

BETWEEN: GRATIEN MOLSUL

Claimant

AND: COMMISSIONER OF POLICE

**AND: GOVERNMENT OF THE REPUBLIC OF
VANUATU**

Defendants

Justice Oliver A. Saksak

Eric Molbaleh for the Claimant
Sammy Aron for the Defendants

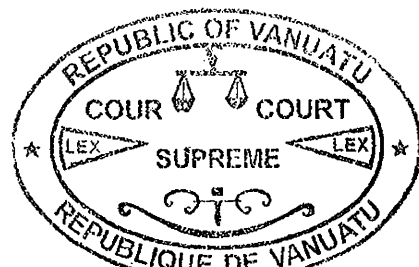
Dates of Hearing: 26 November 2015 and 25 February 2016.
Date of Judgment: 9 June 2016.

JUDGMENT

Introduction

1. The hearing of this matter began on 26th November 2015 and was ultimately completed on 25 February 2016. At the close of the defence case Counsel sought time to file written submissions. 7 days were allowed to the claimant and 14 days thereafter for the defendants' submissions.
2. On 18 March 2016 the claimant filed his written submissions. The defendants have not filed any written submissions. The Court will dispense with submissions from the defendants given more than ample time has lapsed.

The Claims



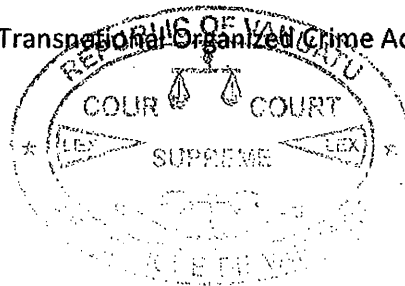
3. The claimant seeks general and punitive damages in the sum of VT 2,500,000 and damages to be assessed for unlawful arrest, unlawful detention and defamation plus interests and costs. He seeks declarations that his arrest and detention were unlawful.

Facts As Alleged

4. The claimant alleges that on 6 May 2013 two police officers arrested him without a warrant of arrest from his work place at the Independent Newspaper Office at 0930 hours and taken to the Police Station and detained from 10.00 hours until his release at 16.30 hours on 7 May 2013. He claims that is a period exceeding 24 hours. He further claims that he was not given food, drinks and was not allowed access to call his lawyer. Further he claims there was never any criminal charge laid against him at any time to date. He further claims his reputation was lowered by his unlawful arrest which was reported locally, regionally and internationally. Finally he claims that there was no warrant of arrest issued for his arrest and no formal complaints had been lodged and no interrogation was made by the police.

Defence

5. The defendants filed a defence on 15 July 2015 pleading that –
 - a). The then Prime Minister, Hon. Moana Carcasses Kalosil formally lodged a complaint with the then Commissioner of Police against the claimant for threats made against him and the Ministers of Government at the time.
 - b). The then Police Commissioner informed his officers about the complaint and ordered them to arrest the claimant at his work place on 6 May 2013.
 - c). The arrest was made on reasonable grounds and suspicion that he had committed cognisable Offences of seditious publication contrary to section 66 of the Penal Code Act (the Act), threatening language contrary to section 121 of the Act, and for threats to do a terrorist act contrary to section 5 (1) and (2) of the Counter-Terrorism and Transnational Organized Crime Act [CAP 313]



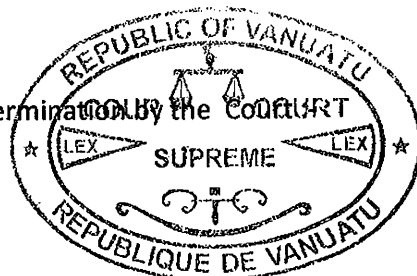
- d). Under Section 12 of the Criminal Procedure Code Act CAP [136] (the CPC Act) no warrant of arrest was required.
- e). The claimant was kept at the Police Station and in custody for less than 24 hours.
- f). The claimant was fed and provided with warm clothes.
- g). No knowledge of the claimant being denied access to a lawyer.
- h). No remand from the Court was required as the claimant was kept less than 24 hours.
- i). Admit no charges were laid and say neither the Police nor the Public Prosecutor are obliged by law to charge the claimant.
- j). Deny any harm to the reputation of the claimant and therefore deny any entitlement to damages.
- k). The Police acted in good faith relying on Section 40 of the Police Act [CAP 105].
- l). Deny the claimant is entitled to any of the reliefs sought.

Evidence.

- 6. To prove his claims on the balance of probabilities the claimant relied on his evidence by sworn statement filed 13 April 2015 in support of the amended claim (Exhibit C1). He was cross-examined on his evidence by Mr Aron. Further he relied on the sworn statement of Charline Molsul also filed on 13 April 2015 in support of the amended claim (Exhibit C2). The deponent was cross-examined by Mr Aron on her evidence on 25 February 2016.
- 7. For the defence, the defendants relied on the sworn evidence of Chief Inspector George Twomey dated 4 November 2015 (Exhibit D1). He was cross-examined on his evidence by Mr Molbaleh. Further the defendants relied on the sworn statement evidence of Corporal Pakoa Rollin dated 4 November 2015. Due to his unavailability in Court his statement was admitted into evidence without objection (Exhibit D2).

The issues

- 8. Mr Molbaleh raised the following five issues for determination by the COURT



- a). Was the claimant unlawfully arrested?
- b). Was the claimant unlawfully detained?
- c). Was the claimant defamed?
- d). Is he entitled to general damages?
- e). is he entitled to punitive damages?

Arguments and Submissions

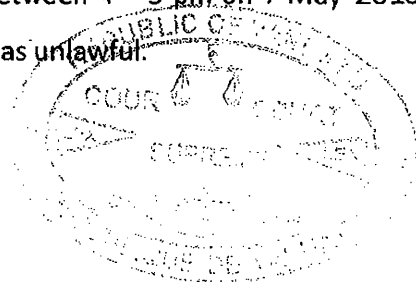
9. Mr Molbaleh argued in support of the issues and submitted the Court should answer them in the affirmative and enter judgment for the claimant in respect of all the issues.

10. First, counsel argued that according to the definition of "cognisable offences" provided in the CPC Act, there was no such offence committed by the claimant to give rise to a reasonable suspicion by the police necessitating the arrest of the claimant without a warrant. Mr Molbaleh argued that the test in section 12 of the CPC Act was not met by the Police. Counsel submitted the arrest of the claimant was unlawful.

11. Second, Mr Molbaleh argued that there was no formal complaint lodged and no evidence was presented to the Court to substantiate the allegation. Counsel argued that the then Prime Minister Mr Moana Carcasses Kalosil and the then Police Commissioner Mr Arthur Caulton should have given evidence about the formal complaint but were not called.

12. Third, Mr Molbaleh submitted that the comment made by the claimant on face book did not amount to a cognisable offence and further that the statement did not amount to terrorism offences under Sections 73B, 73C and 73D of the Penal Code Act.

13. Fourth, Mr Molbaleh argued that the claimant was detained for more than 24 hours from 9.00 am on 6 May 2013 until his release between 4 – 5 pm on 7 May 2013. Counsel submitted that the claimant's detention was unlawful.



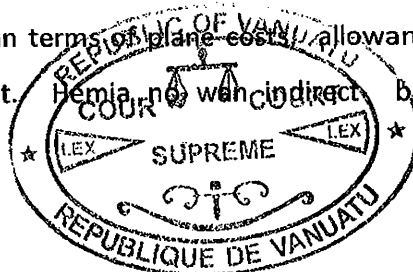
14. Fifth, Mr Molbaleh submitted that his client had been defamed when news about his arrest and detention by the police was reported in the local and international media. Counsel argued that his client had been in the media industry for many years and as such his reputation was tarnished by his arrest and detention.
15. Finally Mr Molbaleh argued and submitted his client is entitled to punitive and general damages to be assessed.

DISCUSSIONS.

16. On the five issues raised by Mr Molbaleh the answers to the issues whether the claimant is entitled to punitive and general damages depend on whether the first three issues are found and answered in the affirmative. The two last issues in paragraph 8 (d) and (e) are really one issue i.e. whether or not the claimant is entitled to damages.
17. I begin with the first issue of whether or not the claimant was unlawfully arrested by the police on 6 May 2013? To find the answer to this issue we need to find out from the evidence the reason or basis for the arrest. It is accepted and is common ground that the arrest made on 6 May 2013 was done without a warrant.
18. The evidence of the claimant himself provides the basis of that arrest. His evidence by sworn statement dated 13 April 2015 at paragraphs 6, 7 and 8 which are restated for ease of reference as follows:

"6. The comment I made arises from a discussion made by different people on the face book in relation to the Council of Ministers that took place at Sola, Vanualava, Banks group in Vanuatu."

"7. A comment was posted by Mr William P. Ganileo saying words to this effect: "Mi harem se COM bae mit long TORBA. Hamas mo public funds bai go towards miting ia in terms of plane costs, allowances, land transport and you nem it. Hemia no wan indirect blong



corruption? Sapos yu wantem mekem assessment long wanem we stap long Torba, sendem ol teknikol man oli go mekem be ino full com. Gavman I measurim risks blong every MINISTER I travel wetem ol DG and Directors, fes PA etc, sapos plane I foldaon hamas man bai ted, who bai pem laef blong olgeta. Sapos Kom I muv igo long North Efate, imo gud yet. Ol chief nao bai oli hostem long nem blong Vaturisu. Ta.”

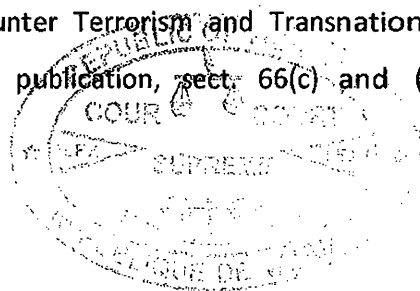
“8. I then responded to that comment saying words to this effect: “Fasin blong “langlang” wantaem. Oli no wantem save long cost. Wanem we oli wantem se ol pua pipol blong Torba oli luk olgeta but mi no save 80% se bae COM miting long Torba bai jenisim provins ia. Ating ol aid donors bai oli komitim olgeta be mino ting se gavman I save mekem blong hem afta. Experiens ia I some finis long sam narafala province. We pray that plane bae I tes crash long Vila Bay taem oli kambak.” (My underlining for emphasis.)

19. The actual face book page is annexed by the claimant to his evidence as Annexure “GM1”.

It includes the response of the then Prime Minister Moana Carcasses Kalosil to Gratien Molsoul, claimant as follows:

“Mi notem long end blong comment blo yu se “We pray that plane bae I crash long Vila Bay taem oli kambak”. YUMI TEKEM TERRORIST COMMENT VERY SERIOUSLY, MI JEST PUTUM A COMPLAINT AGAINST TERRORIST TOKTOK WE G. MOLSOUL I MEKEM AGAINST EXECUIVE CABINET BLONG VANUATU”. (My underlining for emphasis).

20. Next we need to find out whether there was a complaint lodged. Chief Inspector George Twoney’s evidence by sworn statement dated 4 November 2015 (Exhibit D1) shows and confirms a complaint was registered at 10.58 hours on 6 May 2013 by the then Prime Minister Moana Carcasses Kalosil. The acts complained of are (a) Terrorist Act, sect. 5 (1) and (2) of the Counter Terrorism and Transnational Organised Crime Act CAP 313 (b) Seditious publication, sect. 66(c) and (c)



threatening language, sect. 121 of the Penal Code Act. The extract of the Register or Occurrence Book is annexed as "GT1". The complaint is specifically against Gratien Molsul of Pentecost. Further this defence witness confirms that upon that complaint he formed a reasonable suspicion that an offence or offences had been committed and so he gave instruction to his officers to arrest the claimant without a warrant.

21. Next, are any of those acts complained of cognisable offences? Certainly seditious publications is a cognisable offence for which the police have discretionary powers to arrest without a warrant. (see SCHEDULE to the CPC Act).

22. Next, we examine the relevant legal provisions -

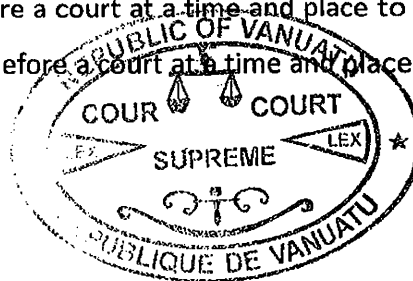
a). Section 1 of the CPC Act defines:

- i). "Cognisable offence" means any offence for which a police officer may in accordance with the Schedule or under any law for the time being in force, arrest without warrant." (My underlining)
- ii). "Complainant" means a person who makes a formal complaint to a prosecutor or a police officer alleging that some other person has committed an offence".

b). **Section 18 of the CPC Act States –**

"Detention of person arrested without warrant

(1) Subject to subsection (2) when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the State, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of a serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking to appear before a court at a time and place to



be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable.

(2) The officer in charge of the police station may release a person arrested on suspicion of committing any offence, when after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with a prosecution for the offence."

(c). **Section 63 of the Penal Code Act States –**

"SEDITIONOUS OFFENCES DEFINED

63. A Seditious intention is an intention –

(a). to bring into hatred or contempt, or to excite disaffection against, the Government of the Republic or the administration of justice;

(b). not applicable.

(c). to incite, procure or encourage violence, lawlessness or disorder;

(d). to incite, procure or encourage the commission of any offence which is prejudicial to the public safety or to the maintenance of public order;

(e). to incite such hostility or ill-will between different classes of persons as may endanger the public safety, or

(f). to show disrespect towards the Government, or the flag, or the person of the President or the Prime Minister of the Republic in such manner or circumstances as causes or is likely to cause a breach of the peace"

(my underlining for emphasis).

(d). **Section 65 of the Penal Code Act States –**

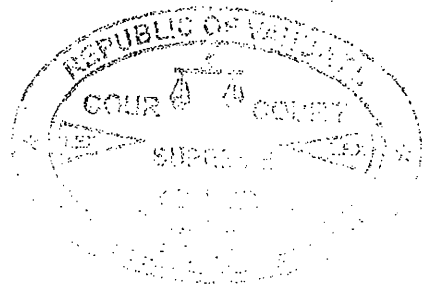
"SEDITIONOUS STATEMENTS

65 (1). No person shall make or publish or cause or permit to be made or published any statement expressing any seditious intention.

Penalty: Imprisonment for 15 years.

(2). For the purposes of subsection (1), the expression "statement" include words, writing, pictures, or any expression, representation or reproduction by any means whatever."

(e). **Section 66 of the Penal Code Act states –**



“SEDITIONOUS PUBLICATIONS

66 (1). No person shall –

- (a). Print, publish, sell, offer for sale, distribute or reproduce any seditious publication.,
- (b). Not applicable.,
- (c). Not applicable.

Penalty: Imprisonment for 15 years.

(2). Every seditious publication shall be forfeited to the Republic.”

(f). **Section 12 of the CPC Act [CAP 136]**

“Arrest by Police Officer Without Warrant

C1). Any Police officer may, without an order from a judicial officer, or a warrant, arrest any person whom he suspects on reasonable grounds of having committed a cognisable offence”.

(g). **Section 40 of the Police Act States –**

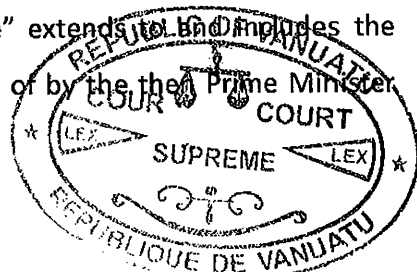
“Non-liability for act done in good faith

No suit or other legal proceedings for damages shall be instituted in any court of law against the Minister or Commissioner or any other member of the Force or any other person for or an account of o in respect of any act, matter or thing done or omitted to be done, in good faith, in the performance or exercise of any duty or power imposed or conferred by or under this Act, and the provisions of this Section shall extend to the protection from liability as aforesaid of any person deputed by delegation under this Act or under any other law for the time being in force to perform or exercise any such duty or power aforesaid.”

Application of the law to the facts.

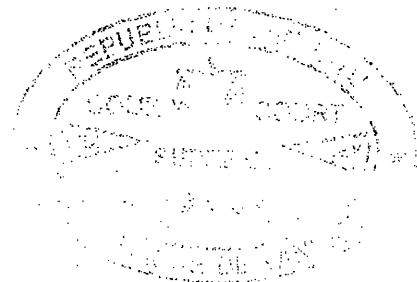
23. Applying these legal provisions to the facts available in the evidence I find that –

- a). The definition of “cognisable offence” extends to and includes the alleged act of terrorism complained of by the then Prime Minister



Moana Carcasses Kalosil under the provision of the Terrorism and Transnational Organised Crimes Act [CAP 313] for which no warrant of arrest was necessary.

- b). Seditious publications and seditious statements are serious criminal offences under Sections 65 and 66 of the Penal Code Act which are included in the schedule of cognisable offences for which no warrant of arrest was necessary.
- c). The opening comment of the claimant in the words "Fasin blong langlang wantaem", is a seditious statement falling within the definition of seditious intention under section 63 (a) of the Penal Code Act. The term "langlang" is a Bislama slang word and it is contemptuous. Surely and certainly the Council of Ministers of Government was not meeting in Torba for the purpose alleged by the Claimant, rather the Council of Ministers was meeting in Torba to make important executive decisions for the Republic. It is indeed a language of disrespect to the then Prime Minister and to the Ministers of his government at the time under Section 63 (f) of the Penal Code Act.
- d). The publication of those words on face book amounted to seditious publication in breach of section 66 of the Penal Code Act.
- e). The statement at the end of the claimant's comment: **"We pray that plane bae I tes crash long Vila Bay taem oli kambak"** was a cursory and a death wish. That amounted to a seditious intention under section 63 (c) and (d) of the Penal Code Act. And upon the claimant publishing that intention on face book, that publication was seditious publication in breach of section 66 of the Penal Code Act. And indeed such seditious intention was capable of inciting, procuring or encouraging violence, lawlessness and disorder under (Section 63 (c) PCA which acts if and when carried out would be acts of terrorism in fact and in law.



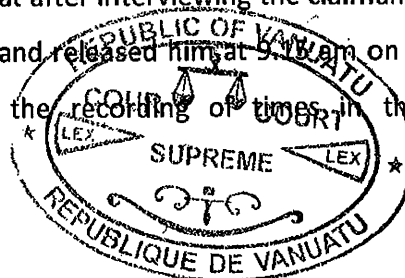
- f). The police had received a formal and legitimate complaint from the then Head of Government who viewed the comments very seriously because he was concerned about the safety of himself, his cabinet and the Republic and he was obliged and rightly did so.
- g). The police formed a reasonable suspicion based on the formal complaint of the then Prime Minister and they legitimately arrested the claimant without a warrant of arrest and they did so squarely within their powers under Section 12 of the Penal Code Act.
- h). After the arrest, detention and due inquiry the police concluded (though wrongly) that there was insufficient evidence to lay charges, they then released him in the morning of 7 May 2013. I find that the police had acted within their powers under Section 18 (2) of the CPC Act.
- i). Further, I find and I am satisfied all the actions of the police done in relation to this claimant were done in good faith under section 40 of the Police Act.

24. Based on and as a result of those findings the issue of whether the claimant was unlawfully arrested is answered in the negative. And his claims fail on this issue.

25. I turn now to the second issue: whether or not the claimant was unlawfully imprisoned?

The claimant's evidence (paragraph 13) is that he was kept in cell at 10.00am on 6 May 2013 and released or let out at 9.45am on 7 May 2013. But he said he was kept further at the police station until 5.00 pm on 7 May 2013. He does not however say why he was kept there until 5.00pm. He has no evidence to show he was in handcuffs or was kept in a locked room or was being watched over by a policeman or was being refused permission to leave the police station.

26. Chief Inspector George Twomey's evidence was that after interviewing the claimant, he had him detained at 10.57 am on 6 May 2013 and released him at 5.45 am on 7 May 2013. These times are consistent with the recording of times in the



Watchhouse Custody Register annexed as "GT2" to the sworn evidence of the Chief Inspector (Exhibit D1). These times show that the keeping of the claimant at the cell was less than 24 hours. Section 18 (1) of the CPC Act permits that to happen.

27. I therefore find that the claimant was not unlawfully imprisoned and answer the second issue in the negative. His claims are dismissed on this issue.

28. Now for the third issue: whether or not the claimant was defamed?

The claimant's evidence (Annexure "GM2") shows a news reporting in the Daily Post on 7 May 2013 about his arrest and detention on 6 May 2013. The real difficulty for him is that he has no evidence showing what impact or effect that news reporting had directly on him and his employment or job that day and onwards. Absent that evidence this issue must be answered in the negative.

29. Having answered the first three issues in the negative it follows therefore logically that the final issue whether the claimant is entitled to punitive and general damages is also answered in the negative.

The Result

30. The claimant is unsuccessful in all his claims. Accordingly all his claims are dismissed in their entirety.

31. As these claims are entirely without merit or basis it follows that he must pay the defendant's costs. Costs are awarded in favour of the defendant on the standard basis as agreed or be taxed by the Master.

DATED at Port Vila this 9th day of June 2016.

BY THE COURT


OLIVER SAKSAK

Judge.

12

