

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

Civil Case No. 78 of 2002.

BETWEEN: KALTAU WILLIE
Plaintiff

AND: MOSES JONATHAN
Defendant

Coram: Magistrate KEWEI KAWI-IU

Appearance: S. Joel for Plaintiff
No Appearance for defence

DECISION

Plaintiff, by his Amended Statement of Claim filed 1/4/03 seek the following relief:

- a) Damages for loss of earning at 246,000 Vatu
- b) Damages for distress at 50,000 Vatu
- c) Damages for loss of vehicle at 700,000 Vatu
- d) Interest
- e) Costs
- f) Any other relief

Following the Amended Statement of Claim a direction order was issued to the Defence to file their Defence and Counter-Claim. An undertaking by Defence to file Defence was made on the 10 June 2003. Again on the 25 July 2003 Court issue direction to Defence to file their Defence and Counter-Claim.

September 2003 still no Defence filed. On this date case was adjourned for hearing on 3 October 2003, and counsels directed to file written witnesses statements.

9/9/04

On the 30 October 2003, hearing was not conducted as Plaintiffs' counsel was sick, and case adjourned to 24 November 2003. Again on the 24 November 2003 case further adjourned due to counsels not appearing.

On the 25 November case further adjourned to 9 December 2003 as defence did not appear. From 9 December 2003 case adjourned to 22 March 2004.

A further adjournment was made from 22 March 2004 to 31 May 2004 for hearing. On this date defence did not appear and Plaintiff applied for adjournment to allow defence time to make appearance for hearing on a new date. The case was then adjourned to the 27 July 2004 for final hearing. On the hearing date (27.7.04) Defendant did not appear and the case proceeded in his absence.

Plaintiff gave oral evidence, and says that in 1998, he bought the vehicle Toyota Hilux 2 WD Reg. No. 2693 at a cost of VT1,300,000. After purchasing the vehicle in Santo, it was shipped to Port Vila where it was registered and operated as a public motor vehicle. Then about August 2002 the vehicle went for repair and was kept at Titus Workshop located at Blacksand.

Plaintiff further says that, the defendant without his approval removed the vehicle from Titus workshop and relocate it to his (defendant's) garage. Since then the vehicle had been kept at the Defendant's place and since the passing of time vehicle has deteriorated and lost its full value. In addition whilst the vehicle was in the Defendant's garage parts (engine, wheels, lights, stereo) had been removed/stolen. Photographs of the vehicle then and now showing stages of deterioration and missing parts were tendered to court in support of the claim.

The relief sought by Plaintiff may be achieved on two considerations, first on the strength of evidence adduced, and secondly, on Defence failure to file Defence and Counter-Claim.

On evidence the court is satisfied Plaintiff has adduced sufficient evidence substantiating his claim. There is evidence showing that plaintiff is owner of the vehicle Toyota Hilux 2 WD Registration No.

2693. Plaintiff had left his vehicle in Mr Titus Workshop to be repaired. However, it was removed from the workshop by the Defendant and taken to his (Defendant's) garage. Plaintiff did not authorize Defendant to remove his vehicle. And by doing so the Defendant unlawfully removed the Plaintiff's vehicle, he had also fail to properly protect another persons property, thus may be liable in negligence's or even for conversion.

The second consideration in which this case was decided relates to Defendant's failure to file defence to the Amended Statement of Claim. When the Amended Statement of Claim was filed on 1st April 2003 no Defence and Counter-Claim was ever filed. Defence filed a Defence and Counter-Claim on 9 July 2002. However, this Defence and Counter-Claim relates to Writ of Summons filed earlier on the 10 May 2002. There is some fundamental differences between the former Claim and the present one, in that the former Claim has the Commissioner of Police as the Second Defendant. Pleadings in the former Claim have been altered reflecting the change of parties, thus requiring a proper Defence and Counter-Claim. The former Defence cannot be properly relied on as the facts pleaded in the Amended Statement of Claim have also changed. The effect of not Filing Defence to the Amended Statement of Claim must mean one thing. That is in the absence of Defence, Judgment may be entered against Defendant in accordance with Rule 9.1 and 9.2.

I am therefore satisfied on the above considerations that Claimant be given the relief he seeks in his Amended Statement of Claim.

Plaintiff claim 246,000 vatu for loss of earning. Under this head allowance will be made for only 159,000 vatu for reasonable expectation of profits for the 53 days the vehicle was under detention. The balance of 87,000 vatu (Para. 11(b) of Claim) assumes that had the vehicle not detained it would have been repaired and operated to earn money. This expectation may or may not eventuated as the nature of the repair is not known. It could have taken longer than expected to repair the vehicle even if the vehicle had not been removed by Defendant.

There is no evidence in respect to distress and the same is not granted.

For damage for loss of vehicle, Plaintiff claim 700,000 vatu. The motor vehicle was purchased in 1998 at a cost of 1,300,000 vatu. Plaintiff operated the vehicle until about April 2002 when it, was detained by Police with the defendants assistance. Upon the vehicle's release it was brought to Titus Tabi's workshop at Blacksand on 14 August 2002. It was finally removed from Tabi's workshop by Defendant on 28 November 2002. Since this date the vehicle had been in Defendant's possession and now the vehicle had virtually lost its value. Plaintiff's claim is for the cost or estimated value of the vehicle at time when it was removed from his possession or control. I regard the 700,000 vatu claim for loss of vehicle reasonable and allow the claim.

Interest of 5% will be allowed from date of filing Amended Statement of Claim to date of Judgment.

Costs as per Schedule 2 of Civil Procedure Rule.

Items:

1	5000 vatu
3	3000 vatu
4	3000 vatu
6	3000 vatu
7	16,000 vatu

I now enter the following Judgment/orders for the Plaintiff.

ORDERS

Defendant is hereby ordered to pay Plaintiff the following sums:

1. Loss of earnings 159,000 vatu
2. Loss of vehicle 700,000 vatu

3. Interest 5% from filing to judgment date(2.8.04)
4. Costs Schedule 2 30,000 vatu
5. Court fees 10,000

Dated at PORT VILA, this 9th day of September 2004.

BY THE COURT



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KEWEI KAWI-IU
Senior Magistrate

