

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 055 of 2009**

**BETWEEN** : **RAVUAMA VONU** of Lot 11, Drevula Road, Nadawa

*1<sup>st</sup> Plaintiff*

: **AKARIVA VURA** of Kade Village School Compound, Kade Village,  
Koro, Lomaiviti, School Teacher.

*2<sup>nd</sup> Plaintiff*

**AND** : **REVEREND SIMIONE KOROI** of Gau Secondary School Compound,  
Nawaikama Village, Gau Island, Lomaiviti, Methodist Church Minister.

*1<sup>st</sup> Defendant*

: **KEVERIELI VONO** of Malawai Village, Gau Island, Methodist Church  
Steward.

*2<sup>nd</sup> Defendant*

: **THE METHODIST CHURCH OF FIJI**

*3<sup>rd</sup> Defendant*

: **CORPORAL AME AND OTHER POLICE OFFICERS** of Nacavanadi  
Police Post, Nacavanadi, Gau, Lomaiviti, Police Officers.

*4<sup>th</sup> Defendant*

: **THE COMMISSIONER OF POLICE** of the Fiji Police Force in Suva.

*5<sup>th</sup> Defendant*

: **THE ATTORNEY GENERAL OF FIJI** of the Attorney General's  
Chamber, Level 5-7, Suvavou House, Victoria Parade, Suva.

*6<sup>th</sup> Defendant*

**Appearance** : **Mr Tuifagalele N.** for the **Plaintiffs**  
**No Appearance** for the **Defendants**

**Date of Judgment: 26 May 2014**

## INTERLOCUTARY JUDGMENT

1. The Writ of Summons filed by the Plaintiffs and seek the following relief from 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants:

- (a) *Special damages to be assessed;*
- (b) *General damages to be assessed;*
- (c) *Costs;*
- (d) *Interest;*
- (e) *Any other relief to this Honorable court may seem just.*

2. **Background**

2.1 The First and Second Plaintiffs are father and son respectively.

2.2 The First Defendant was at all material times a Methodist Church Minister based at Vanuaso Village in Gau and was head Methodist Minister over Vanuaso, Nacavanadi, Lamiti and Lekanai Villages.

2.3 The Second Defendant was the “*Vakatawa*” or “*Steward*” of the Nacavanadi Village Methodist Church.

2.4 The Third Defendant is a religious body and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants carried out their duties as ordained Methodist Church preaches over the congregation at Nacavanadi Village and elsewhere in Gau Island under the administration and control of the 3<sup>rd</sup> Defendant.

2.5 The 4<sup>th</sup> and 5<sup>th</sup> Defendants were Chief Officer and Administrator of the Fiji Police Force and has control over the police officers of Fiji.

- 2.6 The 6<sup>th</sup> Defendant is sued in accordance with the provision of the State Proceedings Act Cap 24.
- 2.7 The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs owned a four bedroom wooden house fully furnished at Nacavanadi Village and that at all material times to this action the 1<sup>st</sup> Plaintiff was living in Suva and the 2<sup>nd</sup> Plaintiff was in Koro Island, a teacher at Kade Village School, during the time material to this action. The 1<sup>st</sup> Plaintiff built the house and the 2<sup>nd</sup> Plaintiff renovated the house in 1993 which was financed by a loan granted by Colonial National Bank in the sum of \$18,000.
- 2.8 In April 2007 when the 1<sup>st</sup> Plaintiff went to his village he found the house had been broken into and the chattels therein were broken or damaged and missing, concrete floor was smashed and the earth underneath being dug up and damaged the house.
- 2.9 The damaged, missing and burnt items were particularized in the Statement of Claim.
- 2.10 The 1<sup>st</sup> Plaintiff went to the house of 2<sup>nd</sup> Defendant with his cousin, a Savenaca Dausiga and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants explained the incident that took place.
- 2.10.1 The 1<sup>st</sup> and 2<sup>nd</sup> Defendants brought a woman to Nacavanadi Village from Naivikinikini in Lami who was supposed to be having cleansing power and they made all arrangements for her stay.
- 2.10.2 During the prayer session at Nacavanadi Methodist Church, a member of the congregation supposedly became possessed with a spirit and the spirit told the congregation that the 1<sup>st</sup> Plaintiff was practicing witchcraft and was worshipping a “skull” which was supposed to be in the house.

- 2.10.3 The 1<sup>st</sup> and 2<sup>nd</sup> Defendants with the support of members of the congregation broke into the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs house and done the damage and not found a skull.
- 2.10.4 The Plaintiffs alleged that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had breached their respective duties of care as church officials of the Methodist Church in Fiji towards the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. Particulars of the breach of duty of care were detailed in the Statement of Claim.
- 2.11 When the 1<sup>st</sup> Defendant, 2<sup>nd</sup> Defendant and others started to break the concrete floor, one of the Plaintiff's cousin sought the assistance from Corporal Ame and other police officers at the Nacavanadi Police Post to prevent the damage and the 4<sup>th</sup> Defendants did not stop the diggers in breach of their duties of care towards the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. Particulars of the breach of duty of care are described in the Statement of Claim.
- 2.12 The 1<sup>st</sup> and 2<sup>nd</sup> Defendants members are officials of the 3<sup>rd</sup> Defendant and the 3<sup>rd</sup> Defendant is vicariously liable for the acts of 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- 2.13 The 4<sup>th</sup> Defendants are members of the Fiji Police Force and the 5<sup>th</sup> Defendant is vicariously liable for the conduct of the 4<sup>th</sup> Defendants.
- 2.14 Further it was pleaded the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had defamed the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs claim further damages.
3. On 25 November 2011, when the matter came before the Master Amaratunga, the Plaintiff had agreed to struck off the claim against the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants and the order was made struck off the claim against the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants and the Notice of Discontinuance was filed by the Plaintiffs on 15 February 2012. As such the Trial was taken up only against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

4. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Statement of Defence was filed on 2<sup>nd</sup> April 2009 and stated inter-alia:

4.1 The Defendants admitted that the 3<sup>rd</sup> Defendant was responsible for the Administration of Vanuaso Circuit which was done through the 1<sup>st</sup> Defendant but 3<sup>rd</sup> Defendant denied that the control of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in relation to their respective individual pastoral duties over the congregation at Nacavanadi Village and elsewhere in Gau Island.

4.2 The Defendants admitted that they were aware of some damage done to the Plaintiff's premises and did not admit or deny the extent of the damage.

4.3 The contents of the paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 were denied by the Defendants and the Plaintiffs were put to strict proof thereof.

5. The Plaintiffs had filed their Reply to the Statement of Defence filed by the First, Second and Third Defendants and stated they join the issues with the Defendants.

6. The minutes of Pre-Trial Conference was filed on 5<sup>th</sup> December 2011.

7. **Agreed facts**

7.1 The parties agreed the Plaintiffs had built and owned a concrete floored house in Nacavanadi Village, Gau Island.

7.2 All material times to this action the Plaintiffs were not residing at Nacavanadi Village. The 1<sup>st</sup> Plaintiff lived in Suva and the Second Plaintiff was in Kade Village School at Koro Island.

- 7.3 The 1<sup>st</sup> Defendant was Methodist Church Minister who was appointed by the 3<sup>rd</sup> Defendant to be the head Methodist Church Minister over Vanuaso, Nacavanadi, Malawai, Lamiti and Lekanai Villages based at Vanuaso Village in Gau Island.
- 7.4 The Second Defendant was based at Nacavanadi Village and was a duly appointed, is a “*Vakatawa*” also known as a “*Lay Pastor*” or “*Catechist*” of the Methodist Church of Fiji and Rotuma.
- 7.5 The 3<sup>rd</sup> Defendant is a duly registered religious body which is responsible for appointing its Ministers and Catechists and others, to help administer and guide the delivery of its spiritual messages among its members and congregations throughout Fiji and Rotuma.
- 7.6 That on or about April 2007, Plaintiffs’ premises at Nacavanadi Village in Gau Island was damaged, and the Plaintiffs held the 1<sup>st</sup> and 2<sup>nd</sup> Defendants primarily responsible for such damage and the 3<sup>rd</sup> Defendant as vicariously liable for the damage caused by the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

8. **Issues to be decided in this matter are:**

- 8.1 As to whether 1<sup>st</sup> and 2<sup>nd</sup> Defendants are responsible for inciting some of the villages at Nacavanadi Village to damage the Plaintiffs’ premises in April 2007 and if it so whether 1<sup>st</sup> and 2<sup>nd</sup> Defendants are liable for damages caused to the Plaintiffs’ house and property.
- 8.2 As to whether the 3<sup>rd</sup> Defendant is vicariously liable for the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
- 8.3 As to whether the Defendants are jointly and/severally liable for the damage caused to Plaintiffs’ house in April 2007 and as to whether they should compensate for the

damages and as to whether the Plaintiffs' are entitled for the reliefs claimed in the Statement of Claim.

9. This matter was fixed for mention (*subsequent Order 34 summons*) on 23<sup>rd</sup> November 2012 and Mr N Tuifagalele counsel for the Plaintiffs and Mr P Salele for the Defendants appeared and matter was fixed for Trial on 26<sup>th</sup> February 2012.
10. When the matter was taken up for hearing, Mr Tuifagalele appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. No counsel appeared for the Defendants and they were not present in the court and matter was taken up for Trial.
11. In absence of the Defendants' solicitors/counsel and the Defendants, the matter was taken up for formal proof and I have considered all the material and evidence led before me to decide on this matter.
12. When the matter was taken up at 9.00am on 25 February 2013 the Defendants or their solicitor/counsel did not appear and Mr Maciu, Law Clerk of the Solicitor was present and stated the solicitor is before a Magistrate. When the trial dates were fixed on 23 November 2012, the Defendants' counsel was present and if he was unable to present he should have instructed another counsel to appear and conduct the case. This amounts to disrespect for the court. However, the court informed Mr Maciu that matter will be adjourned until 10.15am. No appearance made by the counsel/solicitor or the Defendants. This amounts to misconduct on the part of the Solicitor should be dealt by the Chief Registrar as I directed on 25 February 2013. Matter was taken up for hearing at 10.30am for formal proof.
13. At the outset, Mr N Tuifagalele counsel for the Plaintiffs stated the Plaintiffs are entitled for the orders as prayed in the Writ of Summons and called the 2<sup>nd</sup> Plaintiff to give evidence and stated the 1<sup>st</sup> Plaintiff is the father of the 2<sup>nd</sup> Plaintiff who is sick for last 7 years and unable to give evidence.

14. **Evidence of Akariva Vura – 2<sup>nd</sup> Plaintiff's evidence**

- 14.1 The witness is presently a School Teacher at Ratu Seru Memorial School and resides in the school quarters. In 2007 he was teaching at Koro Island. His father (*1<sup>st</sup> Plaintiff*) was in Suva in April 2007 and came to know their house was damaged. His father had visited the damaged house on 20<sup>th</sup> April 2007 and the witness became aware of the damage through his father.
- 14.2 The house structure was built by his father in 1980 and construction of the house was completed on a loan obtained from the National Bank of Fiji.
- 14.3 The house consisted of 4 bedroom ceiling, toilet, bathroom, kitchen and living room. When the witness went to see the house during school holidays, he found the damage and taken some photographs. The house was excavated to unearth a skull supposed to be buried in the ground. All floors of the 4 bedrooms were dugged up. Every room around one meter depth was dugged to search for the skull. The witness sat down and wept after seeing this. I observe after 6 years he still had emotional effect. The photographs were tendered through the witness which showed the substantial damage caused to bathroom, kitchen and bedrooms. When he came back to Suva he had made a complaint to the DPP's office at Toorak and the DPP directed him to the Police. The witness had made a written complaint on 1<sup>st</sup> May 2007 to the Police Headquarters which was marked as *P(1)* and the damage was quantified in the sum of \$12,660.00. This document was tendered as *P1* by the witness. The materials to be purchased for restoration and labour charges were included in the said \$12,660.00.
- 14.4 A written statement was taken by the Police on 1<sup>st</sup> May 2007 which was tendered marked *P2* and further statement was made on 30<sup>th</sup> May 2007 which was marked as part of the court proceedings, which was tendered in evidence marked *P3*.



- 14.5 The Police filed Case No. 13/07 in the Magistrates Court and some villages were charged under Section 324(1) of the Penal Code Cap 17 and the accused have pleaded guilty.
- 14.6 The witness stated the prayer group led by the Pastor was responsible for the damage.
15. Witness No. 2 Mitieli Loma gave evidence in Fijian language translated by the clerk Ms Beverly.
- 15.1 The witness stated he is a villager from Nacavanadi and he knows the 2<sup>nd</sup> Plaintiff and related to him. He recollected the incident which happened in April 2007. A prayer group came to the village in 2007. Pastor Koroï organized the prayer group. He was the Minister in 2007. He was in charge of 5 villages inclusive of Nacavanadi. He was based in Vanuaso around 4km from their village.
- 15.2 The Pastor informed the villagers a prayer group is coming. He announced one week prior to the arrival of the prayer group. When the prayer group came they were separated into 3 groups:
- Group 1 – Registration*
- Group 2 – Massaging*
- Group 3 – One person finding remedies for problems.*
- 15.3 There were 10 people in the prayer group. The witness too participated in the activities. He didn't feel anything some people were manifesting.
- 15.4 Before damaging the house the prayer group burnt the Chief's chair. There was a memorial statue in the village close to the church; it was also damaged, some trees were also cut and damaged. The damage was done with the vision of the person in group 3.

- 15.5 The villagers were frightened by the group and villagers did what the group wanted and the witness too participated in activities of causing the damages.
- 15.6 Witness too participated in the digging of the Plaintiffs' house. More than 20 people participated in digging of the house. No skull was found. He was also charged in the Magistrates Court and shown P4 admitted that he along with other and he was fined \$100.00. The house belonged to Ravuama Vonu the 1<sup>st</sup> Plaintiff. He realized he did a wrong thing. The witness tried to reconcile with the Plaintiffs and pleaded forgiveness as a customary pardon. The witness said he is aware being in the village for long the house was built by the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs.
16. Witness No. 2 Josefa Colati gave evidence in Fijian Language and translated by the clerk Ms Beverly.
- 16.1 The witness was a villager in Nacavanadi village and aged 45 years. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are relatives of the witness. P3 was shown to the witness and admitted he too was charged in the Magistrates court for damaging the property of the Plaintiffs. It was the Plaintiffs' house and he was living in the same village. The villagers were told by the prayer group there was a skull in the Plaintiffs' house and was asked to dig the house, no skull found. The prayer group was brought by the 1<sup>st</sup> Defendant Koroi. Witness was fined \$100. Now he knows what he did was wrong. This was the only house which was dug and which was vacant at that time.
17. **Conclusion**
- 17.1 By the evidence given before me, it was proved in balance of probabilities the Plaintiffs' house was dug and caused damages to the house and chattels. The 2<sup>nd</sup> Plaintiff's evidence was corroborated by the other two witnesses whom had participated in the digging of the house, at the instance of the 1<sup>st</sup> Defendant.

17.2 There was no evidence before me that the 2<sup>nd</sup> Defendant Keverieli Vono is responsible for causing damage to the house of the Plaintiffs. Accordingly, I discharge from the liability. I believe the evidence of the witnesses which are unchallenged.

17.3 It is the 1<sup>st</sup> Defendant who was the Minister who arranged a prayer group to visit the village and caused the damage to the Plaintiffs' house. I note with concern having enough evidence why the 1<sup>st</sup> Defendant was not charged in the Magistrates Court and the villagers (*who acted on the 1<sup>st</sup> Defendant's and prayer group's instructions*) were charged in the Magistrates court. To my mind it raises serious doubt about the investigations and summary of facts tendered to the Magistrates Court by the police without any reference to the First Defendant who led the group. I believe the evidence of the 2 witnesses who were testified in this case that the 1<sup>st</sup> Defendant was responsible for the damage caused to the house of the Plaintiffs. I state the principle of equality before the law is specially important to avoid discrimination. All are equal before the law and are entitled without any discrimination and equal protection of law. Being the Minister of the churches, the 1<sup>st</sup> Defendant is not entitled for special privileges or protection under the law. The police officers should have treated all parties connected to the incident regardless of religious affiliation or socio economic backgrounds etc. The police had failed in their duty to bring the main culprits before the law who induced the other accused to damage the house of the Plaintiffs.

17.4 The First Defendant being the Minister of churches in the area bringing in a prayer group and finally damaging the house of the Plaintiffs is proven by the Plaintiffs on balance of probabilities. The circumstances in this case confer the duty of care on the 1<sup>st</sup> Defendant being a religious leader in the area where the normal people look up to him for guidance. The 1<sup>st</sup> Defendant had misused his authority. He not only failed in his duty of care but induced the people in the village to destroy the properties of the Plaintiffs and I have no hesitation to hold him liable for the damages caused to the Plaintiffs' house and the chattels.

17.5 Now I turn to the 3<sup>rd</sup> Defendant, the Methodist Church of Fiji. The 3<sup>rd</sup> Defendant admitted in the agreed facts that it's a duly registered religious body which is responsible for appointing and anointing its Ministers and catechists and others, to help guide and the delivery of its spiritual messages among its members and congregations throughout Fiji and the evidence before me is that the 1<sup>st</sup> Defendant and his actions should have been closely monitored by the 3<sup>rd</sup> Defendant. If the 1<sup>st</sup> Defendant failed to exercise his duty of care, the 3<sup>rd</sup> Defendant is vicariously liable. 3<sup>rd</sup> Defendant being a religious organization carries more responsibility towards the community. In this case the 3<sup>rd</sup> Defendant failed to prove or tender any material for its innocence for the consideration of the court. As such in accordance with the agreed facts and the evidence led in this case, I determine the 3<sup>rd</sup> Defendant is vicariously liable for the damages caused to the Plaintiffs' house and chattels.

17.6 Further the 3<sup>rd</sup> Defendant along with the 1<sup>st</sup> Defendant filed a Statement of Defence which only makes denials without any substance. If the 3<sup>rd</sup> Defendant had a separate Defence with regard to its vicarious liability a separate Statement of Defence would have been filed. In absence of any material before this court to consider the vicarious liability of the 3<sup>rd</sup> Defendant not only it had not exercised its duty of care but created an inference, the 3<sup>rd</sup> Defendant had condoned the actions of the 1<sup>st</sup> Defendant who acted under its administration and authority.

18. **Assessment of Damages**

18.1 Having concluded that 1<sup>st</sup> and 3<sup>rd</sup> Defendant's liability for the damage caused to the Plaintiffs' house and chattels is established now, I assess the damages.

18.2 The damages caused to the property and chattels had been estimated at \$12,660.00 in May 2007 by the letter tendered as Exhibits *P1* and *P2* (*complaints made to the Police*) and in absence of any evidence in contrary, I award the special damages in the sum of \$12,660.00. The Plaintiff stated in his evidence that the house is not repaired until now. The estimated costs of repairing the house would have been

increased by now and considering escalation of the prices of the items and inflation, I award interest on the said sum at the rate of 6% per annum from 20 April 2007 to the date of this Judgment calculated as below. The 1<sup>st</sup> Plaintiff visited the damaged property on 20/4/2007).

<i>Special Damages</i>	:		\$12,660.00
<i>Interest for 2594 days</i>	:		
		$\left[ \begin{array}{l} \underline{6} = 0.0164 \% \text{ daily rate of interest} \\ (365 \text{ days}) \\ \underline{.0164} \times (2594 \text{ days}): \\ 100 \end{array} \right]$	\$ <u>5,385.76</u>
		<b>Special Damages Total:</b>	<b><u>\$18,045.76</u></b>

18.3 I award General Damages for the Plaintiffs' psychological sufferings and pain of mind \$5,000.00 each totaling \$10,000.00.

Accordingly, I make the following **Orders**:

- 1) *The 1<sup>st</sup> and 3<sup>rd</sup> Defendants are ordered to pay jointly/severally \$28,045.76 as Special and General Damages to the Plaintiffs within 30 days from this Judgment and interest at the rate of 4% will accrue on the total sum of \$28,045.76 until full payment.*
- 2) *The Defendants are ordered to pay jointly/severally the cost of \$2,500.00 summarily assessed to the Plaintiffs within 30 days.*

Delivered at Suva this 26<sup>th</sup> day of May 2014.



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**C. KOTIGALAGE**  
**JUDGE**

