

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

Civil Case No. 13/140 SC/CIVL

BETWEEN: ZACHEUS SORINA

Claimant

**AND: THOMAS DARA, WILLIE DARA,
SISIGNAL LINI, HENSLEY LINI, ANDREW
SINE, SINE MALURI, TAMATA VANUA,
WOLFORD LEO, WILLINGTON LEO,
ERON LINI, VWALAU LOLO, GODWYN
SOVRA AND BULE SINE**

Defendants

Coram: Chief Justice Vincent Lunabek

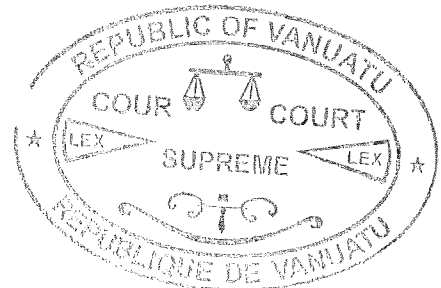
Counsel: Mr. Colin Leo for the Claimant

*Defendants are not legally represented and are not attending the court
(See details of process of service and statements as to proof of service on each
defendant in court file records).*

Date of Judgment: 29th April 2019

REASONS FOR JUDGMENT

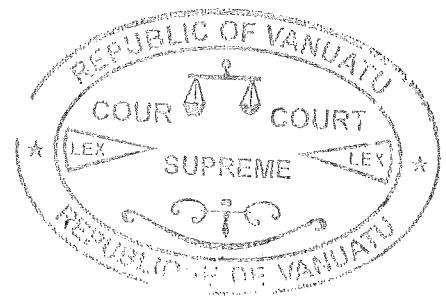
1. This is a claim for damages arising out of personal injuries sustained by the claimant as the result of assaults by each and all defendants individually and together on the body of the claimant on 5 April 2013.
2. The claimant sustained serious injuries as the result of the assaults. He claimed for damages as follow:
 1. General damages:
 - For permanent disabilities estimated at 70% at VT5,000,000.
 - Pain and suffering at VT700,000.
 2. For special damages of VT400,000.
 3. Totaling VT6,100,000.



4. Interests at 12% on the amount of VT6,100,000.

Brief back ground

3. The Claimant and each of the Defendants are citizen of Vanuatu and are natives of Pentecost Island in the Republic of Vanuatu. They all live at Levondo Village on Pentecost Island.
4. On 5 April 2013 at 10.00am O'clock, the defendants, led by a former local councilor, trespassed into the house of the claimant armed with knives, iron, and stones and stick woods and seriously assaulted the claimant. Following defendants took part in the assaults on the claimant on 5 April 2013: Thomas Dara, Wille Dara, Sisignal, Hensley Lini, Andrew Sine, Sine Mahuri, Tamata Vanua, Worlorord Leo, Wellington Leo, Eron Lini, Vwalau Lolo, Godwyn Sara and Bule Sine.
5. The claimant tried to talk to them but because there were many of them, they started assaulting him and wiping him with iron, cut him with knives and stoned him with stones. They assaulted the claimant when he was at the grave yard of his father. As the result of the assaults, he was covered with blood and felt down aside the grave of his father and lay there unconscious with serious injuries. It was not the first time he was assaulted by the Defendants. When he was assaulted, he was weak and could not walk.
6. He attached a copy of the medical report Mr Amos Tabi made when he examined his body on 5 April 2013. Tabi's medical report dated 6 April 2013 show the following:-
 1. The patient was generally weak and pain.
 2. He was unable to walk and was brought to the Health Centre on a bed.
 3. Dried blood was seen all over his face and hands which dried with sand and mud.
 4. Swelling of the face, lips back and lower left leg.
 5. Open cuts on both hands with deep holes measuring 3 to 4 cm.
 6. Painful tooth which were movable.
7. Doctor Richard Walsh Leona examined the claimant on 3 May 2013 at Vila Central Hospital and he provided a report on 17 June 2013.
8. He read the report done by Mr Tabi. The claimant report to him that he was assaulted by a group of men on Pentecost on 5 April 2013. They used spears, iron, metal, stones and knives in assaulting the claimant. The spear pieced his right proximal posterior forearm. He received a metal bar blow on the frontal occiput and on the lateral aspect of the left

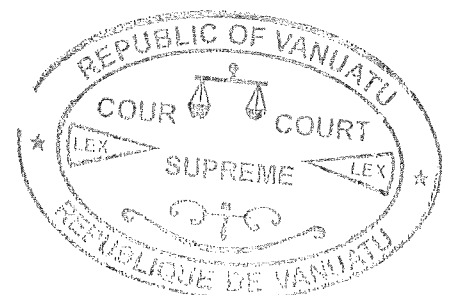


knee. The men also speared him on the lateral aspect of the left forearm. They wiped him on the posterior track with sticks and iron metal bar. He received punches to the face, teeth and posterior neck. He was initially treated at Mauna Health Centre on North Pentecost.

9. On his assessment, the claimant continued to have postural dizziness. He has lost normal taste of food and looseness of front lower molar teeth. He complains of left and right knee pain on walking. He continues to have generalized body pain at rest and exertion.
10. On examination, he has scars on the frontal posterior right forearm and left posterior forearm. There is tenderness on the lateral and medial aspect of the left knee. The X-Ray shows no bony destruction. However, he has evidence of tear of the left lateral meniscus. He also has fracture of the distal right ulnar which has been treated. He will continue to have ongoing pain in the area of injury throughout his life. He also has evidence of psychological trauma due to the assault.
11. Based on the physical and psychological findings, he has following permanent disabilities due to the injuries he received:
 1. Postural dizziness
 2. Left knee meniscal tear
 3. Risk of early left osteoarthritis
 4. Ongoing generalized musculoskeletal pain.
 5. Psychological trauma
 6. Frontal occiput scars

These incapacities represent a total of 70% permanent disabilities.

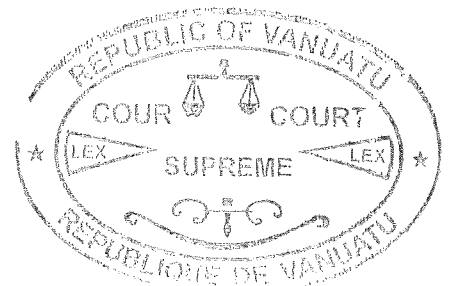
12. The defendants are not legally represented nor present at any court hearings or sittings. There were many adjournments and time given to the Defendants to respond to the Claim for damages, sworn statements, and application for default judgment of 3 March 2013, Notice of hearings on liability, notices of hearings on assessment of damages dated 20 June 2014. The documents were all served on each and all defendants with proved sworn statements of service on each and all of them. No responses filed. No statements filed. The court is satisfied they are all served.



13. Judgment by default was issued on liability in favour of the claimant against the defendants jointly and severally on 3 March 2013 for the assaults inflicted by the defendants on the person of the claimant on 5 April 2013.
14. The facts are not disputed. As the result of injuries the claimant sustained on his body on 5 April 2013 and based on the medical report in support, the claimant has 70% of permanent incapacity.
15. Mr Leo's brief submission on behalf of the claimant on the assessment of damages is to the effect that the claimant is entitled to general damages and special damages outlined in the claim.
16. Mr Leo summarizes Vanuatu local cases on personal injuries. He also provided a copy of "Guidelines for the assessment of general damages on personal injuries cases (2002) compiled by the United Kingdom Judicial Studies Board, if the court is mindful to consider as a starting point for quantifying monetary amounts as adopted by Tuohy J in Obed v. Kalo [2008] VUSC 47; Civil Case No. 221 of 2006.
17. I am grateful to Mr. Leo for the assistance provided in his helpful submissions with relevant local case authorities in particular: Lansonneue v. Barge 4 Lawndes Lambert Pacific Limited (1980 -88) 1984; Solzer v. Garae 4 Anor [1992] Brand [2005] VUSC 71; Civil Case No. 189 of 2004; Enterprise Roger Brand v. Hinge [2005] VUCA 21; Civil Appeal Case No. 13 of 2005; Alphonse v. Tasso [2007] VUSC 54; Civil Case No. 21 of 2005; Obed v. Kalo [2008] VUSC 47; Civil Case No. 221 of 2006; Atis v. Natapei [2010] VUSC 176.
18. There is no any detailed quantitative evidence or precedents to support the various amounts claimed. My instinct impression is that they are arbitrary figures without any proper or sound basis.
19. Given the above, I must do my best, based on the claim, the statements and the medical reports filed in support to award damages in this case under the following heads and for the enumerated amounts:-

(1) Special Damages

The claimant claimed VT400,000 for special damages. There is no evidence tendered on the special damages nor bills or receipts of any expenses. Amounts of special damages claimed have to be specifically proved. Here nothing. No evidence. I will do



what I can. The claimant was seriously assaulted by a group of men on Pentecost Island on 5 April 2013. He was first treated at the Mauna Health clinic at North Pentecost on the same date of his injuries. He was examined and assessed at Vila Central Hospital on 3 May 2013. He must have travelled from Pentecost to Port Vila, he may have been accommodated or rent an accommodation and had food while in Port Vila. No evidence. I do my best and award a minimum amount of VT50,000.

(2) General Damages

(a) Pain and suffering (past and future)	VT 300,000
(b) Loss of amenities and enjoyment of life	VT 500,000
(c) Permanent disability and scarring	VT1,500,000
(d) Loss of future earning capacity	<u>VT 500,000</u>
Total	<u>VT 2,800,000</u>

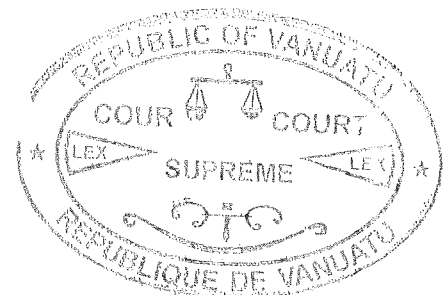
20. When I award the amounts, I do not have evidence of the claimant's age, job and present or future plans on his life. The brief evidence says that he is a native of Pentecost and he lives in his village on Pentecost. I assume he is an adult and a farmer in his village to sustain his living. There is some degree of impression and guess involved on my assessment. There is also an element of uncertainty to project into the future. In such a situation, I bear in mind of the local living standings and economic conditions.

21. The claimant is also awarded interest of 5% per annum on the special damage amount from the date of the time he is in Vila for treatment to the date of the judgment.

22. In summary, the claimant is awarded damages fixed as follows:

- General Damage	VT2,800,000
- Special Damages	VT 50,000
- Interest on special damages 3 May 2013 to 29 April 2019	<u>VT 15,000</u>
Total	<u>VT 2,865,000</u>


23. This was a joint assault. The above names thirteen (13) Defendants are jointly and severally liable for the full amounts. So judgment is against each of them in that amount.



24. The claimant is also entitled to costs to be agreed or determined by the Court. As the Defendants are on Pentecost Island, there will be an enforcement conference on a date and time to be fixed by the Master to examine each defendant about how they propose to pay the judgment. Summons in Form 24 are to be served upon the Defendants by the Sheriff at a date to be indicated by the Master. Costs will be fixed at that conference if not earlier agreed.

DATED at Port Vila, this 29th day of April, 2019.

BY THE COURT


Vincent LUNABEK
Chief Justice

