

BETWEEN: SCOTT MASLEA
Appellant

AND: REPUBLIC OF VANUATU
Respondent

Coram: *Hon. Justice John Mansfield
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon. Justice Gus Andrée Wiltens
Hon. Justice Stephen Felix*

Counsel: *Saling Stephens for the Appellant
Sakiusa Kalsakau for the Respondent*

Date of Hearing: 15th July 2019

Date of Judgment: 19th July 2019

JUDGMENT

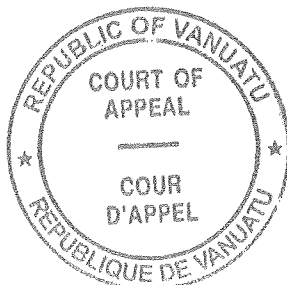
Introduction

1. This is an appeal against a total award of VT800,000 by the Supreme Court to the appellant for pain and suffering (VT500,000) and nervous shock (VT300,000) for a puncture wound sustained by the appellant at the hands of fellow inmates whilst he was a detainee at the Correctional Centre at Luganville, Santo in March 2008.

Background

2. It is common ground that in December 2007 the appellant was a remandee at the Correctional Centre at Luganville, Santo.
3. In his amended claim the appellant alleges that he was assaulted on no less than five (5) occasions: in December 2007, March 2008, and a further three times in December 2010. These assaults all occurred as a result of correctional officers' breaches of their statutory duty of care to ensure his safety as a detainee in their custody. The appellant claimed for damages, together with 5% per annum interest and costs under the following heads:

- | | | |
|----------------------|---|-------------|
| • Pain and suffering | - | VT3,500,000 |
| • Nervous shock | - | VT3,500,000 |
| • Aggravated damages | - | VT5,000,000 |



Supreme Court Decision

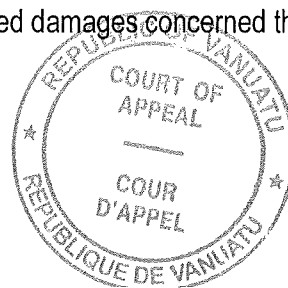
4. In its judgment the Supreme Court found there was no evidence to support the assaults on the appellant in 2010. The Court accepted however that the appellant was assaulted by fellow inmates on 17 December 2007 during breakfast and again on 01 March 2008 at around lunch time. In both incidents the appellant sustained injuries that required hospital treatment.
5. With regard to the December 2007 incident the Supreme Court rejected the appellant's claim of negligence on the basis that the appellant had failed to establish his claim beyond a mere assertion of a careless exercise of a statutory power or duty. What is more the Court accepted that during the assault a prison officer had properly intervened to shield and protect the appellant and accordingly the protective provisions of Section 65 of the Correctional Services Act applied.
6. As to the March 2008 incident the Supreme Court concluded from the appellant's uncontroverted evidence, that correctional officers were negligent in failing to prevent the "*not unexpected*" attack on the appellant by taking relatively simple pro-active measures beyond adhering to the rather passive security regime of a lock down.

The Appeal

7. The appellant appealed against the Supreme Court's rejection of his claim surrounding the December 2007 incident, as well as the adequacy of the VT800,000 awarded for the March 2008 incident.
8. During the course of hearing the appeal counsel for the appellant was asked concerning the December 2007 incident if he could identify where in the Supreme Court judgment an error of fact and/or law was to be found. Counsel was unable to do so beyond highlighting that the appellant's assailants were detained in a different section of the prison and had managed to gain access to the appellant's cell where they assaulted him while he was sleeping.

Discussion and Decision

9. We are not persuaded that the appeal in relation to the December 2007 incidents can succeed. The reasons of the trial judge involve careful findings of fact based on the credibility of the witnesses who gave evidence. Counsel for the appellant tried to assert that there was material to support different findings, but that was not included in the appeal book. He then said the notes of the trial judge, which was the record of evidence, were not available. That is not correct; they are available in the Supreme Court file.
10. So the result is that the findings of the trial judge on the question of liability for the December 2007 incidents are not shown to be wrong. They justify the conclusion that the December 2007 incident was not caused or contributed to by the negligence of the prison officers.
11. The appeal grounds relating to the assessment of aggravated damages concerned the December 2007 incident and do not, therefore, need to be considered.



12. As to the damages as assessed for the March 2008 incident, counsel for the appellant ultimately indicated that the appellant did not complain about them.
13. In those circumstances, the appeal is dismissed.
14. The appellant is to pay the respondent's costs of appeal fixed at VT50,000.

DATED at Port Vila, this 19th day of July, 2019.

BY THE COURT


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Hon. Justice John MANSFIELD



The seal is circular with the text 'REPUBLIC OF VANUATU' at the top and 'REPUBLIQUE DE VANUATU' at the bottom, separated by a star. In the center, it reads 'COURT OF APPEAL' and 'COUR D'APPEL'.