

IN THE MAGISTRATE'S COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 91 of 2003.

BETWEEN: EZABELLE DONAL
Plaintiff

AND: THE COMMISSIONER OF
POLICE
Defendant

Coram: *Magistrate Boe*

Mr. Daniel Yahwa for the plaintiff
Ms. Viran for the defendant

ORDER

This is a Magistrates Court Claim. The Plaintiff, **Ezabelle Donal**, claims VT365, 000 being for damages to her properties confiscated by police at Isangel, Tanna, since 1999. They were seized on allegation that she stole them. There were no provisional charges laid against the defendant but she was put in prison for a week sometime in 1999 when the police confiscated her properties. Thereafter, no attempt were made either by the police or Prosecutor to investigate and have the matter dealt with within a reasonable time. There were letters of reminder sent by the Plaintiff's lawyer to the Public Prosecutor Mrs. Heather Leo, on 19 July, 2000, 1 November, 2000 and again on 6 February, 2001. None of these seemed to have any effect on either the police or the Prosecutor. At one stage on 8 December, 2000, a letter from the Public Prosecutor's office seems to confirm that there are supporting statements to lay charges but none of these have materialized. It is now approximately 5 years 5 months and the matter has yet to be settled. Meanwhile, the Plaintiff has suffered loss as a result of police action.

In civil case NO. 91 of 2003, the Plaintiff now comes to this court requesting that the defendant pay damages of VT365,000 and 10% interest on the said sum. Particulars of damages are set out below.

1. Out Boat Motor Engine
2. Out Boat (Rubber Dingy)
3. Pump (Dingy Pump)
4. Fishing items - Fishing line rolls all turn black
- Hooks and pulleys all rust
5. 2 fishing rots - rusty and defective
6. Petrol Tank - rusty and broken
7. 3 video screens all damage
8. 2 video deck not working
9. video cassettes (Tapes) 55 altogether
- 33 missing
- 22 dirty
10. Cupboard (size approx. 1.5 x 2.5m) soaked with water and fallen apart
11. 4 sheets (Bed Coverings) (size 4x4m) torn by rats and cockroaches
12. Type writer not working
13. Electric saw - missing
14. Electric sand paper - missing
15. Electric Plainer - missing
16. 2 cartons library books - all soaked with water.

The value of the properties damaged is some VT365,000. During the hearing on 17 June, 2003, Ms. **Viran Molisa**, from State Law, appeared for the defendant. On 25 July, 2003, this court made certain directives. These were;

- (a) Defense to have 14 days to file defense, that is by 7 August, 2002, at 4 pm.
- (b) Plaintiff to file response within 7 days, that is by 14 August, 2003, at 4 pm.
- (c) Return date 21 August, 2003, at 08.30.

On 21 August, 2003, defendant made no attempt to file defense. No reasons were recorded for this non-compliance. Today, 18 September, 2003, Ms. **Viran** now advises this court that she was unable to get instructions from her client. No reasons were given as to why she could not obtain instructions from her client.

When I consider this case closely, I see a miscarriage of justice and unfair treatment of the plaintiff. This is why I refused to adjourn the matter further.

First, there were reasonably no strong evidence for the police to confiscate the properties. Secondly, by jailing the plaintiff for 1 week without formal charges being laid is unwarranted on the eyes of the law. The power to confiscate properties can only be exercised where police have obtained a warrant to enter the plaintiff's residence and do a search. This must be based on strong reasonable grounds that the plaintiff has some properties which they can proof to have been stolen. In this case, there were no warrant issued. If there was, this court cannot say. What is clear here is that, having confiscated those properties they found no evidence to lay charges against the plaintiff. If they had, they would have laid charges against and prosecuted the plaintiff a long time ago.

Even if they have strong evidence to prosecute her now, it would be against her right protected under Article 5(2). This Article states that 'everyone charged with an offence shall have a fair hearing, within a reasonable time'. Five (5) years 5 months is not a reasonable time. It is gross injustice to treat a plaintiff as a suspect for the past 5 years and 5 months without laying charges against her or without informing her of the charges. Such treatment can only be termed as deplorable.

For these reasons, I make no reservations but order the Police Commissioner pay damages as follow;

1. Damages in the sum of VT365,000
2. Interest of 10% calculated as VT100 per day as from the filing of this claim (20 May, 2003) until completion of payment.
3. That the properties belonging to the plaintiff listed above be immediately return in the presence of the plaintiff.
4. To pay costs in the lower scale as stated under Rule 15.10 as follow:

For drafting and settling claim.....VT5,000
(including counterclaim)

For drafting and settling any other.....VT3,000
application to the court, including an
for enforcement and a judgment order

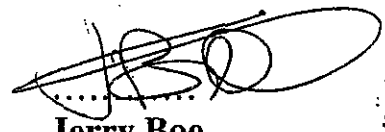
For preparation for trial only.....VT3,000

For any court appearance.....VT10,000
including for entry of default
judgment, but not for trial or
adjournment

For court appearance for.....VT3,000
adjournment VT24,000

Total cost to pay is VT4,000

Dated at Port Vila this 18 day of September, 2003.



**Jerry Boe
Magistrate**

