

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 11 of 2012

BETWEEN: HALING NEF

Claimant

AND: ETIENNE TEKEBU

Defendant

Coram: *Mr. Justice Oliver Saksak*

Counsel: *Miss Jane Tari for the Claimant*

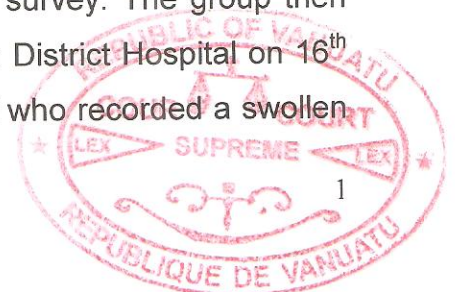
Defendant in person unrepresented

Dates of Hearing: *22nd August 2012 and 9th October 2012*

Date of Judgment: *28th March 2013*

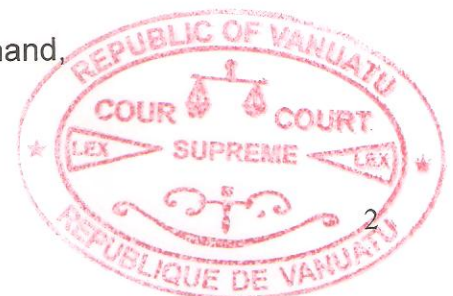
JUDGMENT

1. This is a claim for general damages against the defendant in the sum of VT5,000,000 with interests at 5% per annum and costs.
2. The incident occurred on 15th October 2009. The Claimant was in the front seat of a vehicle which was carrying a number of persons and making an approach onto the Claimant's land for the purposes of doing a survey. They were met by the Defendant and his dogs who had caused a road block so that the vehicle had to stop. The Defendant then approached the vehicle with a piece of burao branch in his right hand and a matchet (bush knife) in his left hand. He approached angrily and started hitting the front of the vehicle with the branch in his hand causing damage to the vehicle. When the Claimant called to the Defendant to stop hitting the vehicle, the Defendant approached the claimant and hit his right hand against the door of the vehicle. He then threatened the group and urged them not to do the survey. The group then returned and the Claimant was taken to the Northern District Hospital on 16th October 2009. He was examined by Dr. Santus Wari who recorded a swollen



and painful right hand. There was no open wound. Radiographic examination revealed fractures in the right little finger, the ring finger and the middle finger. He was treated with a plaster cast for support and analgesics for pain. On a review on 25th November 2009 it was found that the fractures were healing satisfactorily and the cast was removed. The Claimant was advised to do some hand physiotherapy exercises. A final examination by Dr. Santus Wari was done on 22nd April 2010 which revealed that the claimant being an elderly man “stands to lose permanently 25% of the function of his right hand.”

3. Dr. Santus Wari gave evidence confirming his examinations first on 16th October 2009, secondly on 14th December 2009, thirdly on 3rd February 2010 and finally on 22nd April 2010. His evidence are contained his sworn statement dated 25th July 2012 (Exhibit C1). He also tendered the x-ray Films relating to his examinations.
4. Ruben Tamrock gave evidence in support of the Claimant’s allegation of assault on his right hand by the defendant. His evidence are contained in his sworn statement dated 20th June 2012 (Exhibit C8).
5. The Defendant filed a defence and counter-claim in the sum of VT11,000,000 on 21st May 2012. There is no evidence that he paid the filing fees in relation to his counter-claims. Whilst the Defendant admitted assaulting the claimant, he stated that he acted as such following a declaration by a Lands Tribunal which declared ownership of the land in question to his father. He alleged that the claimant and his group had been trespassing onto his land on 15th October 2009 when the incident occurred. He disputed the findings of Dr. Santus Wari and called for the x-ray Films which were tendered into evidence on the second day of trial on 9th October 2012.
6. On the evidence presented, I am satisfied the Claimant has proved to the required standard that –
 - (a) the Defendant had intentionally assaulted his right hand,



- (b) the assault resulted in fractures to the little finger, the ring finger and the middle finger of the claimant's right hand, and
- (c) those injuries are permanent causing the loss of use of the Claimant's right hand by 25%.

7. The Court therefore gives judgment in favour of the Claimant.

8. In regards to the counter-claims of the Defendant, I find insufficient evidence in support of his claims of VT11 Million. Accordingly, I dismiss his counter-claims in its entirety. In regard to his defence, I find his claim that the Lands Tribunal declared ownership to the Defendant's father as being irrelevant to the issue of whether or not he assaulted the Claimant's right hand and causing permanent injuries to three of his fingers. I find the Defendant's action of hitting the vehicle twice and causing damage to it, and hitting the Claimant's right hand, and the threats and abuses made by him to the Claimant and his group on 15th October 2009 were clearly a breach of the peace. It amounted to taking the law into his own hands.

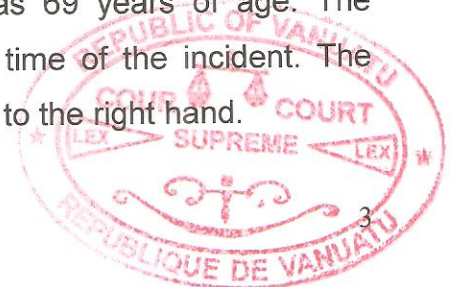
9. The Defendant filed written submissions on 28th November 2012. Those submissions are irrelevant to the real issues and are therefore rejected. His claims for costs are also rejected.

10. Regarding the amount of damages to be allowed, Claimant's counsel has not assisted the Court with submissions and case authorities. But the Court is assisted by the case of Bastien vs. Michoutouchkine Vol. 2, VLR, 540. The case has some similarities to the circumstances in the present case in that –

(a) the Defendant used a stick to assault the Claimant;

(b) the assault caused the fracture of the small finger which required a cast but which was later removed and operated on, causing pain and suffering.

The differences were that the Claimant had provoked the assault and that only one finger was injured. The Claimant was 69 years of age. The Claimant here was about 78 years old at the time of the incident. The injury was done to her left hand. In this case it is to the right hand.



11. Vaudin d'Imecourt C.J basing his calculations on the case of Solzer v. The Government Vol. 2 VLR 528 awarded general damages in the sum of VT312,000 and special damages in the amount of VT210,000 making a total of VT350,000. Interests were allowed at 15% per annum in the sum of VT110,925. Costs were agreed at VT350,000. The total sum awarded was therefore VT982,925.

12. Based on the Solzer and Bastien Cases, it is the view of the Court that the claimed amount of VT5 Million is too high. The appropriate amount should be three times the amount awarded as general damages in Bastien being for three fingers instead of just one. That should bring the amount of damages to VT936,000. There is no evidence of special damages. But the Court will allow interests at 5% per annum on the principal amount of VT936,000 from date of filing to date of judgment.

13. The final awards are –

(a) General damages –	VT936,000
(b) Interests at 5% -	<u>46,000</u>
Total -	<u>VT982,000</u>

14. The Claimant is entitled to damages against the Defendant in the total sum of VT982,000, and costs of and incidental to the action as agreed or taxed by the Court.

DATED at Luganville this 28th day of March 2013.

BY THE COURT


OLIVER A. SAKSAK

Judge

