

(Civil Jurisdiction)

BETWEEN: JEAN BAPTISTE PALAUD

Claimant

AND: THE COMMISSIONER OF POLICE

Defendant

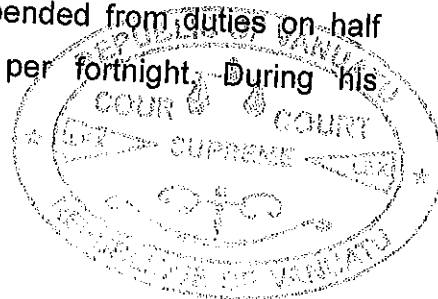
Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Saling N. Stephens for the Claimant
Mr Justin Ngwele for the Defendant

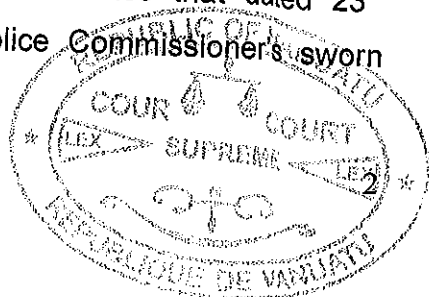
Date of Hearing: 11th November 2008
Date of Judgment: 2nd March 2009

JUDGMENT

1. This is a reserved judgment. After the hearing on 11th November 2008, the Court allowed Counsels to file final written submissions within 21 days for the Claimant and a further 21 days thereafter for the defendant. It has been some four months since the direction was made and no submissions have been filed by Counsels. The only submissions by the defendant are those dated September 2008. The Court will treat those as the defendant's final submissions and will dispense with the Claimant's submissions.
2. So what gave rise to this Claim?
The Claimant, now a Sargeant in the Vanuatu Police Force since 1st August 1984. On 1st January 1998 he was posted to Lakatoro Police Station. On 18th March 1999 he was suspended from duties on half pay which he claims to be VT11.038 per fortnight. During his

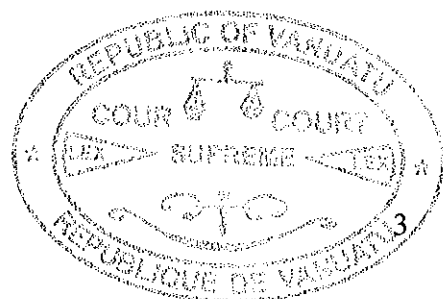


- suspension, the Claimant claims he suffered stress and loss to reputation.
3. On 15th June 2004 after a period of 5 years and 3 months, the Claimant was re-instated to active duty. No charges were laid against him following the allegations that led to his suspension.
 4. He is now claiming his arrears of salaries from 18th March 1999 to 15th June 2004, which he claims to be VT1,501,168.
 5. He also claims damages for:-
 - (a) Stress and suffering – VT2,500,000
 - (b) Defamation – VT2,500,000
 - (c) Exemplary Damage – VT2,500,000
 6. He claims the following reliefs:-
 - (a) A declaration that the Claimant's personal and professional reputation was damaged by the defendant.
 - (b) Damages in the total sum of VT9,001,168 against the defendant.
 - (c) Interest at 4% per annum from date of judgment to final settlement.
 - (d) Costs of and incidental to the proceeding.
 7. The Claimant relies on his evidence by sworn statements dated 17th November 2006 tendered as Exhibit C1 and also that dated 23rd September 2008 in response to the Police Commissioner's sworn



statement of 9th September 2008 which he tendered into evidence as Exhibit C2.

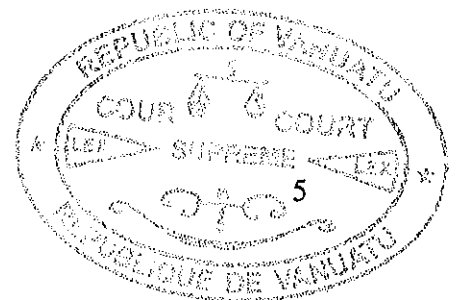
8. The defendant relies on the evidence of Mr Patu Navoko Lui, the current Police Commissioner dated 9th September 2008. Counsel for the Claimant had previously indicated his intention to cross-examine the Police Commissioner but informed the Court after further consideration that there was no need to cross-examine him. The Court therefore took his statement as read.
9. In the course of the hearing it was disclosed to the Court that Parties had tried to settle the claim out of Court by the defendant paying the sum of VT1.400.000 by cheque in favour of the Claimant. The money has been kept in Counsel's trust account and remains in that account to date.
10. The defendant accepts the Claimant was suspended on half salaries until he was heard by the Disciplinary Board of the Police on 10th March 2004 and reinstated on 15th June 2004. Further, the defendant accepts that the Claimant is entitled to his arrears and that based on the calculations made by the Finance Department, the amount is VT1.409.978. Of this sum, the defendant says they have paid VT1.400.000 by cheque to the Claimant. This is not denied by the Claimant. The defendant says the only outstanding amount is VT9.978 which would be paid into the Claimant's bank account as part of his basis salary.
11. The Claimant however submits the correct amount of his arrears is VT1.479.092.



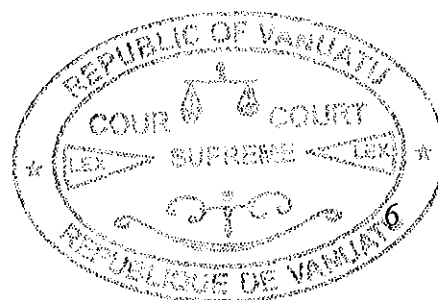
12. On the question of arrears it is really the amount that is disputed. So which of the two should the Court accept?
13. The Court accepts the correct amount is that calculated by the Finance Department annexed as PNL13 in the sworn statement of the Police Commissioner. The amount is VT1.409.978.
14. The Court notes that VT1.400.000 has already been paid to the Claimant by cheque. The only remaining sum is VT9.978.
15. The only other claims relate to damages for stress and suffering, damage to reputation and exemplary damage.
16. Counsel for the defendant submitted by submissions dated September 2008 that firstly, in regard to defamation that the Claimant had not shown any cause of action in his claim specifically known as "damage to reputation". Further, they submit no underlying facts were pleaded. Further that to establish defamation, the Claimant had to show a libel or slander was published or communicated to a third party. Counsel referred to the Case of Cyclamen Ltd v. Minister of Lands [2007] VUSC 51 CC 119/2005 where the Court of Appeal endorsed Jones v. Skelton [1963] 3 ALL ER 952, 958; and Sim v. Strech [1936] 2 ALL ER 137.
17. The Court accepts the defendant's submissions that (a) the Claimant has no cause of action and (b) if he has, he has not established libel and/or slander and that they were published and/or communicated to a third party and that they specifically referred to him.
18. The Court concludes therefore that the Claimant claims for damage to reputation must fail and I so rule.



19. As regards his claims for stress and suffering and exemplary damages, the defendant submits that with-holding of arrears of pay is not a cause of action that could sound in damages. Further, that he has not pleaded negligence to establish a cause of action that could sound in damages for stress and suffering or exemplary damages.
20. From the pleadings and the facts, the Claimant was suspended on half pay from 18th March 1999 to 15th June 2004 when he was re-instated. That is a period of 5 years and 3 months. In his sworn statement of 17th November 2006 at paragraph 33, he states his suspension and salaries at half affected his family and his children's education. He states the suspension affected his health and he annexes a medical report dated 31st March 2006. He was cross-examined by Mr Ngwele as to why it took so long for him to obtain the Report. He answered saying he had been checking every year.
21. In paragraph 6 of his claims, the Claimant pleads hardship in maintaining his family and that at one stage his child was expelled from school because of unpaid school fees.
22. In paragraph 5, the Claimant pleads negligence when he was suspended for allegations for which the Public Prosecutor made a decision that there was insufficient evidence to prove inciting and soliciting intentional assault against him – see PNL 3 to the Police Commissioner's sworn statement.
23. For these reasons, the Court rejects the defendants submissions that the Claimant has not pleaded nor established causes of action that would entitle him to damages for stress and suffering and for exemplary damage.



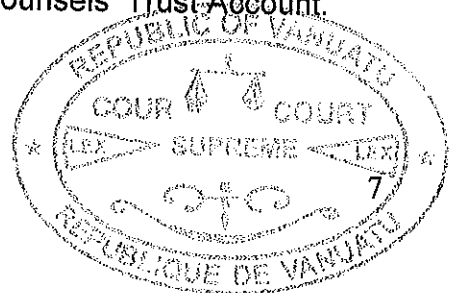
24. The Court concludes the Claimant is entitled to damages for stress and suffering and for a period of 5 years and 3 months the Court awards the sum of VT1.260.000. That is equivalent to VT20.000 per month for 63 months. This is calculated based on his monthly salary of VT22.076 reduced by VT2.076.
25. The Claimant is therefore entitled to damages for stress and suffering for 5 years and 3 months (63 months) in the sum of VT1.260.000.
26. As regards his claims for exemplary damages, he did plead negligence. The evidence is that on 22nd August 2003 Mr Nicholas Mirou, the then Public Prosecutor wrote to Maj. Lester Roy informing him that there was insufficient evidence against the Claimant for him to be prosecuted and advised he should be dealt with internally.
27. On 9th October 2003 the then Police Commissioner Mr Robert Diniro wrote to Maj. Lester Roy urging disciplinary action to be taken against the Claimant "at an earliest opportunity" (see "PNL4").
28. On 18th December 2003, some two months later the Claimant went before a disciplinary hearing. But the Police Commissioner was not informed of the decision and outcome until 26th January 2004. (See PNL5). The hearing was adjourned to 23rd January 2004 and charges were dismissed against him.
29. On 10th March 2004, some two months had gone by before Maj. Lester Roy wrote to the Commissioner informing him about the results of disciplinary hearing of the Claimant and other police officers. (See PNL6).



30. Then finally on 15th June 2004, the Police Commissioner wrote to the Claimant informing him that he had been re-instated to duty with full salary. (See PNL7). But that was after some four months after the Commissioner was informed of the results on 10th March 2004 and six months after he first appeared on 18th December 2003.
31. So the question is: was the defendant negligent in handling the Claimant's Case?
32. The Court answers the question in the affirmative. And as such he is entitled to exemplary damages. But the amount of damages will be nominal. The Court fixes the amount based again on his monthly salaries of VT22.076 multiplied by 5 months that it took after he was dismissed of the charges in January 2004 until he was re-instated on 15th June 2004. He could have been re-instated in February 2004 but it took another 5 months to re-instatement. He is entitled to be compensated for that period and the calculations are $VT22.076 \times 5 = VT110.375$.
33. In summary the Court grants judgment in favour of the Claimant against the defendant for damages as follows:-

(a) Arrears of Salaries –	VT9.978
(b) Stress and Suffering –	VT1.260.000
(c) Exemplary Damage –	VT110.375
Total –	<u>VT1.380.353</u>

This will be in addition to the VT1.400.00 the Claimant has already been paid by cheque and which is kept in Counsels' Trust Account



34. The overall total amount awarded to the Claimant against the defendant is the sum of VT2.780.353.
35. The claimant is entitled to interest at 4% per annum calculated on the sum of VT1.380.353 from the date of judgment until final settlement.
36. Finally, the Claimant is entitled to his costs of and incidental to this proceeding to be agreed if not, be determined by the Court.
37. That is the judgment of the Court.

DATED at Luganville this 2nd day of March 2009.

BY THE COURT



OLIVER A. SAKSAK

Judge

