IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

CIVIL APPEAL CASE No. 11 of 2015

BETWEEN: **REPUBLIC OF VANUATU**
Appellant

AND **JENNECK SAMUEL PATUNVANU**
Respondent

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice John von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Mary Sey
Hon. Justice Stephen Harrop

Counsel: *Mr K Tari (SLO) for the Appellant*
Mr K Loughman for the Respondent

Date of Hearing: *Wednesday 29 April 2015*
Date of Judgment: *Friday 8 May 2015*

JUDGMENT

Introduction

1. This is an appeal against the judgment of Justice Saksak in the Supreme Court delivered on February 2015 in which the respondent's claims for damages for false arrest, unlawful imprisonment and two malicious prosecutions were upheld. Vt 6 million was awarded together with VT 900,000 for interest. The appellant contends that none of the causes of action should have been found established and that therefore no damages ought to have been awarded. The respondent supports the Supreme Court judgment and the reasoning by which it was reached.

Background Facts

2. Mr Patunvanu is an experienced sea captain and carries on business under the name *"Marine Safety Vanuatu"*.

3. The facts giving rise to the claims were not materially disputed, with an important exception as to the basis on which Mr Patunvanu was arrested on 21 April 2011. We therefore gratefully adopt the summary contained in Justice Saksak's Judgment:

> "*3. Sometime in January 2011 the claimant signed a lease agreement with Carl Belden regarding two vessels, namely the MV Christine Leigh and MV Kaona. Subsequent to that signing the claimant went to the Solomon Islands to bring the two ships to Vanuatu with the help of some crew members from the Solomon Islands.*
> 4. *The Claimant captained the MV Christie Leigh and sailed from the Solomons on or about 14th January 2011 arriving in Port Vila on or about 20th January 2011 at 2100 hours.*
> 5. *The MV Kaona was captained by Captain Billy Mamaloni which sailed from the Solomons on the same date and arriving in Port Vila at Mid night on 20th January 2011. Both ships were anchored off Malapoa Point on arrival.*
> 6. *On 24th March 2011 Abel Kone made a formal complaint statement against the claimant alleging misappropriation, theft and forgery.*
> 7. *On 18th and 19th May 2011 Abel Kone made an additional complaint statements against the claimant and further alleging theft of VT 75.000.*
> 8. *On 6th April 2011 the Harbour Master, Captain Luke Beandi made a formal complaint statement to the Police alleging that the claimant and Captain Billy Mamaloni had breached section 5(a), (b), (c), (d), (e), and (f) of Ports (Operations in Port Vila) Regulations Cap.26.*
> 9. *Following the complaint of Captain Luke Beandi, the Police arrested the claimant at the Vila Mall at about 12'oclock noon on 21st April 2011. The Claimant was having lunch with a member of Parliament at the time. Four Police Officers in uniform arrived and arrested the claimant and put him in the metal cage at the back of the Police Vehicle. They then drove through town back to the Police Station.*
> 10. *At the Police Station the claimant was told to get out of the cage and go into the office. He was told he would be locked up in a cell. He was then locked up [*for about 3 ½ hours*].*
> 11. *The claimant being asthmatic and on medication had difficulty breathing inside the dirty and smelly cell. He asked the Police Officers to retrieve his spray from his wife at the family home at Tagabe. After about an hour, the Police returned with the claimant's spray.*
> 12. *Later on 21st April 2011 at around 3:30pm the Police took the claimant before the Magistrate Court. He was formally charged in Criminal Case No. 72 of 2011 for breach of section 5 of the Ports Regulations Cap 26 on 8th April 2011.*
> 13. *Also during his appearance in the Magistrate Court on 21st April 2011 Mr Loughman sought bail on behalf of the claimant. Bail was granted on conditions that-*
>
> *a. He must not leave Efate,*

b. He must not interfere with Prosecution witnesses,

c. He reports to the Prosecution Office every Friday between 7:30am to 4:30pm(Sic)

d. He appears on 13th May 2011 at 8:30am for plea,

e. Any breach of conditions would result in his arrest and detention.

14. The case was listed and called for plea on the following dates-

a. 13 May 2011, the prosecutor did not appear

b. 30th May 2011, the prosecutor did not appear again.

c. 24th June 2011, the prosecutor did not appear

d. 6th July 2011, the prosecutor did not appear

e. 22nd August 2011, the prosecutor did not appear and the Court dismissed the case for want of prosecution.

On each of those dates, the claimant appeared in Court.

15. On or about 20th June 2011 the defendant commenced the second criminal proceeding against the claimant in Criminal Case no. 173 of 2011 Public Prosecutor .v. Jenneck Samuel.

16. The charges preferred and laid against the claimant were misappropriation (Count 1), theft (Count 2) and forgery (Count 3).

17. On 14th July 2011 the claimant appeared in Court and pleaded not-guilty to all the charges. The Court adjourned the case for trial to 21st July 2011.

18. On 21st July 2011 the claimant appeared in Court however, the prosecution entered a nolleprosequi in respect of all three charges laid against the claimant."

The claim in the Supreme Court

4. The respondent claimed that his arrest on 21 April 2011 was unlawful because it was in relation to alleged offences against Regulation 5 of the Ports (Operations of Port Vila) Regulations, the maximum penalty for which is a fine ; accordingly the respondent could not properly have been arrested without a warrant as these were not cognisable offences for the purposes of section 12 of the Criminal Procedure Code. He further claimed that his detention from the point of arrest to his appearance and release on bail from the Magistrates' Court was consequently unlawful.

5. The respondent also claimed that both of the prosecutions against him were malicious as having been brought for reasons other than to prosecute him as an offender.

6. As to the first prosecution, Criminal Case No. 72 of 2011 alleging the regulatory offending, the particulars of malice pleaded were that the real complainant in that case was Maurice Kaloran (a former director of Ports and Harbour) and that the respondent had been asked to be part of an investigation team looking into Mr Kaloran's conduct in

light of allegations of misappropriation and failure to follow tender procedure in the building of the Pango lighthouse.

7. As to the second prosecution, Criminal Case No. 173 of 2011, in which the counts of misappropriation, theft and forgery were laid, the particulars were that the main complainants were Carl Belden, Abel Kone and Ronnie Lele against whom the respondent had obtained a default judgment on 30 March 2011 for Vt 1,400,000. Further, it was pleaded that in January 2011, Mr Belden had engaged the respondent to bring the two ships to Vanuatu from the Solomon Islands under a lease agreement pursuant to which the respondent would continue to run and operate the ships within Vanuatu. Mr Belden however had terminated that agreement and entered into two new lease agreements, one with Abel Kone to operate MV Kaona and the other with Ronnie Lele to operate the MV Christie Leigh. It was further pleaded that Messrs Kone, Lele and Belden had difficulty running the two ships under the new lease agreements because they assumed that the respondent was preventing them doing so through Admiralty Case No. 3 of 2011 in which he had obtained the default judgment.

Unlawful Arrest and False Imprisonment

8. In our view Justice Saksak's findings that there was an unlawful arrest and unlawful detention for about 3 ½ hours at the Police station were undoubtedly correct and the appeal against those findings must be dismissed.

9. Although the appellant's witness Allanrow Bani said that the arrest was on the theft, forgery and misappropriation charges following the complaint by Mr Kone, the surrounding evidence clearly showed that the arrest was on the regulatory charges. The respondent was charged on 8 April 2011 with that offending and duly appeared on those charges on 21 April 2011. The "Kone" charges were not laid until 20 June 2011 and nothing appears to have been done to advance Mr Kone's complaint (which was supplemented by a further statement of complaint from him on 18 May 2011) until June.

10. Further, when the respondent was interviewed on 21 April it was only in relation to the regulatory charges on which he had been arrested, charged and bailed.

11. As the regulatory charges were not cognisable offences for the purposes of section 12 of the Criminal Procedure Code the arrest without warrant was unlawful.

The ingredients of a malicious prosecution cause of action

12. Establishing the tort of malicious prosecution is no easy task. The learned authors of Salmond and Heuston on the Law of Torts (21st edition, 1996) state at page 393:

> *"In order that an action shall lie for malicious prosecution.... the following conditions must be fulfilled:*
>
> *(1) The proceedings must have been instituted or continued by the defendant:*
>
> *(2) He must have acted without reasonable and probable cause;*
>
> *(3) He must have acted maliciously;*
>
> *(4) The proceedings must have been unsuccessful – that is to say must have terminated in favour of the plaintiff now suing."*

13. Self-evidently, the effect of the second and third of these cumulative requirements is that even if the prosecutor lays a charge without reasonable and probable cause to do so there is no malicious prosecution unless it is *also* proved that he or she acted maliciously. Further, even if it were proved that the prosecutor had acted maliciously, there is no cause of action in malicious prosecution if (unlikely as this may be) there was nevertheless reasonable and probable cause.

14. Accordingly, as the learned authors of Salmond and Heuston observe at page 397:

> *"Malice and absence of reasonable and probable cause must unite in order to produce liability. So long as legal process is honestly used for its proper purpose, mere negligence or want of sound judgment in the use of it creates no liability; and, conversely, if there are reasonable grounds for the proceedings (for example the probable guilt of an accused person) no impropriety of motive on the part of the person instituting the proceedings is in itself any ground of liability. Therefore it is necessary to distinguish between honesty of belief and honesty of motive: the former is relevant to the question of reasonable and probable cause, the latter to the question of malice.*

Malice means the presence of some improper and wrongful motive – that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It can be proved either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor."

Criminal Case No. 72 of 2011- a malicious prosecution?

15. At paragraph 32 (c) of his judgment Justice Saksak said: "The prosecution of the claimant in Criminal Case No. 72 of 2011 was simply bad. He was charged without the evidence to support the charge. He was charged prior to being interviewed. There was another captain who was complained against but he was not charged. Those are the facts what (sic) made this prosecution malicious. The test established in the case of *Martin v. Watson* [1994] 2 All ER 606 was satisfied by the Claimant."

16. There is no doubt that this prosecution was initiated by prosecutors for whom the appellant is responsible, so the first element was established. The fourth requirement was also established because the prosecution ended with a dismissal of the case (for want of prosecution).

17. The first question to be considered is whether in laying the charges in Criminal Case No. 72 of 2011 the prosecutor acted without reasonable and probable cause. The burden of proving the absence of this is on the claimant who, as Salmond and Heuston observe *"thus undertakes the notoriously difficult task of proving a negative."*

18. As the learned authors go on to say:

"Reasonable and probable cause means a genuine belief based on reasonable grounds, that the proceedings are justified..... the defendant is not required to believe that the accused is guilty: It is enough if he believes there is reasonable and probable cause for a prosecution. He need only be satisfied that there is a proper case to lay before the Court."

19. It is obvious, but important not to forget, that the assessment of this question, and indeed that of whether there was malice, is to be made at the time when the charges were laid rather than informed by hindsight. Later events may of course shed light on the true position at the time of filing the charges. A prosecution launched with reasonable and probable cause may nevertheless for a variety of reasons be later discontinued without derogating from the original justification for the charge.

20. Here there was a written complaint lodged by Captain Luke Beandi, the Harbour Master at Port Vila, which expressly stated that neither the vessel under the command of the respondent nor that under the command of Captain Mamaloni had obtained the Harbour Master's consent in the various respects required by section 5 of the Regulations. His complaint attached a copy of the Regulations and the Public Prosecutor prepared a statement of brief facts as well as particularised charges and a four page document in support of an application for a remand in custody or alternatively on bail on certain conditions. For present purposes it is clear that the Public Prosecutor acted entirely as if she believed she had reasonable and probable cause to launch the prosecution. We note that the complainant was on the face of it a responsible public official without any apparent ulterior motive to make the complaint.

21. We do not understand Mr Loughman to have contended either in the Supreme Court or before us that there was no basis for the charges. He did not plead or submit that there was no reasonable cause for the prosecution to be launched by reference to the facts of the complaint lodged by Captain Beandi, but rather attacked the prosecution as being for an ulterior purpose. Of course if there were ulterior reasons at play but nevertheless a reasonable and proper cause for prosecution then the claimant failed to establish an essential element of the cause of action.

22. In this case we are not satisfied that there was sufficient evidence justifying the conclusion that the Public Prosecutor did not have reasonable and probable cause to lay the charges under the Regulations. In our view, this is fatal to the cause of action and the appeal in relation to the first alleged malicious prosecution must succeed.

23. In any event, there was the further requirement to prove that the prosecution was launched maliciously. The assertion in the claim that Mr Kaloran was the real complainant is not on the face of the documentation correct. While he may have

complained to the Harbour Master, it was the Harbour Master who complained to the Police and it was on the police file that the Prosecutor based the charges. Accordingly, even if it was a malicious complaint, it was cloaked with the Harbour Master's authority when it came to the Public Prosecutor.

24. On the evidence provided to the Supreme Court we are not satisfied that the respondent proved his allegation that the Public Prosecutor knew of the alleged motivation for Mr Kaloran to complain about the respondent and that she deliberately launched the prosecution knowing of that i.e. that the complaint was not genuine. We are therefore not satisfied that the third element, that of malice, was established on the evidence. We do not accept Justice Saksak's conclusion that the failure to interview the respondent until after he was charged and the fact that the other captain was not charged justified the inference that the Public Prosecutor acted maliciously.

25. To determine the malice issue, the focus had to be on the mind of the Public Prosecutor, Ms Tavoa. Was it proved that she had an improper motive for filing the charges? While malice may be inferred from other evidence, in this case she arguably needed to be summonsed by the respondent as a critical witness in support of the allegation that she was motivated by malice. The onus was on the respondent to prove that she was. She was not called to give evidence. Although the Acting Public Prosecutor, Mr Malantugun purported to do so effectively on her behalf he had no personal knowledge of the case or of the state of mind of the Public Prosecutor herself.

26. In our view, the respondent failed to establish both the second and the third elements of the cause of action in malicious prosecution, in relation to the Criminal Case No. 72 of 2011. The appeal must be allowed on this point.

Criminal Case No. 173 of 2011- a malicious prosecution?

27. Justice Saksak also found this prosecution was malicious. At paragraphs 40 and 41 of his judgment he found:

> *"40. The evidence was that the charges of misappropriation theft and forgery were laid following the complaints of Abel Kone made on 24th March 2011 and on 18th and 19th May 2011. That is undisputed evidence. The difficulty is that when the police interviewed the claimant on 27th April 2011, six days after his*

arrest, detention, Court appearance and bail, the police did not raise any questions to the claimant about the allegations made against him by Abel Kone. And the defence did not produce any evidence showing (a) witness statements to support the allegations and (b) any suspect statement from the claimant as defendant or accused at the time.

41. Faced with that scenario the Public Prosecutor took decisions to prosecute the claimant and laid formal charges dated 11th July 2011. This is annexed to the sworn statement of Sgt. Wycliff Tarilenga (Exhibit D3). The case was then for a preliminary hearing on 21st July 2011. When the case was called by the Magistrate to assess the evidence and decide whether there was a prima case to commit the claimant as accused to the Supreme Court, the prosecution invited the Court to enter nolleprosequi. Their defence is that there was insufficient evidence against the claimant. Was that a malicious decision? In my view it was. That decision could and should have been made right at the beginning when considering the complaint, the witnesses statements and the suspects statement to assess whether on the basis of the material before her, a guilty plea and conviction could be secured or reached. To set a prosecution in motion without such consideration and assessment and to make that decision at a preliminary inquiry stage was simply malicious, if not a neglect of duty. In my view the test set out in Martin v. Watson were (sic) satisfied by the claimant in this case."

28. As with the other prosecution, the first and fourth elements were clearly established by the respondent. Again the issue is whether Justice Saksak was correct to find the second and third elements were proved.

29. Mr Loughman points to the failure of the police to interview the respondent about Mr Kone's complaints before they laid the charges. While this might on occasion be suggestive of an absence of reasonable and probable cause and perhaps of malice, it is by no means unusual for a prosecutor to lay charges without any input from the defendant. Of course on many occasions a defendant whom the police seek to interview declines to make any statement in the exercise of his/her rights. The prosecutor must then decide whether there is sufficient evidence available without any comment from the defendant to lay a charge. But it does not follow that if there is no interview or even an attempt to interview a defendant that the prosecution may not otherwise have sufficient evidence.

30. What information then did the prosecutor have before laying the charges in Criminal Case No. 173 of 2011? First there was a handwritten statement taken from Mr Kone on 24 March 2011 and the further one taken on 18 May 2011. While it is unclear how the second statement came to be taken, there is at least an available implication that the police had sought further information from Mr Kone in respect of his initial complaint. The information provided in the two interviews allowed the Public Prosecutor to lay three charges with a reasonable level of particularization. The documents lodged at the Court for the purposes of the preliminary enquiry hearing were: the two complaints, the formal statement of complaint signed by the Public Prosecutor pursuant to section 35 of the Criminal Procedure Code (certifying that the Public Prosecutor believed on reasonable and probable grounds that Mr Patunvanu had committed the offences of misappropriation, theft and forgery) and the information containing the three charges together with particulars.

31. In these circumstances, we cannot accept that these charges were laid without reasonable and probable cause. The onus was on the respondent to prove that was lacking. While the level of investigation and the absence of interview of the respondent may support an allegation of inadequate preparation, all the prosecutor needed to have at that stage was a belief that there was reasonable and probable cause for the prosecution, a proper case to lay before the Court. Here there was an identified complainant who had twice made statements in support of the allegations and sufficient detail to allow particularised charges to be laid. The prosecutor herself certified formally that she believed on reasonable and probable grounds that he had committed the offences.

32. As we have noted, the Public Prosecutor was not called as a witness by the respondent to challenge her state of mind as not holding the belief she certified she had. We cannot accept Justice Saksak's conclusion that a failure to interview the respondent before charging indicates an absence of reasonable and probable cause to do so. While as Justice Saksak noted, there were no supporting witness statements, that does not mean that Mr Kone's statements alone did not provide a sufficient basis to launch the prosecution.

33. Even if there was an absence of reasonable cause, we are also not satisfied that there was sufficient proof of malice. The Respondent pleaded that there were ulterior motives for

the prosecution relating to the relationship between the respondent and Messrs Belden, Kone and Lele.

34. We first note that the pleaded particulars of malice were not relied on at all by Justice Saksak in his decision: rather he focused on the paucity of evidence and the prompt decision to discontinue the prosecution after it was laid. With respect he appears to have equated what he saw as insufficient justification for the charge to be laid with proof of malice. As we have already noted, even if the prosecutor was lacking in the honesty of belief in the prospects of success of the prosecution that does not mean she had a dishonest motive in lodging it. Pleaded dishonesty or ulterior motives were simply not established by sufficient evidence called at trial. We note that Mr Loughman's submissions both before us and in the court below did not refer to any evidence which might have supported the pleaded allegations of malice.

35. In summary, we are not satisfied that on the evidence before the Supreme Court there was sufficient justification for concluding that the prosecutor acted without reasonable and probable cause in filing the charges but, even if we had found otherwise, there was no evidence or even a submission on behalf of the respondent which justified a conclusion that the pleaded malice set out in paragraph 15 of the amended claim was established. There may well have been justification for criticism of the conduct of the prosecutor as being inadequately prepared for the laying of these charges but the evidence fell well short of establishing the second and particularly the third element required to be proved to establish a cause of action in malicious prosecution.

36. We therefore allow the appeal so far as it relates to the Supreme Court's finding that there was a malicious prosecution in respect of Criminal Case No. 173 of 2011.

Conclusions on liability issues

37. We uphold the Supreme Court's findings that there was unlawful arrest and false imprisonment and dismiss the appellant's appeals in those respects but we allow its appeals in respect of the two findings that there were malicious prosecutions, respectively in Criminal Case No. 66 of 2011 and 173 of 2011.

Damages

38. Self-evidently the appeal against the award of damages in the Supreme Court must also be allowed because the most serious findings on liability, those relating to the malicious prosecutions, have been set aside. An assessment is now required of the appropriate award of damages to the respondent for the unlawful arrest and false imprisonment which occurred between his arrest and his appearance some 3 ½ hours later at the Magistrate's Court.

39. In the Supreme Court the respondent claimed damages of Vt 1 million for the unlawful arrest including humiliation and shame and Vt 1 million for the false imprisonment.

40. As we understood Mr Loughman, the respondent accepts that the most that could reasonably be sought was around Vt 1 million, covering both the false arrest and unlawful detention for 3 ½ hours. We agree the two matters should for present purposes be considered as one event. The question is what is the appropriate award having regard to the awards made in cases with similarities to this one?

41. We accept that the arrest itself was humiliating and embarrassing for the Respondent. He is an experienced seaman of 30 years and former Harbour Master who was arrested while having lunch with a member of Parliament at the Vila Mall. His detention began with a degrading ride, albeit a fairly short one, in the cage in the back of a police vehicle from Vila Mall to the Police station. He noted in his evidence that this involved a drive through town and that he felt humiliated and ashamed because people on the street saw him in the cage. The inference is that he was likely seen by people who knew him. He was then detained in a cell and was worried about his asthma worsening in the conditions there. He had to request his asthma spray but this was brought to him reasonably promptly. He then had to travel to the Magistrate's Court from the police station, again in the cage where he was visible to the public.

42. How do these facts compare with other similar cases?

43. Mr Tari referred us to the Court of Appeal judgment in *Warte v. Republic of Vanuatu* [2013] VUCA 10 and suggested that the damages here should be calculated based on that case. Claire Dornic and Lea McNicol were arrested by police officers who unlawfully

entered and remained on Mrs Dornic's property after they were told to leave by her. They were detained for some three hours and in the course of arrest Mrs Dornic suffered bruising to her legs and body. Mr McNicol, aged 67, was also manhandled and forced into the police vehicle. Mrs Dornic was never charged with an offence and there was no evidence that the police ever had a legitimate basis for her arrest. Mr McNicol faced a minor charge of wilful damage of a lock but that was withdrawn by the police without his ever appearing in Court. Even if the charge had been justified, it could not have legitimately formed the basis for his arrest.

44. The Court of Appeal said at paragraphs 31 and 32 of its judgment:

> *"31. In our view the appellants were arrested and imprisoned without cause in the circumstances where the arresting police officers were well aware that the arrests were not justified. Mrs Dornic was assaulted during the course of her arrest. Mr McNicol was 67 years of age and poor health. The appellants were also detained in custody for a relative (sic) short period of some 3 hours. However, neither appellant suffered serious or permanent injury.*
>
> *32. The Respondents suggest an award of between Vt 400,000 to Vt 600,000 for each appellant. We agree this is an appropriate range. Mrs Dornic is entitled however to a somewhat higher award given the assault on her. Accordingly we award Mrs Dornic Vt 600,000 and Mr McNicol Vt 400,000 damages under this head."*

45. There were other awards of damages to Mrs Dornic for trespass and malicious prosecution (Vt 1 million and Vt 125,000 respectively) and an award of Vt 125,000 to Mr McNicol for malicious prosecution.

46. Although we have upheld the Supreme Court finding that the arrest of the respondent at the Vila Mall without warrant was unlawful, there is no suggestion that the arresting officers knew that they were acting unlawfully. Also there is no suggestion of physical harm suffered by him although there were the additional factors of humiliation during his transport to and from the police station and the stress associated with the concerned about his asthma spray. The detention was relatively brief and the spray was fetched reasonably promptly.

47. In the circumstances we consider an award of damages of Vt 500,000 covering both the unlawful arrest and false imprisonment would be consistent with the approach of the Court of Appeal in *Warte*. We accordingly substitute this award of damages of Vt500,000 for those awarded the Supreme Court.

Interest on Damages?

48. The Respondent claimed and was awarded interest from the date of arrest, 21 April 2011, on the damages awarded in the Supreme Court. While there was no appeal against this aspect, and the issue becomes much smaller one with the substantial reduction in damages following our determination of this appeal, we take the opportunity to comment.

49. In our view where the damages are not for out-of-pocket losses i.e. special damages which a Court has found ought to have been paid by the defendant to the claimant at an earlier point in time, in principle no interest ought to be awarded. When the Court awards general damages for unlawful arrest and detention it does so in light of "current money awards" as at the date of trial. It is not appropriate to award interest on such intangible heads of damage.

50. This has been long established in personal injury cases in relation to awards for pain and suffering, loss of immunity and so on. See *Alphonse v. Tasso* [2007] VUSC 54 at [57]. In *Commissioner of Police v. Garae* [2009] VUCA 9 at [31] this Court said: "*As the general damages award is made in current money value it is not appropriate to award interest from the date of imprisonment. However the assessment now made is substituted for the award made at trial, and will stand on the judgment of the Supreme Court. Interest will therefore run from 21st November 2008 at 5%*"

51. We therefore decline to award interest from the date of arrest on the damages award of Vt 500,000, but consistent with this Court's observations in the *Garae* case, interest at 5% per annum on the VT500,000 award will run from the date of the Supreme Court judgment, 13 February 2015 until payment.

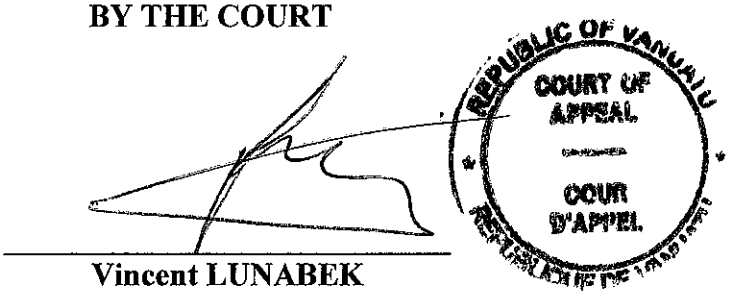
Costs

52. Both parties have had some success on appeal. The appellant has succeeded in its challenges to the findings that there were two malicious prosecutions and has succeeded in reducing the damages award overall from Vt 6.9 million plus interest to Vt 500,000. On the other hand it persisted on appeal in its contention that the arrest and subsequent detention were lawful as based on the "Kone" charges, despite the surrounding circumstances clearly showing the respondent was arrested on the regulatory charges.

53. In these circumstances, we consider costs should lie where they have fallen. The award of costs made in the Supreme Court must obviously be and is set aside.

DATED at Port Vila this 8th day of May, 2015

BY THE COURT



Vincent LUNABEK
Chief Justice