

**BETWEEN:**        **BRIGIT ROLLAND** representing  
                         **JORDAN ROLLAND**  
                         Claimant

**AND:**            **MIM MING WENG**  
                         Defendant

*Mrs. Malites. P for Claimant*  
*No appearance of Defendant*

*Date of hearing: 27 April 2021*  
*Date of Judgment: 01 July 2021*

## **JUDGMENT**

This is a claim for damage caused by assault.

The matter was listed for trial on 08 March 2021. The Defendant failed to appear. The Court adjourned the trial this morning. The Defendant made no attempt to attend trial even though he was served with notice. The Court had provided the Defendant time to show up for trial. The Court in consideration of Rule 12.9 of the Civil Procedure Rules No. 49 of 2002 gives permission to the Claimant to call his evidence to establish if he is entitled to judgment against the Defendant.

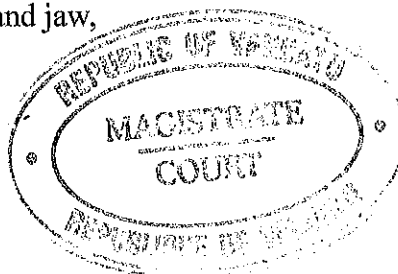
### **Facts**

The Claimant was 14 years of age in 2019. He attends the NTM school located at Agathis area. On 13 November 2019, during a morning break, the Claimant accompanied by his nephew Excel Kalwat aged 7 years went to the Defendant's shop to buy a packet of biscuit. The Claimant claimed that the Defendant made the following acts:

- (a) grabbed his neck and drop him on the ground,
- (b) punch his jaw,
- (c) slapped him on the back of the head,
- (d) teared two button of his uniform shirt,
- (e) Claimant had fear and peed in his pants.

The Defendant's action caused the following to the Claimant:

- (a) minor injuries to his neck and jaw,
- (b) fear and tears,
- (c) humiliation.



## Issues

- a) Whether the Defendant assaulted the Claimant?
- b) Did the Defendant tore the Claimant uniform shirt?
- c) Did the Defendant injured the Claimant?

## Claimant's case

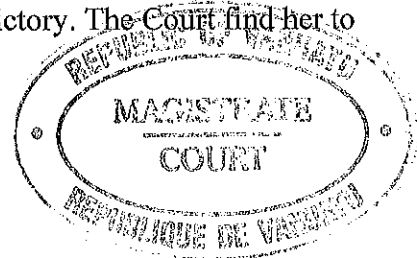
Ms. Brigitte Rolland Kaluatman is the mother of the Jordan Kaluatman. She filed the claim on behalf Jordan Kaluatman. She said that on 12 November 2019, her daughter called her at her work place to say that a Chinese man assaulted Jordan Kaluatman and that caused Jordan Kaluatman to peed in his pants. She also informed the witness that the Defendant tore two button from Jordan's uniform. She told her daughter to put everything into a plastic bag and bring it to the police station. The next morning, she took Jordan to the police station. The police took them to the Defendant's shop but nothing can be done since the Defendant could not speak or understand Bislama. She is a credible and reliable witness.

Rolland Kaluatman is the father of Jordan Kaluatman. He said he wrote a letter to the Family Protection Unit concerning the assault made on Jordan Kaluatman. He wrote the letter so there can be some assistance from the Family Protection Unit section. He is a credible and reliable witness.

Elijah Kakato is a teacher at the NTM school. He said that on 13 November 2019 he went to a food stall near a shop at Tagabe area. He saw the Chinese man slapped the back of Jordan's head and then Jordan ran towards a yard. This is contradictory to his police statement exhibit "C2". His police statement indicated he did not see what happened but only heard Jordan shouted twice "awe". He saw a Chinese man ran after the Jordan Kaluatman. The Chinese man was shouting and say something to Jordan but he could not understand what the Defendant was saying. He saw the NTM school Chaplin came and talked with Jordan. After the incident, he went back to school. He is a credible but not a reliable witness.

Jordan Kaluatman is 15 years of age. He is the victim in this case. He said the Defendant assaulted him at a food stall near NTM school. He said he went to buy a packet of biscuit from the Defendant's shop. The Defendant had no change so he went to the food stall to buy something. He was at the food stall when the Defendant came and assaulted him on his jaw. He tried to protect himself so that the Defendant will not punch his face. In his police statement, this witness said the Defendant held his neck and punch him and slap the back of his head. The statement given by this witness is contradictory. He said the Defendant tore two buttons from his uniform shirt. He was so scared that he peed in his pants. The Court finds him to be a credible but not a reliable witness.

Helen Navong was the vendor at the food stall. She said that the Defendant slapped the back Jordan Kaluatman's head. She said the Defendant was not a kind person. Her police statement exhibit "C4" stated that she only saw Jordan Kaluatman ran past her into a yard and was called out twice "awe". She asked her friends and they told her that the Defendant slapped back of Jordan's head. She said the Defendant was shouting out to Jordan in the yard but she could not understand what the Defendant was saying to Jordan. Her evidence in Court and her police statement are contradictory. The Court find her to be a credible but not reliable witness.



## Discussion

In answer to issue (a) above, the Court is satisfied that the Defendant only slapped Jordan Kaluatman on the back of his head. The Court is not satisfied that the Defendant assaulted Jordan Kaluatman on his jaw or punched him on his face. Punching on the face and his jaw were alleged by Jordan Kaluatman. There is no evidence to back up this allegation by the other witnesses.

In response to issue (b) above, the Court is not satisfied that the Defendant tore two buttons from Jordan Kaluatman's uniform shirt. There is no evidence to support the allegation made by Jordan Kaluatman.

In response to issue (c) above, the Court answer in negative. No medical report to support the alleged injuries.

The Court is satisfied that Jordan Kaluatman was afraid when the Defendant slapped him on his head. A normal person would not react in such manner unless he or she was provoked. Even though Jordan Kaluatman denied any provocation in Court. The Defendant is not in Court to challenge this concept. Thus, the Court will award damage to the Claimant at the end of the scale for fear and humiliation caused to him by the Defendant.

## Order

The judgment against the Defendant as follows:-

- Slap on the back of Jordan Kaluatman's head and grabbing of his neck - VT100, 000.
- Humiliation and fear award in the sum of VT10, 000.
- Interest of 5% of the judgment in the sum of VT13, 500

Final judgment against the Defendant shall be VT123,500 which shall be paid within 30 days. The Defendant shall also pay costs of this proceeding in the sum of VT10,000.

This matter is listed for enforcement on 05<sup>th</sup> August 2021 at 9.00am in the morning for hearing.

DATED at Port Vila, the 01<sup>st</sup> day of July 2021

BY THE COURT

