

(Civil Jurisdiction)

BETWEEN: EDWARD WAPILAK

Plaintiff

AND: BERNADETTE TAPIUSU

First Defendant

AND: WILLIE BULE

Second Defendant

AND: UBER CHARLEY

Third Defendant

AND: TADE TABI

Fourth Defendant

**Coram: Mr Justice Oliver A. Saksak
Ms Cynthia Thomas – Clerk**

**Counsel: Mr Hillary Toa for the Plaintiff
Mr Bill B. Tamwata for the Defendants**

JUDGEMENT

The Defendant applied by way of a Notice of Motion dated 15th dated 15th January 2001 seeking the following orders that:-

- (1) The statement of claims dated 5th July 2000 discloses no reasonable cause of action and is frivolous and vexatious, and is an abuse of process.

- (2) The statement of claim dated 3rd July, 2000 be struck out.
- (3) Any other orders as the Court deems just.

The application was heard on 6th July, 2001. The Defendants filed two affidavits in support of their application. These were affidavits from Philip Bule and Marcel Virekil.

It was argued and submitted by Mr Tamwata that as the matter was dealt with at the village level and in accordance with local customs, practice and usages, that the Plaintiff had indicated that he would appeal against the decision of the Council that heard the matter and had not, that there is in existence a valid structure which must be followed in cases of this nature; that it was improper for the Plaintiff to come before the Court.

Mr Toa argued and submitted that the case was a complaint rooted in tort. That as a result of false allegation made by the First Defendant the Plaintiff's reputation was destroyed and therefore he had properly issued his claim out of this Court. In their defence, the Plaintiff relied on the affidavits of Gregory Bule, Livustoh Pierre Channel, Edward Wapilak, Marie Channel, and Yvan Saksak.

The Court dealt with the matter upon information in the various affidavits referred to. There was no oral evidence. Considering all submissions and arguments made on behalf of the parties by both counsel the court made the following findings and rulings –

- (1) The case was similar in nature to the Lakatoro Case of Walter Jonah v. Albert Nimalia, Civil Case No.36 of 2000, unreported judgment dated 12th June, 2001. In that case the Plaintiff sought orders of specific performance against the defendant concerning a customary peace settlement agreement reached at or before a customary tribunal constituted by chiefs from the plaintiff's village and the defendant's village. At paragraph 4 on page 5 of the judgment, I ruled that only that customary tribunal could enforce its decision or order. I maintain that view and accordingly rule likewise in this case.

(2) In the affidavit material before the Court it was clearly indicated that the Plaintiff would appeal against the decision of the village court. The meeting was held in Levusap village, Central Pentecost on 28th April, 1999. To date no such appeal has been made by the Plaintiff. Instead he has chosen to come before this court by way of a writ of summons claiming for damages. According to the structure (Annexure "A") which is a valid structure on Pentecost the proper place to entertain an appeal is the Area Council. Whereas the Plaintiff should have appealed to his Area Council and has not but has come directly to this court in my view is an abuse of process.

(3) In his writ of summons the Plaintiff is claiming among others for the fines of 5 pigs and VT8.000 cash that he paid as a result of the finding of guilt by the chiefs.

In the affidavit materials filed in support of his claims other people say they paid the fines of pigs and money. It is clear from this that the Plaintiff has not told the truth. The Court cannot understand why the fines were paid at all. If he was dissatisfied with the decision finding guilt against him, the proper thing to do was not to pay the fines but appeal against the decision. He did not. His compliance means in effect that he has accepted the findings of the village council. That may explain also why he has not appeal to date despite the fact that it was indicated on his behalf that he would. That renders his action frivolous and vexatious.

(4) This Court respects the structure and the decision of a Council within that structure. It is out of that respect that I feel I should refer this matter back to them to look further into it.

(5) The first Defendant's letter is alleged to be the source of the Plaintiff's claim. Regardless of that, whoever lodged the complaint against the Plaintiff chose to resort to the local tribunal. This person had as much right as the Plaintiff to initiate proceedings in a Court of law. But that person decided to resort to the local tribunal out of trust and confidence in the system. That process must be allowed to take its full course.

In conclusion I direct that this matter be referred back to the local tribunal on Pentecost. This is entirely dependent on the Plaintiff lodging his appeal documents. His writ will remain open for a period of 6 months from today.

There will be no order as to costs. Each party has to pay their own costs which they have incurred so far.

DATED at Luganville, this 6th day of July, 2001.

BY THE COURT



OLIVER A. SAKSAK

Judge

