

(Civil Jurisdiction)

BETWEEN: MALTO BONG ALICK

Plaintiff

AND: THE COMMISSIONER OF
POLICE

Defendant

Coram: Mr Justice Oliver A. Saksak
Ms Cynthia Thomas – Clerk

Counsel: Mr Saling N. Stephens for the Plaintiff
Mr Tom Joe for the Defendants

Date of Hearing: 11th October, 2002.

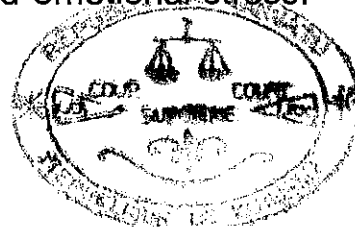
Date of Judgment: 4th April, 2003.

JUDGMENT

This is a reserved judgment. The trial took place on 11th October, 2002. The Plaintiff gave oral evidence on oath and produced evidence from one other witness. The Defendant produced no evidence either orally or by affidavit. Submissions were required to be written and a period of 30 days were given to the Plaintiff to lodge his written submissions, and 21 days to the Defendant. The date line for the Plaintiff's submissions was 11th November, 2002 and for the Defendant, 2nd December, 2002.

The Plaintiff's submissions were received by the Registry on 2nd December, 2002. Due to this lateness Mr Joe of counsel for the Defendant requested a further 14 days from 2nd December, 2002 to lodge written submissions. Mr Stephens consented to that period. Unfortunately no submissions have yet been lodged by Mr Joe.

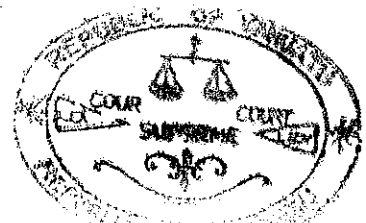
The Plaintiff's claims are for damages in respect of trespass, assault, kidnapping, unlawful imprisonment and anxiety and emotional stress.



The total amount claimed is VT4,500,000. He further claims for interests thereon and costs.

The brief facts of this case are that on 22nd January 2000 at 5 O'clock in the morning four police officers entered the Plaintiff's property. The Plaintiff was still asleep. When he was awakened and approached the officers the Plaintiff was told to get into the police vehicle. He did so and was taken to the Police Station where he was detained until Tuesday 25th January 2000. He was apprehended on Saturday 22nd January 2000.

The Plaintiff gave oral evidence in relation to his sworn affidavit. The date was Saturday 22nd January 2000 at 5 O'clock in the morning. Four police officers entered their property and asked to see him. His father called to him and told him to come and see the police officers. He came out of his room. He heard his father talking to the officers expressing his views about the arrest. The Plaintiff came out on the verandah and was told to get into the truck which had stopped at the gate. He did so. He was not told of the reason of the apprehension. There were four officers and two of them were armed. He knew one of the police officers as Jeffrey Bong. He did not know the other three. At the police station his hands were fastened with nylon rope behind his back and he was made to wait outside with others who had been apprehended, earlier during the same operation. He waited for 2 hours after which Eric Pakoa came and read out their names and divided them into two groups, one group consisted of those who committed theft and the second group included those who committed assaults on other people. The Plaintiff was called into the second group. They were told to go into a truck and taken to the prison house where they were searched and then detained. The Plaintiff was detained in the same room which John Atley and Robson Seth were being kept. When he saw these two men he recalled the first incident for which they had been charged but which case was dismissed by the Magistrate's Court on the basis of no evidence. He was detained for the full day on Saturday. He did not have any breakfast. No body came to talk with him. The following day being Sunday he was detained for the whole day. On Monday the Plaintiff was detained for the whole day. On Monday the Plaintiff was detained for the whole day and on Tuesday as well. At 2 O'clock on Tuesday afternoon he was taken to the Police Station and was told to



wait outside. He waited under a tree until 5 O'clock in the afternoon. Then he was asked to go into the office. He was asked in relation to a previous incident in which he was involved and whether or not there was a custom ceremony between his family and the family of the other party. The Plaintiff said he didn't know. After making such a statement he was asked to sign a piece of paper and then told to go home. The Plaintiff was charged in Criminal Case No.47 of 1999 with Attempted Rape, Aiding a person to drive exceeding the speed limit in Luganville, and Aiding a person cause unintentional harm causing death. The Magistrate's Court on 25th June 1999 found there was no prima facie case against him and two others. The charges against him were dismissed.

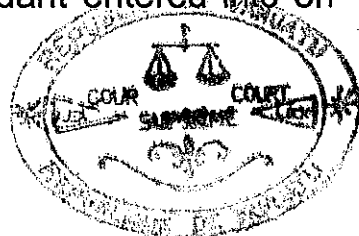
The second witness was Chief James Malto, the Plaintiff's father. His evidence confirms the date and time. He was still in bed when he heard a knock on his door. It was his other son's wife telling him that 'the Mobile' police were at the gate. He took the keys and went to open the gate. He saw four police officers two of whom had rifles. He only recognised one of them as Jeffrey Bong. He opened the gate and let them in. Jeffrey Bong then asked him whether the Plaintiff was in and that they had come for him. He asked Jeffrey if it was in relation to the two girls for whose case the Plaintiff had been to Court over, but Jeffrey Bong said that it was in relation to theft. He then called to the Plaintiff who was still inside the house. He came out on the verandah and one of the officers with a rifle told the Plaintiff to get into the truck. The Plaintiff walked over to the gate, climbed onto the truck and they drove away. He confirmed that his son only came home on Tuesday afternoon the 25th January 2000.

Both witnesses were cross-examined by Mr Joe on their evidence.

Based on these evidence I make the following findings in relation to the issues of:-

(a) Trespass to property

I find there to be no evidence of trespass to property. The Plaintiff sues not in a representative capacity. He sues as an individual. As such the onus was on him to show that he owns the property that the officers of the Defendant entered into on



22nd January 2000. The Plaintiff's father had the keys to the gate of the property. The evidence is that his father opened the gate and let the police officers in. By this time the Plaintiff was at the verandah of their house and he was told to get into the truck.

(b) Assault

I find there to be evidence of assault when the Plaintiff's hands were tied behind his back with a piece of nylon rope. However I find no evidence of physical injury.

(c) Kidnapping

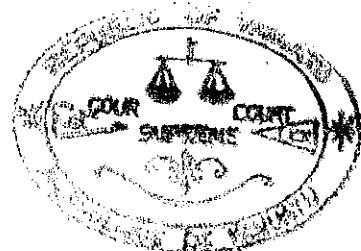
I find there to be no evidence that what occurred really amounted to or could be described as kidnapping in the true sense of the word. The Plaintiff as the evidence shows was not grabbed by any or all the four officers. There was no struggle. His face was not concealed so he could not recognise those who captured him. The evidence is that he was simply told to get into the truck and he did so by walking to the truck and climbing into it. At best the action of the officers of the Defendant amounted to an apprehension or an arrest done without a lawful warrant of arrest, but it fell short of kidnapping.

(d) Unlawful imprisonment

I find there is evidence that the Plaintiff was detained at the prison for three more days longer than was necessary without a lawful warrant, and without being charged or brought before a judicial officer as required by the law.

(e) Anxiety and emotional stress

I find there is no medical report or certificate confirming that the Plaintiff suffered anxiety and emotional stress. But I find in the evidence that there were circumstances rendering it a possibility that on the balance of probability the plaintiff suffered some anxiety and emotional stress.



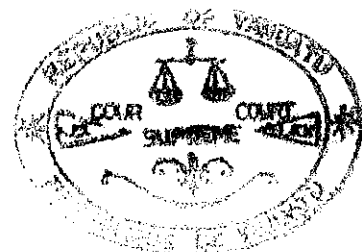
Quantum

I now deal with the issue of quantum. Mr Stephens submitted three legal authorities for consideration by the Court. Firstly the case of Loudon v. Ryder [1953] All ER p.741. The Court of Appeal in England awarded £5,500 as damages in respect of trespass and assault together with exemplary damages. The jury awarded separate damages for trespass £1,500, £1,000 for assault £3,000 as exemplary damages. The award of £5,500 is equivalent to VT1.079,430 at the rate of 196.26VT.

The present case differs in that firstly the Plaintiff has not pleaded and claimed for exemplary damages. Secondly I have held on the evidence that there is no evidence substantiating the claim for trespass. Thirdly the Loudon case has been over-taken by other cases which are authoritative against awarding damages under different heads of damage. For example in Broome v. Cassel & Co [1972] A.C 1027,1073 Lord Hailsham pointed out the danger in hypostatizing the different heads of damage in computing the award. The other case is that of Attorney General v. Raynolds [1979] 3All ER 129 at p.142 where the Privy Council said that when making an award, although the Court will obviously indicate the principal factors taken into account in making its assessment, there is no need to specify the precise amounts awarded under each head.

There will therefore be no award specifically for trespass to property as claimed by the Plaintiff.

The second of the claim is for assault in the sum of VT500.000. The assault was such that there were no physical injuries. Mr Stephen did not cite any other legal authority to guide me in assessing this claim, but I am guided assisted by the Vanuatu cases of Dorsen v. Brysten Civil Case No.153 of 1997 where Coventry, J awarded VT40,000 to the plaintiff in respect of damages for injuries for minor assaults incurred when the defendant threw a coconut at the plaintiff.



I am further guided and assisted by the Tongan case of Kaufusi v. Lasa & Others Civil Case No. 29 of 1989 [1990] TLR 39. That was a case where the Plaintiff claimed that he was unlawfully arrested and assaulted and that he was unlawfully detained at a police station. The Court held that (a) the arrest was unlawful because the grounds of the arrest were not made known to the Plaintiff; (b) the assault on the plaintiff was unlawful because it was done in the course of an unlawful arrest; and (c) the detention in the police station was unlawful because the arrest was unlawful. The Court awarded general damages of \$15,000 and \$1,000 as exemplary damages less \$1,180 for the value of traditional gifts. The award was increased on appeal.

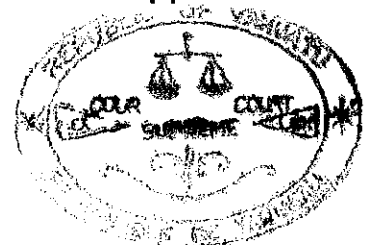
I apply the principles of this case to the present case to make an award of damages for assault but the quantum should not be VT500.000 as claimed but lower considering the local and economic conditions both of and in Vanuatu. There will be further discussions on this point later.

As regards damages for Kidnapping Mr Stephens submitted for consideration the case of Public Prosecutor v. Walter Kota & Others Criminal Case No. 58 of 1993. I have found that the actions of the Officers of the Defendant fell short of meeting the elements or requirement of kidnapping and therefore this case is not relevant. And there will be no award for this head of damages.

Finally regarding damages for unlawful imprisonment Mr Stephens relies on the case of Attorney General v. Raynolds (Supra) where the Privy Council upholding the decision of the Court of Appeal awarded the Plaintiff the sum of \$18,000.00 for his unlawful imprisonment without being charged. That amount is equivalent to VT1,335.600. (rate 74.2vt)

The plaintiff in this case claims VT2,000,000 as damages under this head. In my view this figure is excessive.

In the Raynold case the Plaintiff Mr Raynolds was a former police inspector of good character and was a member of the opposition



party in his country. The Plaintiff in this case has not shown in evidence whether he was in gainful employment at the time of the incident or that he is now in gainful employment. He has no pecuniary losses.

The Court of Appeal of the Republic of Vanuatu has in Kalfau Moli v. Bob Heston Civil Appeal Case No.11 of 2000 at p.10 said:

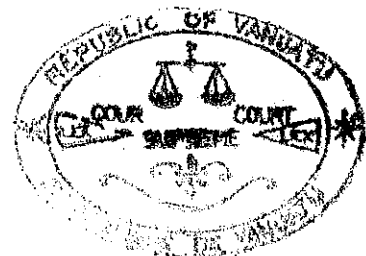
“In our judgment the starting point is to look at the economic situation in this country. We recall that the minimum wage is in the vicinity of VT200.000 per year. Senior and responsible people within the community often earn no more than VT1.500.000 per year.

When one tries to reflect those figures back into comparison with New Zealand or Australia defamation awards (and realise that the levels of remuneration which are perhaps a tenth or even a twentieth of what it might be else where), we are satisfied that a total award in this case of VT8 million is excessive. If translated by reference to the different economic standards in New Zealand or Australia, it would create a figure which in those places would clearly be seen as excessive.”

In Marika v. Kapieni ABU 49/98 the Court of Appeal in Fiji emphasised the need to consider local and economic conditions when approaching quantum of damages.

Applying these principles to the facts, merits and circumstances of this case I am of the view that the Plaintiff's claims should best be divided into two categories as follows –

1. Compensatory and Aggravated Damages to cover his claims for assault unlawful imprisonment and anxiety and stress, I will award the sum of VT200.000.
2. Punitive Damages to mark the Court's special censure of the Defendant's arbitrary and unlawful actions against the Defendant.


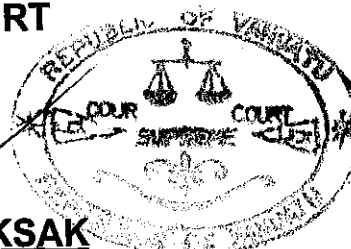


I have indicated earlier on in the judgment that the Plaintiff has not pleaded or claim exemplary damages. This head of damages may only be awarded in special or exceptional cases. This case is one of the many arising out of the operations by the officers of the Defendant and the State carried out in Luganville in early 2000. It was known as the Operesen Klinim Not. Mass arrests were made without lawful warrants and the persons arrested were detained in jails beyond the 24 hours permitted by law and without they being brought before a judicial officer. And many of those persons were released and have not and never been charged. The Plaintiff in this case was one of those persons. He sued individually. Others have sued as a group and I think the Court has a discretion to award damages in this case despite the fact that the Plaintiff did not specifically claim for it. Accordingly I award the sum of VT100.000.

Deciding the case on its own merits, facts and circumstances and in the light of the principles of assessing quantum in the Kalfau Moli Case (Supra) and the Marika Case (Supra), the appropriate amount of damages the Court can award to the Plaintiff is in total the sum of VT300.000. There will be no interests awarded on that sum. But the Plaintiff is entitled to his costs of and incidental to this proceeding. The Defendant will pay these costs.

DATED at Luganville, this 4th day of April, 2003.

BY THE COURT



OLIVER A. SAKSAK
Judge