

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

Civil  
Case No. 21/416 SC/CIVL

**BETWEEN:** FR8 Logistics Limited  
Claimant

**AND:** Port Vila Municipality  
Defendant

*Date of Trial:* 10 September 2021  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr P.J. Boe  
Defendant – Mr S. Kalsakau  
*Date of Decision:* 15 October 2021

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## JUDGMENT

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A. Introduction

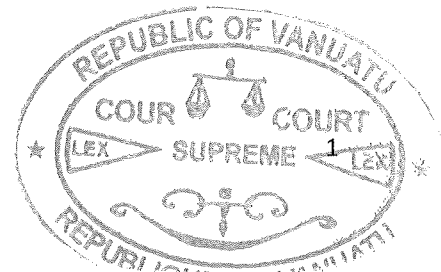
1. The Claimant FR8 Logistics Limited ('FR8') is suing the Port Vila Municipality (the 'Council') for misfeasance in public office in relation to the detention of its vehicle and fines ordered to be paid. The Claim is disputed.

B. Background

2. On 20 August 2020, the Council's municipal wardens carried out a traffic check. Twelve vehicles, including FR8's vehicle registration number 9060 ('FR8's vehicle'), were cited for breach of the *Road Traffic (Control) Act* [CAP. 29] (the 'Act') and detained.
3. FR8's vehicle was detained for 21 days.
4. The Council issued a notice for a VT15,000 fine to be paid in relation to FR8's vehicle.

C. The Law

5. Section 38 of the Act provides:



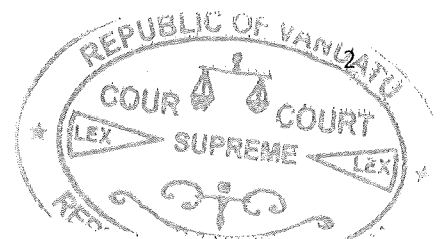
38. *Every owner of a vehicle being used on a public road shall display or cause to be displayed in a conspicuous position on the right hand side of the said vehicle, the sticker provided by the Director of Customs and Inland Revenue.*

6. Section 41 of the Act provides:

41. (1) *No person shall use or cause or permit any other person to use any motor vehicle on a road unless there is in force in relation to that vehicle a policy of third party insurance covering liability arising from the use of such vehicle by any person on a road for the death or bodily injury of any person, other than a passenger in such motor vehicle issued by an insurance company.*
- (2) *The amount of liability insured shall be unlimited.*
- (3) *No such policy of third party insurance shall be avoided or vitiated by reason of any term or condition thereof whatsoever and any such term or condition of any policy of third party insurance shall be deemed to be null and void.*
- (4) *The provisions of this section shall not apply to motor vehicles owned by the Government of Vanuatu.*

7. Sections 54, 54A and 54B of the Act provide:

54. (1) *Any police officer may challenge and summon to stop any driver of a vehicle who has committed an offence against the provisions of this Act in order to appraise him of the offence committed and to record particulars of identity.*
- (2) *Any police officer may detain any vehicle concerned in an offence which seriously jeopardizes the safety of road users, the state of preservation of the public roads or their normal use.*
- (3) *Upon a request from the owner of a vehicle detained under subsection (2), the vehicle is to be released temporarily to the owner for the sole purpose of having the vehicle repaired.*
- (4) *Within one working day after the repairs are completed, the vehicle must be returned to the place of detention for inspection by a police officer and the owner must advise the officer of the repairs made to the vehicle.*
- (5) *If upon inspection of the vehicle, the police officer is satisfied that the vehicle no longer seriously jeopardizes the safety of road users or the state of preservation of the public roads or their normal use, the vehicle is to be released to the owner.*
- (6) *If upon inspection of the vehicle, the police officer is not satisfied that the vehicle no longer seriously jeopardizes the safety of road users or the state of preservation of the public roads or their normal use, the vehicle is to be released temporarily again to the owner for the sole purpose of having the vehicle repaired, and this subsection and subsections (4) and (5) apply in respect of the release.*
- (7) *A vehicle is forfeited to the State if the owner does not make a request under subsection (3) within 10 working days after the detention.*
- 54A. (1) *Any police officer may challenge and summon to stop any driver of any vehicle for the purpose of determining whether or not –*
- (a) *the vehicle has on display a sticker provided as required by section 38; or*
- (b) *the vehicle is registered in accordance with the requirements of this Act.*
- (2) *The police officer may detain the vehicle if he or she is satisfied that –*
- (a) *the vehicle does not have on display a sticker as required by section 38; or*



- (b) the vehicle is not registered in accordance with the requirements of this Act.
- (3) A detained vehicle must be released if within 10 working days or such longer period determined by a police officer after the detention –
  - (a) a sticker for the vehicle is provided as required by section 38; or
  - (b) the vehicle is registered in accordance with the requirements of this Act; or
  - (c) if applicable both paragraphs (a) and (b) are satisfied.
- (4) A detained vehicle is forfeited to the State if paragraph (a), (b) or (c) of subsection (3) (whichever applies) is not satisfied within the period mentioned in subsection (3).
- (5) Upon a request from the owner of a vehicle detained under this section, the vehicle is to be released temporarily to the owner for the sole purpose of obtaining a roadworthy certificate (see section 32(2)) in order to obtain a sticker under section 38.

54B. An officer appointed under section 19A of the Municipalities Act [Cap. 126] as a municipal warden may assist a police officer under section 54 or 54A.

8. The tort of misfeasance in public office is introduced in *Clerk & Lindsell on Torts* (19<sup>th</sup> ed., Sweet & Maxwell, 2006) at [14-56] as follows:

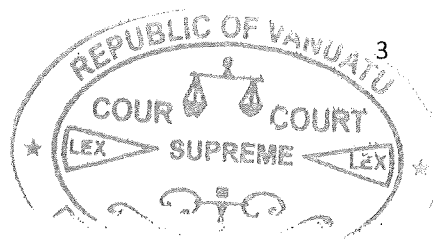
*The tort of misfeasance in public office originated in the electoral corruption cases of the late seventeenth century, was expanded in the nineteenth century to cover the liability of judges of inferior courts for malicious acts within their jurisdiction, and has now been authoritatively defined in the speech of Lord Steyn in Three Rivers D.C. v Bank of England (No. 3) [2000] 2 W.L.R. 1220. Lord Steyn explained, at [1229], that there were two different forms or limbs of the tort:*

*"First there is the case of targeted malice by a public officer, i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful."*

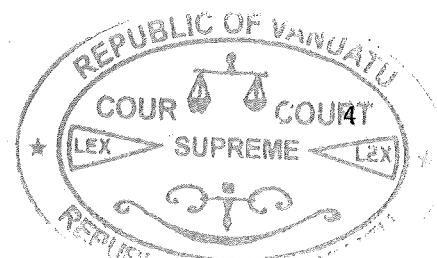
*The first form is referred to as "targeted malice" and the second as the "untargeted malice" of "illegality" limb. It can be classed as an "intentional tort" but the key element is an intention to act for an improper motive. Its rationale, according to Lord Steyn, at [1229], is that "in a legal system based on the rule of law executive or administrative power 'may be exercised only for the public good' and not for ulterior or improper purposes' and hence, it was an exception to "the general rule... that if conduct is lawful apart from the motive, a bad motive will not make [the defendant] liable."*

D. Discussion

- 9. FR8 alleges that the Council's detention of its vehicle was illegal and as a result committed the tort of misfeasance in public office.
- 10. In its Defence, the Council denied that there was any unlawful seizure and that at all material times:
  - a) Municipal wardens were assisting the Vanuatu Police Force (the 'VPF') to police the Act, in accordance with s. 54B of the Act;



- b) That FR8's vehicle was detained in accordance with s. 54A of the Act and was released after that; and
  - c) That the municipal wardens acted reasonably and in good faith.
11. FR8 will need to prove malice by the Council, that is, conduct specifically intended to injure a person or persons or alternatively, that the Council's municipal wardens acted knowing that they had no power to do the act complained of and that the act would probably injure FR8. The wardens must not have an honest belief that their act is lawful.
12. FR8 filed sworn statements of:
- a) Chris Kernot filed on 17 February 2021, [**Exhibit C1**] and on 17 May 2021, [**Exhibit C2**]; and
  - b) Derrick George filed 18 February 2021, [**Exhibit C3**].
13. There were a number of objections made to Mr Kernot's sworn statement, [**Exhibit C1**]. This sworn statement contained more legal submissions than assertions of fact. Paragraphs 3, 7, 8, 14-16 are struck out for containing submissions, conclusions of law and irrelevance. In addition, the word "illegally" in the first sentence of para. 6; the words beginning, "the municipal warden on behalf of the PVM..." to the end of para. 10; and the words beginning, "as a result of..." to the end of para. 11 are also struck out for containing conclusions of law and irrelevance.
14. Mr Kernot was cross-examined. Mr George was the driver of FR8's vehicle when it was stopped and detained on 20 August 2020. He was not available for cross-examination. I therefore gave little weight to his evidence besides noting his evidence that he was told by the municipal warden who stopped the vehicle that they had the presence of national police with them on the road therefore they were allowed to detain vehicles.
15. The Council filed the sworn statement of William Seru, [**Exhibit D1**]. Mr Seru evidenced that he is a Corporal of the VPF and assigned to the Traffic Unit. On 24 March 2020, he was seconded to the Council to oversee and coordinate traffic duties within Port Vila with the assistance of municipal wardens. On 20 August 2020, under Mr Seru's supervision, he and the municipal wardens set up road blocks to check that all vehicles using the public roads were doing so with the required documentation. They stopped 12 vehicles, including FR8's vehicle, for breach of the Act. FR8's vehicle was detained as it did not have a road tax sticker, roadworthiness certificate or vehicle insurance. A VT15,000 fine was issued.
16. There is no evidence of malice by the Council. There is also no evidence that the Council's municipal wardens acted knowing that they had no power to do the act complained of and that the act would probably injure FR8. There is no evidence that the wardens did not have an honest belief that their act was lawful. Nor did FR8 summons any municipal warden or other Council officer to give evidence as to these matters. On the contrary, Mr George evidenced that he was told by the warden who stopped him that they had the presence of the police with them on the road so they were allowed to detain vehicles.



17. Section 54B of the Act provides that an officer appointed as a municipal warden under the *Municipalities Act* [CAP. 126] may assist a police officer under ss 54 or 54A. I accept Mr Seru's evidence that on 20 August 2020, municipal wardens assisted him to stop vehicles under ss 54 and 54A of the Act and detain vehicles if required.
18. Section 38 of the Act requires every owner of a vehicle used on a public road to display a road tax sticker. A sticker cannot be issued without a valid roadworthy certificate for the vehicle. Section 41 of the Act provides that no person shall use a motor vehicle on a road unless there is in force in relation to that vehicle a third party insurance policy. It is undisputed that when FR8's vehicle was stopped and detained on 20 August 2020, it did not have a road tax sticker, roadworthiness certificate and insurance policy. Accordingly, the municipal warden, assisting Mr Seru, acted in accordance with subs. 54A(1) and s. 54B of the Act to challenge and summon to stop Mr George who was driving FR8's vehicle.
19. FR8's vehicle was not displaying a road tax sticker therefore in accordance with para. 54A(2)(a) of the Act, it could be detained. I am satisfied it was detained by the warden who was assisting Mr Seru in accordance with s. 54B of the Act.
20. I must conclude that the wardens assisting Mr Seru and Mr Seru acted in accordance with the law and in good faith.

E. Result and Decision

21. For the reasons given, the Claimant has failed to prove the Claim on the balance of probabilities.
22. The Claim is **dismissed**.
23. The Claimant is to pay the Defendants' costs as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

DATED at Luganville this 15<sup>th</sup> day of October 2021  
BY THE COURT

.....  
Justice Viran Molisa Trief

