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

Civil Case No. 19/659 SC/CIVL

BETWEEN: Yatamil Joe

Claimant

AND: Michel Napau, Marie Michel, Bryan Michel, Richie Michel, Patso Michel, Mathew Michel, Lavinia Michel

Defendants

Date of Hearing :	***2nd October 2020***
Date of Decision:	***10th December 2020***
Before:	***Justice Oliver.A.Saksak***
In Attendance:	***Mr Eric Molbaleh for Claimant***
	Ms Linda Bakokoto for Defendants (ceased acting)

JUDGMENT

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1. This is a claim for damages for trespass and personal injuries caused to the claimant by the defendants resulting from an assault, and for pain and suffering, general damages and costs.

2. The defendants deny liability and counter-claim against the claimant for VT 3.000.000 being general for trespass, assault and batter, mental distress and costs.

Facts

3. In relation to the counter-claim the defendants claim the claimant trespassed into Tom Iarapia's property on 27th July 2018. He cut down Mr Iarapia's door using a bush knife. He also cut Mr Iarapia's forehead causing a laceration. Defendant Patso Michel saw Tom fall to the ground and went to his assistance. However the claimant saw Patso Michel and swung his knife to cut him. Fortunately the knife missed Patso and the knife caught a nearby pawpaw tree with a cut of 20 cm in diameter. The claimant then threatened to cut someone with a knife and did not care if he went to prison for his action.

4. On 2nd August 2018 around 10:00am the claimant trespassed again into the defendant's property. He entered Bryan Michel's room and was searching through his staff. Mathew Michel and Lavinia Michel were in the house. The claimant saw them and tried to scare them away but

they would not leave. The claimant then swung his knife at Mathew and cut Mathew's shirt across his chest. The two young children were so scared they ran to the main road and remained out of the house until 1:00pm that day. The other defendants returned from fishing and noticed the two children on the road. They were literally shaking and traumatised by the incident. Matthew is an asthmatic child. They asked them what happened. The children told the defendants what the claimant had done to them.

5. The defendants contacted the Police by phone to report the matter. The Police did not attend, complaining they had no fuel to attend the scene.

6. On Friday 3rd August 2018 defendant Michel Napau called the police again. He called again on 4th August 2018 but received the same response.

7. On 5th August 2018 Richie Michel and Bryan Michel became so angry with the claimant. They went to the claimant's house to express their anger at his actions they then assaulted the claimant.

8. Matthew and Lavinia Michel became mentally distressed causing them to miss school resulting in poor results in their school work.

9. In relation to the claimant's claim the defendants assaulted him on Sunday 5th August 2018. Defendants Richie Michel, Patso Michel and Bryan Michel entered the Claimant's property under the influence of alcohol and assaulted him. Richie punched him between his right eye and nose with a ring on his finger causing laceration and bleeding. Patso held a knife and tried to stab him in the back but the claimant kept running away around the house. Bryan held a spear gun and pointed it at him. Matthew and Lavinia too attended the scene with Michel Napau and Marie Michel. Michel Napau tried to kick him several times. Marie Michel ultered some abusive words. Richie Michel swore at him and threatened to kill him dead and that they would burn down his house.

10. The claimant's brothers came on the scene and stopped the fight. They then took him to the Central Hospital. An eye examination revealed a deep laceration on the right upper eye lid resulting from an assault.

Evidence

11. The claimant filed sworn statements in support of his claim on 26 June 2019 and on 3rd September 2019. His father Joe Yokai also filed a sworn statement in support on 3rd September 2019.

12. The defendants filed evidence by sworn statements from Tom Iarapia on 8th June 2020, from Ratso Michel on 7th May 2020, from Richie Michel, Bryan Michel, and Marie Michel also a 7th May 2020 and from Michel Napau on 8th November 2019.

Discussion

13. Matthew and Lavinia did not depose to any sworn statements therefore could the defendant's claim that the claimant threatened them and scared them off be a made-up story? However Michel Napau said he and his sons were returning from fishing on 2nd August 2018 when they saw Matthew and Lavinia on the main road literally shaking. His sons are Bryan, Richie, Patso and Matthew. Lavinia is his grand-daughter. Bryan, Richie and Patso all confirmed this statement. Marie Michel was not with them but says she returned from work at the time and saw the group on the main road.

14. Joe Yokai, the claimant's father witnessed the assault on the claimant by Richie, Patso and Bryan Michel. He saw Michel Napau kick the claimant with his shoes. He says he did not believe his son had assaulted the children as he says at the time he and his son were weeding in a garden at Mele.

15. The difficulty with his evidence is that Joe Yokai does not state the date and time he and his son were in the garden weeding. He does not say when his son had gone to Mele, he does not say where he lives. But I take note that Joe Yokai is a pastor and as such his evidence is far more credible than the defendant's evidence. But then the children were seen at 1:00pm. It could well be the claimant did threaten them earlier then left to go to Mele for fear the children would report him to the other defendants. The latter is more probable to me.

16. I note the medical report annexed as MNO1 to the statement of Michel Napau but it is dated 17th October 2019. And it relates to Leontor Napau, a male born on 27th November 2007. It shows this boy to be asthmatic.

17. The difficulty I have with the Report is that it does not relate to Matthew Michel. Michel Napau does not state whether Leontor Napau is the same person as Matthew Michel. Therefore this medical report is questionable.

18. Further the claim that the children Matthew and Lavinia were mentally distressed is not medically confirmed. There is no separate medical report on Lavinia. Therefore the claim for mental distress is also questionable.

19. The assault on Tom Iarapia is admitted by the claimant but he claims they have reconciled. However Tom Iarapia has not confirmed this in his evidence. But this is not Tom Iarapia's case. He had not sought to be a party to this proceeding to claim against the claimant. He is merely a witness.

Findings

20. From the analysis of the evidence I find as follows:-

(a) Michel Napau and his sons Bryan, Richie and Patso had assaulted the claimant on 5th August 2018.

(b) The assault was provoked by the previous actions of the claimant firstly on Tom Iarapia in July 2018, and the battery and threats caused on Matthew and Lavina on 2nd August 2018.

(c) By his actions, the claimant had taken the law into his own hands. Therefore he has now come to Court with dirty hands to claim damages.

(d) As for the counter-claims of the defendants, I also find the defendants took the law into their own hands by assaulting the claimant on 5th August 2018. Therefore they too have come to Court with dirty hands.

The Result

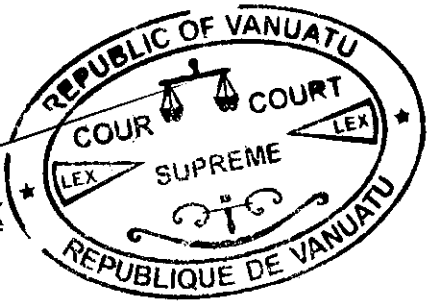
21. The claim of the claimant therefore fails in its entirety and are dismissed.

22. The counter-claims of the defendants also fail in its entirety and are dismissed.

23. That being the result, there will be no order as to costs. Each party bears their own costs.

DATED at Port Vila this 10th day of December 2020

BY THE COURT



OLIVER.A.SAKSAK

Judge