

**IN THE BANKS/TORRES ISLAND COURT CIVIL CASE NO 2916 OF 2021
OF THE REPUBLIC OF VANUATU**

.....
(Civil Jurisdiction)

BETWEEN: RODRICK MOFFET

Claimant

AND: JACK WONA & OLFIELD POLICAP

First Defendant

AND: EDDIEN WONA

Second Defendant

AND: KALFAU POLICAP

Third Defendant

**CORAM: Justice Raymond SIPLAQ
 Justice Leolyn ROSLYN
 Justice Keith HOPKINS**

Clerk: Dimas ARU

DOH: 18th October 2021

DOJ: 18th October 2021

CASE: COMPENSATION CLAIM BLONG MUSIC SPIKA WE I DAMAGED

JUDGEMENT

Introduction

1. Claimant hemi stap claim from wan speaker blong hem we hemi claim se second mo third defendant tufala I stap iusum, mo tufala first defendant oli bin damegem.

2. Hemi claim blong every defendants oli jointly compensateitem hem.

Issue:

3. I gat 2 issue I stap bifo long Court blong hemi lukluk long hem;

a) Sapos I tru se ol first defendants nao oli bin distroeyem spika ia.

b) Sapos I tru, whu nao I sud responsipol blong compensateitem spika ia.

Claim blong Claimant

4. Claim blong claimant hemi ko olsem;

5. *“Long 24th July 2021 (long morning), Second defendant Eddien Wona wetem de facto partner blong hem oli bin kam luk mi long Nerekasal. Tufala I askem blong iusum speaker blong mi.*

6. *Tufala I askem blong ko lisin long hem long rum blong tufala. Mo mi letem long tufala.*

7. *Speaker ya hemi cost 79,000 Vatu.*

8. *Long sem day ya yet Second defendant mo third defendant oli drong (wetem sam nara boy). Mo oli iusum speaker blong mi ya.*

9. *Around mid-day long sem day ya, I gat wan faet I broke out we I involvem Eddien Wona.*

10. *Nao around long taem ya too tufala first defendant oli kam tru long olgeta ya we oli stap drong. Instead blong tufala I tok or kwaetem olgeta we oli drong ya, oli damegem speaker blong mi ya.*

11. *Sem day ya yet (24th July 2021) sam ples long aftanun, two boy oli tekem speaker ya i kambak long mi. Speaker ya hemi totally damaged. I nomo on, mo I nomo singsing.*

12. *Long next day, mi bin kam blong jekem olgeta blong oli compensateitem speaker ya.*

13. *Mi bin ko luk Olfield Policap fastaem. Mo hemi talem se bae hemi no save pem bak. Hemi se Eddien mo Kalfau wetem ol boy we oli drong nao bae oli pem bak speaker ya.*
14. *Mo mi bin ko luk Jack Wona. Nao hemi talem blong mi faelem case ya long Court.*
15. *Mo mi bin ko luk Second mo third defendant. Nao tufala I promisim mi se bae oli pem bak speaker ya long wan manis taem. Nao mi talem long tufala se bae oli pem bak long two installments. First payment (half) long 2 weeks mo nara wan long end blong manis. Oli agree.*
16. *Long two weeks taem mi kam luk tufala, oli se oli no ready wetem mani ya yet.*
17. *Mo long end blong manis, taem mi ko, Kalfau hemi kivim 10,000 Vatu. Mo hemi se bae oli pem bak ol remaining behind.*
18. *Second defendant Eddien, taem mi stap luk hem, hemi stap kiaman long mi se Friday nomo. Be hemi never kivim wan mani kasem tede.*
19. *Mi bin traem ol nara effort blong mekem oli pem bak speaker ya, olsem mi ripotem long Police mo ol Police oli bin luk olgeta be oli no mekem any attempt blong mitim demand blong mi."*
20. *Claimant hemi stap claim from 50,000 Vatu wetem 1,000 Vatu olsem fee blong tekem case I kam long court blong ol defendants oli jointly pem.*

Defense & Counter-Claim

21. *Long response, defendant Jack Wona hemi faelem form blong response, mo hemi dispiutim part blong claim.*
22. *Defendant Oldfield Policap hemi faelem form blong response, mo hemi dispiutim part blong claim. Mo tu hemi faelem wan defense mo counter-claim.*
23. *Hemia hemi defense blong hem;*

Hemi talem se hem hemi wan chief insaed long council of jifs blong Sola.

Hemi agri se claimant hemi gat raet blong claim from spika blong hem. Be hemi wantem se claimant hemi mas prufum value blong spika mo jastifaeyem wetem wan receipt.

Mo hemi steitem se igat risen why oli bin damegem spika ia. Hemia nao hemi ol risen blong hem;

- Taem we incident ia hemi happen, I bin gat ban long alcohol consumption we Minister responsible hemi bin mekem. We I minim se I tapu blong drink alcohol. Mo taem ia tu yumi stap long wan state of emergency [SOE]. Taem ia second mo third defendant mo ol nara boe oli stap drink mo oli stap iusum spika ia. Mo hem wetem Jack olsem ol first defendant oli mas brekem spika ia blong ol boy ia oli wanwan. Hemia hemi in line wetem SOE mo order we Minister hemi mekem.
- Nara risen hemi blong avoidem ol incidents we I bin happen long past. Hem olsem chief we I lukaotem ol pipol, hemi talem se alcohol hemi wan samting we I stap kosem fulap problem long area blong hem. Mo miusik nao hemi contribute plante blong ol boy oli stap iusum blong drink. Fulap taem ol boy oli end up blong faet mo fulap oli stap karem kill. Samfala I kosem plante damage long ol properties. Fulap I stap kosem disorder long ol public area we I stap kosem fear mo threat long public.
- Oli bin brekem tu blong avoidem ol samting we I stap happen long taem ia tu. Taem ia igat plate noise, mo sam long olgeta oli stap faet. I mekem se oli mas brekem, mekem se oli boy long taem ia oli ko wanwan, mo noise tu I ko daon.

Folem ol risen ia, hemi talem se wanem we oli mekem hemi stret, mo oli act from safety mo welfair blong community. Therefore, hemi submit se olgeta we oli sud pem spika ia hemi second defendant, third defendant mo ol nara wan we oli bin drink long taem ia.

Mo lastly, olsem wan counter-claim, hemi stap claim blong claimant Rodrick hemi mas faen I ko long hem from hemi bin letem spika blong hem long ol boy long taem ia blong oli drink wetem. From we oli drink long area we hemi lukaotem.

24. Second mo third defendant oli faelem response blong olgeta mo oli agree se claim hemi correct.

Appearance

25. Every party long case oli apia long court.

Discussions

26. Second mo third defendant oli plead liable.

27. Tufala fes defendants oli denaeyem part blong claim we I stap agensem tufala I mekem se case ia hemi ko long trial folem Rule 6(6) blong *Island Courts Civil procedure rules*.

Evidence blong Claimant

28. Claimant hemi toktok in support long claim blong hem.

Cross-Examination

29. Hemi confirm bakeken se Eddien Wona nao hemi bin ko tekem spika ia long hem long Nerekasal. Mo taem we spika I damaged, Eddien nao hemi bin confirmem se tufala fes defendant nao oli brokem.

30. Mo hemi talem se risen blong tekem case I kam long court hemi from ol defendant oli fail blong pem bak spika ia. Mo defendant Jack Wona tu hemi bin insist blong hem I faelem case long Court.

31. Hemi confirm tu se spika ia hemi pem long Australia, mo amount we hemi claim hemi excludum ol nara expenses osem freight mo ol nara costs.

32. Hemi confem tu se hemi bin risivim wan part payment blong 10,000 Vatu long Kalfau Policap.

Evidence blong Defendant

Defense blong defendant Jack Wona

33. Defendant ia hemi bilif se sapos ino spika ia, bambae ol boe bae oli no save drong. From miusik nao I mekem oli drong mo oli faet, mo oli mekem noise. I mekem oli mas kam in blong brekem.

34. Hemi talem tu se hem I no agri wetem cost blong spika ia, unless claimant hemi justifaeyem wetem wan receipt. Hemi se hem I gat wan

spika we I semak olsem be hemi 69,000 Vatu nomo be hemi no 79,000 Vatu olsem we I stap long claim blong claimant.

35. Hemi no agri tu se claimant hemi bin ripotem long Police mo ol Police oli bin kam luk olgeta from spika ia. Hemi se sapos I tru, oli sud stretem issiue ia bitwin olgeta finis.

36. Hemi talem tu se spika ia hemi no wan niufala spika. Mo valiu blong hem I sud ko daon finis. Hao nao hemi save justifaeyem long claim blong hem se value blong hem I stap semak.

Defense blong defendant Olfield Policap

37. Hemi toktok in support long defense steitment blong hem.

Cross-Examination

38. Hemi kam blong talem se sapos ino spika ia, bae ol boe bae oli no save drong. From miusik nao I mekem oli drong mo oli faet, mo oli mekem noise.

39. Part blong hem olsem wan chief I blong protektem welfea blong ol pipol blong hem wetem ol property we I stap long community blong hem. Hemia I inkludum ol boy ia we oli stap drink tu.

40. Hemi talem tu se spika ia hem I bin destroyem long door blong hem, we I minim se hemi gat raet.

41. Defendant Oldfield hemi submit bakeken se ol boe we oli part blong drink nao oli sud pem, be ino hem wetem Jack Wona.

Ol findings blong Court

42. Second defendant mo third defendant oli bin admitim mo agri long steitment we I ko akensem tufala.

43. Tufala first defendant oli bin admitim se tufala nao I destroyem spika ia. Mo Court I faenem se oli gat reason blong brekem. Ol risen hemi from seifti mo welfea blong community. Hemia I inkludum ol mama, ol pikinini mo ol property we I stap. Mo even olgeta we oli stap drong tu.

44. Court I faenem tu se value blong spika ya bae hemi no save stap olsem we I niufala.

45. Mo I bin gat wan 10,000 Vatu we third defendant hemi pem I ko long claimant. Hemia court bae I considarem taem hemi mekem decision blong hem.

46. Findings blong Court hemi olsem;

a) *Sapos I tru se ol first defendants nao oli bin distroeyem spika ia.*
Ansa hemi yes.

b) *Sapos I tru, whu nao I sud responsipol blong compensateitem spika ia.*

Long issue ia, folem faendings blong court, every defendants ia bae oli no save bearem sem amount blong liability from involvement blong olgeta I no semak.

Long view blong court, second defendant nao hemi sud bearem highest liability from we hem nao hemi tekem spika ia, mo tru long hem nao ol boe oli bin drink mo I result se I bin damaged.

Third defendant nao hemi sud bearem second highest liability. From hemi I bin agri wetem steitment blong claim, mo hem tu I bin drink wetem second defendant wetem ol narafala boe.

Tufala first defendant, although tufala I liable, be court hemi agri se aksen we oli tekem hemi olsem defense.

Folem ol faendings ia, hemia hemi decision blong Court;

DECISION

47. Court hemi stap mekem decision se amount we ol defendants oli liable blong pem hemi 41,000 vatu instead long 51,000 vatu. Hemia from we spika ia hemi wan used spika mo hemi mas lusum sam value blong hem. Mo Court I stap ditaktem tu 10,000 Vatu we third defendant hemi bin pem iko long claimant I mekem se total amount we bae ol defendants oli jointly pem iko long claimant olsem compensateisen hemi 31,000 Vatu.

48. Hemia nao hemi breakdown blong amount we each defendant I sud pem iko long claimant;

- I. Second defendant, Eddien Wona, Court hemi stap odarem yu blong pem I ko long claimant wan amount blong 24,000 Vatu olsem compensateisen blong spika ia.

- II. Third defendant, Kalfau Policap, Court hemi stap odarem yu blong pem I ko long claimant wan amount blong 5,000 Vatu olsem compenseisen blong spika ia.
- III. Tufala first defendants, Jack Wona mo Oldfield Policap, Court hemi stap odarem yutufala blong pem I ko long claimant wan amount blong 1,000 Vatu each olsem compenseisen blong spika ia.

49. Sapos anywan we I no agree wetem decision ia, hemi save apil within 30 days long date we judgment ia hemi kamaot.

Dated long Sola- VANUA LAVA, this 18th October 2021

BY THE COURT

.....
Justice Raymond SIPLAQ

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Justice Leolyn ROSLYN

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Justice Keith HOPKINS