

**BETWEEN:** Mark Tom  
*Claimant*

**AND:** Rosen Lauto  
*Defendant*

**Before:** Justice Oliver A. Saksak

**Counsel:** Mr Roger Rongo for the Claimant  
Mr Bill Bani for the Defendant

**Date of Hearing:** 27<sup>th</sup> June 2023

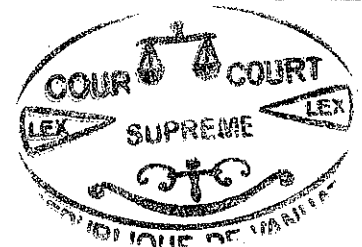
**Date of Judgment:** 5<sup>th</sup> April 2024

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**JUDGMENT**

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1. On the night of 23<sup>rd</sup> October 2020 the claimant sustained permanent injury to his right eye when the defendant threw a rock at the claimant. He fell down unconscious and was taken to the hospital for medical treatment.
2. His medical reports shows-
  - a) Sustained blunt trauma to the right eye.
  - b) A deep gushing laceration to the right and front of the cheek bone.
  - c) A blunt trauma to the right eye resulting in massive bleeding with the globe.
  - d) His right vision was seeing hand motion (significant loss of vision). Trauma had caused pupil dilation and significant vitreous haemorrhage at lower quadrant of the globe.
  - e) Right traumatic mydriasis, significant vitreous degenerations and macular damage.
  - f) The claimant now permanently blind on the right eye.
3. On the basis of that medical report the claimant was granted early retirement from his employment as an officer in the Vanuatu Mobile Force.



4. On 4<sup>th</sup> November 2020 the defendant and his father attended the claimant and made admissions about the defendant throwing the rock of at the claimant's eye. They paid a monetary sum of VT 15,000 with some calico, rice and mats as a token of reconciliation.
5. The defendant was latter charged and pleaded guilty to the charge of intentional assault causing permanent injury on 24<sup>th</sup> August 2021. He pleaded guilty and was sentenced to 100 hours of community work with supervision for 12 months.
6. The claimant therefore claims VT 15,000,000 for personal injury, VT 2,000,000 for emotional stress, VT 4,000,000 for economic loss, VT 2,000,000 for general damages and VT 1,000,000 for punitive damages. He claims also for interest at 5% per annum, and costs.
7. Whilst the defendant admitted throwing the rock at the claimant that night, he alleged the assault was provoked and that the claimant contributed to his own injury by being drunk and instigating the arguments and fight occurring on the night of the incident.

### The Issues

8. The first issue to determine is whether the defendant threw the stone at the claimant and causing the permanent injury to his eye?
9. From the defendant's own evidence he admitted taking a stone and throwing it at the claimant because the claimant had held onto his brother and was calling for his friend to come and assault him. The defendant never denied that the stone he threw at the claimant caused injuries to the claimant's right eye. He pleaded guilty to the charge of intentional assault causing permanent injury under section 107 (c ) of the Penal Code Act and was sentenced accordingly on his own plea. The defendant's action was deliberate and intentional.
10. The answer to the first is therefore "Yes".
11. The second issue is whether the assault was provoked by the claimant?
12. There was evidence the claimant and his friend were drunk that night. There was evidence of an argument arising with the bus driver that night because he had dropped them off at another



location. There was evidence of provocation but that provocation came from the defendant and his brother when they swore at the claimant and his friend which explains why they went after the boys.

13. There was therefore no provocation on the part of the claimant.
14. The third issue is whether the claimant sustained permanent injury to his right eye as a result of the defendant throwing the stone at him?
15. The answer is "Yes". It was so obvious that the stone thrown by the defendant hit the right eye of the claimant and he was taken to the Vila Central Hospital. The medical report describes the nature and extent of the injuries. The defendant could have denied those injuries during his criminal plea but did not. In effect he had accepted he admitted the assault. He therefore could not challenge that medical report in the Civil claim or object to its admission without any cross-examination.
16. The fourth issue is whether the claimant is entitled to damages and how much?
17. The answer is "Yes" but not in the sum of VT 15 million as claimed in the claim. In my opinion the claimant has not proved any economic losses. However it is my view and assessment that the claimant is entitled to general damages in the sum of VT 8,000,000 for his injuries to his right eye.
18. Finally the claimant is entitled to his costs of and incidental to the action on the standard basis as agreed or taxed.

DATED at Port Vila this 5<sup>th</sup> day of April 2024

BY THE COURT

  
Hon. Oliver A Saksak

Judge

