

**(Civil Jurisdiction)**

**BETWEEN: JOHNNY WUAN REGGIE**

Claimant

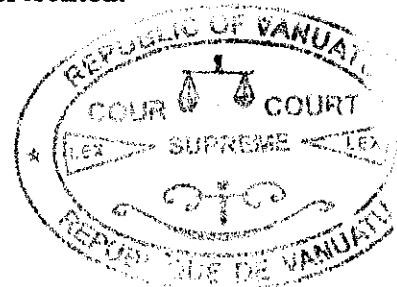
**AND: DAVID LIVO  
SIMEON ALICK  
JOHNSON MATA  
THOMPSON SUALA  
JOSEPH LIVO  
SAMSON LIVO  
LEO ENOS**

Defendants

**Coram: Mr Justice Oliver A. Saksak  
Mrs Cynthia Csiba – Clerk**

**Counsel: Mr George F. Boar for the Claimant.  
The Defendants appear in persons unrepresented.**

**Date of Hearing: 13<sup>th</sup> August 2004  
Date of Judgment: 27<sup>th</sup> August 2004**



## **JUDGMENT**

Following judgment by default dated 1<sup>st</sup> March 2002, this matter was heard on 13<sup>th</sup> August 2004 in relation to assessment of damages.

The Defendants have never been represented by a solicitor although during the course of the proceedings they have been advised of the need to be represented. More than adequate opportunities have been given to the defendants to find legal representation. They have quite clearly chosen not to do so.

On 13<sup>th</sup> August, 2004 the Claimant gave evidence orally to show an intentional and aggravated assault on his person that caused him a broken jaw, lost teeth, fractured fingers and other bodily injuries of both temporary and permanent nature. The assault was unprovoked. The Claimant is the

brother-in-law of the defendants. He was stoned with rocks and beaten unconscious and left for dead away from the village. When he finally regained consciousness, he attempted to head back to the house despite his pains. He arrived at one Gibson's house who assisted him to be taken to hospital. He spent two days in the Northern District Hospital in Luganville. He was admitted for 2 weeks at the Port Vila Central Hospital.

He is a married man of three children. Two of these children are at school. He was a gardener living mainly on garden produce and earned a living by cutting people's copra. He would cut up to 4 bags a day at VT300 per bag.

He produced an updated medical report dated 2<sup>nd</sup> August 2004 issued by Dr. Spooner. The report shows some permanent disabilities but does not indicate to what degree of disability the Claimant is now in and for which the Court could take into account when assessing damages. He produced x-ray photographs.

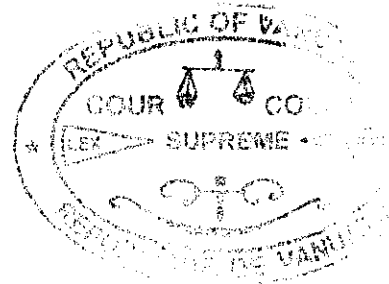
The defendants did not challenge any of those evidence. They have accepted liability but they dispute the amount of damages. They say they cannot pay anymore than the VT300,000 they have paid to the Claimant following an agreement dated 6<sup>th</sup> April 2001. This agreement was made at the Police Station in Luganville and witnessed by the then Inspector Robert Boe. The defendants did not call evidence from Robert Boe. But Joseph Livo was the only defendant who gave evidence.

In cross-examination of the Claimant by Mr Boar in relation to the agreement, the Claimant said the sum of VT300,000 was agreed to be paid to him by the defendants to assist him meet school fees for his three children. It had nothing to do with compensation. He did say in evidence that one of his children is not now in school. He accepted receipt of the VT300,000 as agreed.

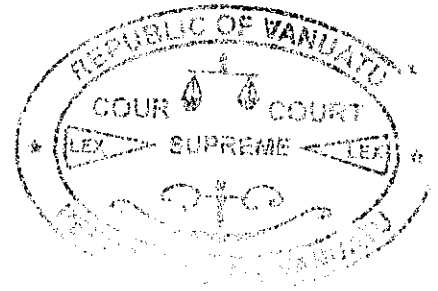
Joseph Livo confirmed the evidence of the Claimant that the agreement related only to school fees. And the Court accepts that evidence in relation to the payment of VT300,000.

The Claimant claims a total of VT6,582,800 made up as follows –

(1) Pecuniary Loss	–	
(a) Air tickets	–	VT 40,000
(b) X-ray costs	–	VT 5,000
Total	–	<u>VT45,000</u>



(2) Loss of Earning Capacity -	VT 1,080,000
(3) Living Costs	- VT 1,080,000
(4) Lodging/Rental	- VT 1,080,000
(5) General Damages	- <u>VT 3,322,800</u>
Total	- <u>VT 6,607,800</u>



Dealing now with the amount of damages to be awarded in the light of the evidence presented and the authorities cited to me -

- (1) Pecuniary loss of VT45,000.

The Court is satisfied that the claimant suffered loss of this amount. He is therefore awarded the sum of VT45,000 under this head.

- (2) Loss of earning capacity – VT1,080,000.

The Court is satisfied that the Claimant could have earned the sum of VT1,080,000 in the remaining 18 years of his life to retiring age at 55 years earning at least VT5,000 per month from cutting copra or gardening. He is therefore awarded the sum of VT1,080,000.

- (3) Living Costs – VT1,080,000.

From the evidence the claimant is from Ambrym. He was at the time of the assault living in the defendants village on Mavea Island, East of Santo Island. He said he was a gardener. He did not say how many gardens he had, what crops and fruit trees he planted and what sort of contributions he was making at that time, if any to the village. The sum of VT1,080,000 under this head is therefore disallowed.

- (4) Lodging/Rental – VT1,080,000.

The Claimant did not say in whose house he lived in at the defendant's village. The Court is of the view that the claimant in this case is not entitled to an award under this head and therefore this sum of VT1,080,000 is disallowed.

- (5) General damages – VT3,322,800.

This sum is based on the guideline set out in the Solzer case. The injuries in Solzer's case were more serious than the Claimant's injuries in this case. They required that Mr Solzer attend to medical

treatment in Australia. He was hospitalized for much longer period than this claimant. He underwent more complicated surgical operations than this claimant. For these reasons the award in respect of general damages must be lower than that awarded in the Solzer case. I think the appropriate amount to be awarded to the claimant under this head is the sum of VT1,000,000.

The total award of damages against the defendants is the sum of VT2,125,000. However the sum of VT300,000 will be deducted from that sum. The balance to be paid by the defendants is therefore the sum of VT1,825,000. This sum will carry interests at 3% per year from 1997 to the date of judgment. This is the sum of VT54,750 per year x 7 years = VT383,250.

In summary the total sum or damages awarded in this case are –

(a)	Damages	-	VT1,825,000
(b)	Interest	-	<u>VT383,250</u> <small>costs</small>
			<u><u>VT2,208,250</u></u>

The Claimant is entitled to his costs in relation to the assessment hearing to be paid by the defendants.

### ORDER

All the Defendants herein are jointly and severally liable to pay the sum of VT2,208,250 together with costs to the Claimant. Each defendant will pay as follows -

(a)	David Livo	-	Vt 315,464
(b)	Simeon Alick	-	Vt 315,464
(c)	Johnson Mata	-	Vt 315,464
(d)	Thompson Suala	-	Vt 315,464
(e)	Samson Livo	-	Vt 315,464
(f)	Leo Enos	-	Vt 315,462

DATED at Luganville this 27<sup>th</sup> day of August, 2004.

BY THE COURT

*Oliver A. Saksak*

OLIVER A. SAKSAK  
Judge

