seeking compensation or damages.
20. All their claims are vexatious. They had no evidence showing any special losses. It was the Police and the State instead that suffered substantial losses by staging Operation Lava at the time. It was the claimants who had brought about the situation and therefore their claims cannot be justified under those circumstances.



Conclusion

21. All claims by the claimants fail in their entirety and accordingly they are dismissed.
22. In the circumstances of the case, it is proper that there be no order as to costs. Each party must pay their own costs.

DATED at Luganville this 11th day of December 2015

BY THE COURT


OLIVER.A.SAKSAK

Judge

