

BETWEEN: GEORGE REUBEN PAKOA
FRED REUBEN PAKOA
JOEL JACK

Appellants

AND: REPUBLIC OF VANUATU
Respondent

Coram: *Hon. Justice John Mansfield*
Hon. Justice John Hansen
Hon. Justice Oliver A. Saksak
Hon. Justice Dudley Aru
Hon. Justice Stephen Felix

Counsel: *Colin Leo for the Appellants*
Sakiusa Kalsakau for the Respondent

Date of Hearing: 10th July 2019

Date of Judgment: 19th July 2019

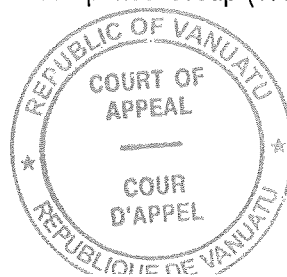
JUDGMENT

Introduction

1. On the 11th of April, 2019, the Supreme Court entered judgment on the assessment of damages following this Court's determination of liability against the respondent in an earlier proceeding.
2. The appellants' appeal against that judgment of April 11th 2019, was advanced on two grounds. Firstly that the amount awarded was manifestly inadequate and insufficient in the circumstances of this case; and secondly that the judge was wrong in not following the guideline set out in the case of Warte v Republic of Vanuatu [2013] VUCA 10, and by not granting exemplary damages against the respondent.

Facts

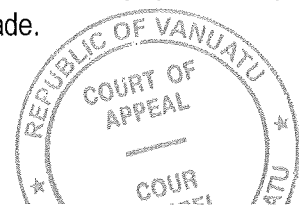
3. The appellants had originally, through a Supreme Court claim filed on the 14th of March 2014, sought damages against the respondent in respect of an arrest and detention by a group of Police Officers attached to the Tactical Response Group (TRG) Unit within the Police in Port Vila on the 18th of December 2012.



4. The statement of claim then pleaded unlawful arrest and detention and trespass on the appellants' persons.
5. The amount of damages sought was VT2.4 million for deprivation of liberty, VT500,000 for injury to feelings and VT1 million for trespass for each of the three appellants.
6. The claim for trespass was later abandoned before trial by counsel for the appellants;

Supreme Court Judgment on Damages

7. The primary Judge noted that the appellants' claim for trespass had been discontinued by the appellants' counsel during trial on March 1st, 2018 but not in their claim for a relief in the form of exemplary damages;
8. The position in law, as stated in the Court of Appeal cases of Nelson v Public Prosecutor [2018] VUCA 17 and in Warte was indeed correctly applied by the primary Judge in his approach when assessing the damages and outlining that: "*... an hourly rate or daily rate is simply an incorrect way to assess the proper damage ... one must consider the circumstances of the unlawful imprisonment and the circumstances of the detainees*".
9. The cases relied upon by the appellants' counsel as comparators namely Warte and Elisa v Government of the Republic of Vanuatu [2004] VUSC 93 were very different in circumstances.
10. As summarised in paragraph 7 of the judgment of the Court below of April 11th, in Warte, the detention was for about 3hours and the damage assessed were VT 600,000 for one detainee and VT 400,000 for the other. The facts are far more serious than this present case. There were also a number of aggravating factors that were considered in determining the amount of damages that was awarded. And in Elisa, the detention was for 20 hours and the damages assessed were VT 150,000 but considering the fact that the detainees were taken out from their home island to another island.
11. In the paragraphs 8 and 9 of the judgment, the primary Judge clearly distinguished Warte and this case. The appellants were arrested from their place of work in Port Vila by Police officers in the course of investigating a complaint of an alleged Intentional Assault offence. They were taken into the Vila Police Station, stripped, held in Cell 6 and released 24 hours later. During the time in the cell, they were given little water and 2 biscuits to sustain them.
12. In paragraph 10 of the his judgment, the primary Judge considered the sworn statements of the three appellants and found nothing of such a character to warrant any significant uplift of damages due to them by way of exemplary damages.
13. The primary Judge then accepted the submissions of the respondent's counsel and awarded a total of VT100,000 damages for injury to liberty and VT50, 000 damages for injury to feelings to each of the appellants; and no award of exemplary damages was made.



14. The primary Judge also, by consent of both parties, ordered total costs of VT850,000 against the respondent including the costs of the trial on liability.

Discussion

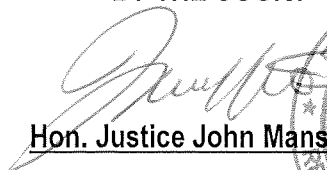
15. The respondent filed a cross-appeal on two grounds but it was abandoned during the course of this appeal. The submissions that this appeal was out of time and the submission that the damages of VT150,000 awarded should be reduced to VT50,000 need not be considered. The cross-appeal is therefore dismissed.
16. Counsel for the appellants accepted in the course of the proceeding that the primary Judge correctly applied the law as stated in relation to the type of damages they can claim;
17. The primary Judge carefully considered the decisions in Warte and Elisa and distinguished them from this case. We agree with his analysis as set out in paragraphs 10, 11 and 12 above.
18. We accept the findings of fact made by the court below. They were not challenged. We see no reason to interfere with the assessment made and the damages awarded. They were clearly within the range of damages which might have been awarded.
19. The claim for exemplary damages was never pleaded in the original statement of claim. The fact that it was pleaded and awarded in the case of Warte does not give the appellants the right to claim such a relief in this case, and to suggest that this relief was included in the last relief sought in the statement of claim under the heading "*such further orders as the Court deems just*" is not acceptable because it defeats the purpose of pleadings, which is to provide clear notice to the other side concerning the specific controversies. In any event, Counsel for the Appellants did not point to any particular findings of fact on which an entitlement to exemplary damages could be awarded.

Conclusion

20. The appeal is therefore dismissed.
21. Costs of this appeal are awarded in favour of the Respondent fixed at VT30,000

DATED at Port Vila, this 19th day of July, 2019.

BY THE COURT


Hon. Justice John Mansfield.

