

(Civil Jurisdiction)

BETWEEN: SUSAN TCHIVI

Claimant

AND: SAMSON TALI

First Defendant

AND: FRANCOIS TAU

Second Defendant

**AND: GIBSON NGWELE
BOB PAUL
JUNIOR TOARE**

Third Defendants

Mr Justice Oliver A. Saksak

Ms Jane Tari for the Claimant
Mrs Marisan P. Vire for the Defendants

Date of Hearing: 23rd September 2011

Date of Judgment: 10th February 2012

JUDGMENT

Background Facts

1. The First, Second and Third Defendants were charged and convicted in Criminal Case No. 1 of 2009 for the following criminal offences –
 - (i) Unlawful Assembly – Section 69 of the Penal Code Act.
 - (ii) Unlawful Entry – Section 143.
 - (iii) Arson – Section 134 (1).
 - (iv) Malicious Damage To Property – Section 133.



- (v) Obstructing Police – Section 73A.
- (vi) Idle & Disorderly – Section 148(b).

1.2. It happened in the morning of 28th December 2008. They attended a party at a house just next door to the Claimant's house. They got drunk and assembled together and unlawfully entered the Claimants property. They damaged and destroyed the door to a local store and set fire to the building. The fire completely destroyed the building including equipment and goods in the local store.

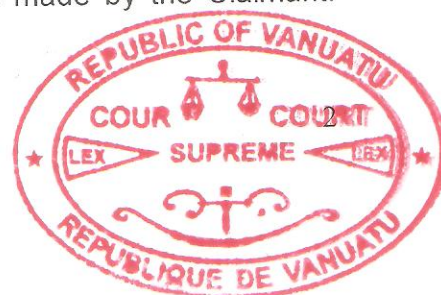
1.3. All the defendants pleaded guilty to all six charges and were convicted and sentenced accordingly on 10th February 2010.

Claims

2. The Claimant brought a civil action against all the defendants claiming –
- | | |
|------------------------------------|---------------------------|
| (a) Loss of items and properties – | VT1,706,800 |
| (b) Loss of building - | VT1,905,000 |
| (c) Emotional Stress - | VT 200,000 |
| (d) Exemplary Damages - | VT 500,000 |
| (e) Trespass - | VT 200,000 |
| (f) Wiring Labour - | <u>VT 10,000</u> |
| Total - | <u>VT4,521,800</u> |
| (g) Interests of 5%; and | |
| (h) Costs. | |

Liability

2. At a conference hearing on 3rd May 2011, the defendants conceded and accepted the facts and liability for their actions. They however disputed the amount of damages and claims made by the Claimant.



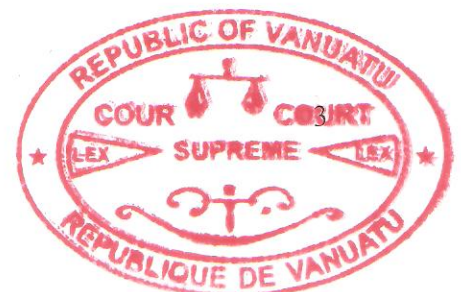
Judgment was entered as to liability against the defendants on that date and directions were issued requiring evidence by sworn statements in relation to the amounts of claims and damages to be filed within 14 days.

Evidence

- 4.1. The Claimant filed her sworn statement on 13th June 2011 giving evidence about some of her expenses in the total sum of VT18,000. These are part of her costs of the action. She filed earlier statements on 3rd December 2010 giving evidence of all her expenses and loss of goods and equipment including her costs of the building. Ephraim Morris was her builder. Mr Morris filed a sworn statement also on 3rd December 2010 confirming he was the builder. He had three workers and that they were paid VT200,000 in total. His transport costs amounted to VT180,000. His tools were hired at VT20,000. He confirms costs of materials at VT1,385,000 and Permit Fees of VT40,000.
- 4.2. The defendants themselves did not file any evidence to rebut the Claimant's claims. Two statements were filed on 22nd September 2011 by Roseanne Steven and Barthelemy Ngwele but these were rejected after counsel for the Claimant raised objections to their admission on the basis that they were filed when pleadings were closed and that they raised new matters.

Written Submissions

5. By direction orders dated 23rd September 2011, the Court directed parties to file and serve written submissions. Claimant's counsel filed written submissions on 3rd October 2011. The defendants have not filed any written submissions.



Burden of Proof

6. The Claimant has the burden of proof on the balance of probabilities.

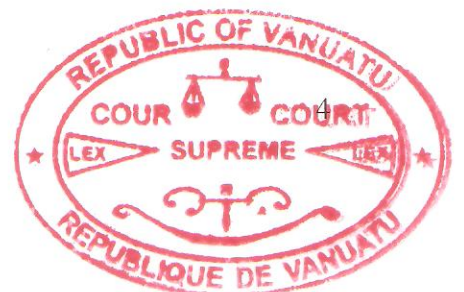
The Losses of the Claimant Proven

7. From the evidence by sworn statements filed in support of the claims, the Claimant has shown she has suffered losses to –

(a)	The whole building at the cost of	VT1,385,000
(b)	Equipment – 1 Deep Freezer -	70,000
-	Ice-Box -	78,000
-	Bread Storage Shelf -	15,000
-	1 Desk with Drawers -	15,000
-	3 Single Tables -	30,000
-	Storage Shelves -	30,000
-	1 Extension Cord -	6,400
-	2 Electric Pulbs -	<u>5,100</u>
	Total -	<u>VT1,634,400</u>

- (c) Goods – In all probabilities there was likelihood that the goods listed for 23rd and 26th December 2008 were on the shelf and destroyed with the building on 28th December 2008. The purchases from 3rd to 18th December 2008 are rejected. It is common knowledge the period of heavy up to Christmas is a period of heavy shopping and it is likely most of the goods were sold out before 26th December 2008. The Court allows only the sum of VT30,870 being for goods purchased on 23rd and 26th December 2008. In total, the Claimant's actual losses were VT1,665,270.

Trespass



8. I accept counsel's submission that based on Kaltamat v. Kalou [2003] VUSC 55 Civil Case 8 of 2002, the Claimant is entitled to some damages for trespass. The defendants were convicted and sentenced for their criminal actions in Criminal Case No. 1 of 2009. Through their unlawful actions they had trespassed and caused emotional distress to the Claimant and her relatives. They are entitled to some form of damages for these. In the Court's opinion general damages should be awarded rather than award sums for separate heads of damages. To cover trespass and emotional distress a general damage in the sum of VT400,000 is sufficient.

Other Expenses

9. The Claimant claims VT18,000 and proves it by receipts shown as Annexures R1, R2, R3, R4, R5 and R6. These are valid but are awarded as part of the Claimant's costs of and incidental to her actions.

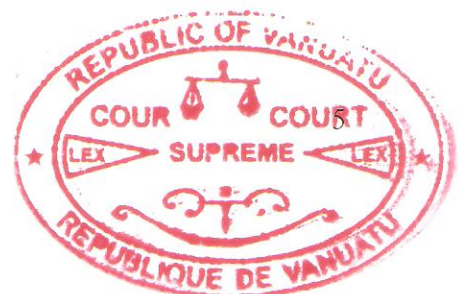
Exemplary Damages

10. The defendants have been punished separately in Criminal Case No. 1 of 2009 and therefore it is not appropriate to award this head of damages.

Rejected Claims

11. In the opinion of the Court, the claims for (a) tools (b) labour and transport costs (c) building permit fees and (d) electricity must be rejected. These were not losses attributed to the unlawful actions of the defendants.

Final Award



12. The final awards made by the Court in favour of the Claimant are –

- (a) Loss of Building – VT1,385,000
- (b) Loss of Equipment - 249,400
- (c) Loss of Goods - 30,870
- (d) General Damages - 400,000

Total **VT2,065,270**

(e) Interests at 5% from 2008 to date of judgment.

Final Orders

- 13. (a) Judgment is given in favour of the Claimant for the sum of VT2,065,270 plus interests as awarded against all the defendants jointly and severally.

- (b) The defendants will pay the Claimant's costs of and incidental to the action.

DATED at Luganville this 10th day of February 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

