

(Civil Jurisdiction)

BETWEEN: MARINA RAVO

Claimant

AND: FRANK MAEL

Defendant

Mr Justice Oliver A. Saksak

Mrs Marisan P. Vire for the Claimant
Miss Jane Tari for the Defendant

Date of Hearing: 3rd December 2012
Date of Judgment: 8th February 2013

JUDGMENT

1. The claimant was the wife of the defendant. They had lived together for over 20 years and have three children by their marriage. Since 2009, the couple have been living apart. On 2 November 2011, the defendant filed a Petition seeking for dissolution of marriage. A degree nisi was issued in the Magistrate Court on 8 December 2011. The marriage was absolutely dissolved by Notice dated 8 March 2012.
2. Sometimes on 1st December 2008, the defendant assaulted the claimant and caused her serious injuries particularly to her head. As a result of the assault, the claimant received medical treatment on 2nd December 2008. She annexed the medical report to her sworn statement dated 16 September 2011.
3. Following the assault, the claimant lodged a complaint to the police who investigated and submitted the case for prosecution. The defendant was charged with intentional assault contrary to section 107 (c) of the Penal Code Act. On 5 December 2008, the defendant pleaded guilty to the charge and was convicted and sentenced to 8 months imprisonment suspended for 2 years.



4. The claimant filed a civil action against her husband on 16 September 2011.

She alleges that –

- (a) The defendant hit her head twice with a piece of timber;
- (b) She was kicked in the head, hands and back;
- (c) As a result, she suffered injuries and loss of much blood through heavy bleeding.

5. Her claims against the defendant are as follows –

- (a) VT1.000.000 for assault and injuries;
- (b) VT350.000 for loss of employment;
- (c) VT200.000 for emotional stress; and
- (d) Costs.

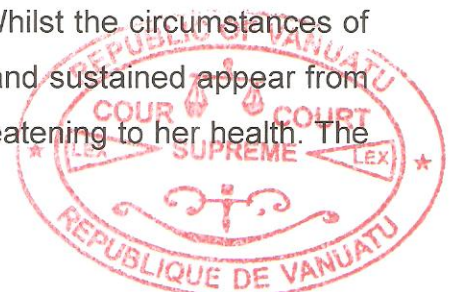
6. The defendant filed a defence generally admitting the allegations but say at paragraph 12 that the claims are exaggerated.

7. On 3rd December 2012, both the claimant and the defendant appeared in persons without Counsel. The defendant admitted and accepted liability for damages and judgment was entered on that basis subject to written submissions to being filed within 14 days by the claimant within a further 14 days thereafter by the defendant. As at 24th January 2013, no such submissions had been filed and the Court will dispense with them due to the delay.

8. In the absence of written submissions, I will deal with the claims simply as they are pleaded in the following manner :-

(a) Assault and Injuries – VT1.000.000.

Liability has been conceded but the amount is challenged on the basis that it is exaggerated. The claimant pleads she was hospitalised but she has no evidence as to how many days she was hospitalised for. She has annexed her Medical Report dated 2nd December 2008 but she has not provided any update medial report in respect to those injuries either on the date of filing her claims or any time thereafter. Whilst the circumstances of the assault appear serious, the injuries-caused and sustained appear from the report as not serious and are no way life threatening to her health. The



report does not show how she was treated and what medications were administered to her.

For those reasons, the Court agrees that this claim of VT1.000.000 is exaggerated. Without any assistance from Counsel with submissions, it is my considered view that the claimant is entitled to some damages for her injuries and the assault done to her person, but the amount should be reduced to VT300.000. And I so rule in her favour for this amount.

(b) Loss of Employment – VT350.000.

The claimant's evidence show that her employment with Paradise Property Consultant was not terminated as at 11 May 2010. That appears still to be the position as the claimant has not produced any other termination letter. The defendant disputed this claim in his defence. The Court accepts that defence. In my considered view, the claimant is not entitled to this claim and accordingly the claim is dismissed.

(c) Emotional Stress – VT200.000.

On the basis of her medical report and the facts of her assault on 1st December 2008, it is probable she suffered emotional stress. And the sum of VT200.000 is allowed as appropriate in the circumstances.

9. In the final analysis, the Court grants judgment in favour of the Claimant but for a reduced sum as follows-

(a) Damages for assault and injuries	– VT300.000.
(b) Emotional Stress	<u>- VT200.000.</u>
Total	<u>- VT500.000.</u>

10. The Claimant is entitled to her costs of and incidental to the action on the standard basis as agreed or determined by the Court.

DATED at Luganville this 8th day of February 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

