

BETWEEN: JOHN REID WILLIE, SILAS WILLIE and
MICKIE SARGINSON
Claimants

AND: THE COMMISSIONER OF POLICE
First Defendant

AND: THE PUBLIC PROSECUTOR
Second Defendant

AND: THE REPUBLIC OF VANUATU
Third Defendant

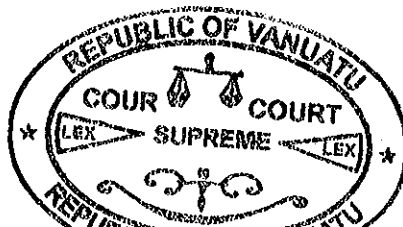
Coram: *Justice D. V. Fatiaki*

Counsels: *Mr. Saling Stephens for the Claimants*
Mr. Alain F. Obed for the Defendants

Date of Judgment: 26 January 2012

JUDGMENT

1. On the evening of 2 April 2007 shortly after 10 p.m. the lifeless body of 27 year old **Robert Manuel** was discovered face-down on **Bursalo beach** between **Mason village** and **Burumba village** on the island of **Epi**. The body had a large deep open wound on the left side of the head. The skull/head bone was broken open and the exposed brain smashed. Foul play was suspected and the matter was reported to the police on 4 April.
2. On 10 April 2007 a team of police officers under the command of **Chief Inspector George Twomey** flew from **Port Vila** to **Epi island** to investigate the suspicious death. Investigations were conducted in the villages of **Kalala**, **Nambatri** and **Burumba** over the following ten (10) days commencing with a community meeting and thereafter attending the crime scene, taking measurements and photos, retracing the deceased's movements on the fateful night immediately before his death and interviewing and recording of witness statements
3. Investigations revealed that the deceased had been drinking kava at several locations at **Burumba village** in the early evening of 2 April 2007 and had collected his dinner in a white container and was seen heading towards his home at Mason station along **Bursalo beach**. On the way he met and spoke to **Yoa Savua** at "around 20.05 hours". The next sighting of the deceased was sometime between 10 – 11p.m. when his dead body



was discovered on the beach by 2 of the deceased's kava-drinking mates who were returning home along the beach.

4. Plainly, the deceased met his death sometime between 8 and 11 p.m., and, in the absence of any material eye-witness(es) to the death police investigations concentrated on narrowing that "3 hour" window by closely monitoring the movements of people during those hours of the night. The explanations or alibis of possible suspects would also have needed to be verified and cross-checked. In all, a total of 50 witnesses statements were recorded.
5. As a result of information gathered during the course of the police investigations, **John Reid**, **Silas Willie** and **Micky Sarginson** ('the claimants'), were accompanied (to adopt a neutral term) to Port Vila to be interviewed in regards to the death of **Robert Manuel**.
6. The police party were met at the airport and were driven to the Port Vila police station and the claimants were locked in cell No. 6. The following day 21 April 2007 the claimants were interviewed under caution and each denied the allegations and said that they knew nothing about the death of Robert Manuel. Nevertheless, the claimants were formally arrested and jointly charged with Intentional Homicide. Owing to the non-availability of a magistrate the claimants remained in police custody on 21 April and were taken before a magistrate on 22 April 2007. Despite the police prosecutor's application only **John Reid Willie** and **Silas Willie** were remanded in custody. **Mickie Sarginson** was released on strict bail conditions to appear again in court on 9 May 2007 for a preliminary inquiry hearing.
7. On 9 May 2007 no preliminary inquiry was held and **John Reid Willie** and **Silas Willie** were released on bail to appear again before the Magistrate's Court on 29 May 2007. Despite defence counsel's objections the case was adjourned again on four (4) more occasions during the month of June 2007 because the police prosecutor sought more time to complete the preliminary inquiry documents. Finally, on 16 July 2007 in the absence of the preliminary inquiry documents **and** the police prosecutor and, on the application of defence counsel, the charge against the claimants was "*dismissed for want of prosecution*" and the claimants were discharged.
8. For completeness, on 20 July 2007 the Public Prosecutor filed a Notice and Memorandum of Appeal against the Magistrate's Court decision dismissing the charge against the claimants. Four (4) months later on 23 November 2007 the Public Prosecutor filed a notice abandoning the appeal. The claimants have not been recharged.
9. Eleven (11) months later on 7 October 2008 the claimants filed a joint claim in the Supreme Court against the **Commissioner of Police**, the **Public Prosecutor** and the **Republic of Vanuatu**. The claim sought itemized damages in excess of **VT53 million** for several causes of action including, unlawful arrest, battery, unlawful imprisonment, mental stress

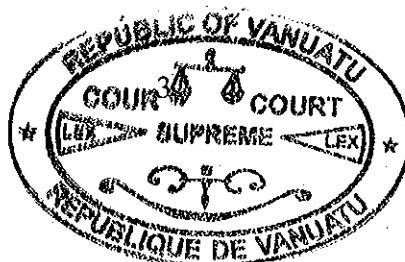


and anxiety, malicious prosecution, libel and damage. Owing to the inadequacy of the claimants' pleadings and at the direction of the Court, the claim was amended on three (3) occasions and was eventually reduced to a claim for unspecified damages for **unlawful arrest, battery, false imprisonment and malicious prosecution** against the Republic of Vanuatu only. This latter cause of action was not pursued at the hearing and may be considered abandoned. Any claim against the **Public Prosecutor** is therefore dismissed.

10. In its defence the Republic denies liability to the claimants and relies in part, on **Section 12 (1)** of the **Criminal Procedure Code** and **Section 40** of the **Police Act**.
11. At the trial the evidence of the claimants comprised:
 - Three (3) sworn statements of **John Reid Willie** – dated 7 October 2008 with annexures "A" to "J" (Exh. 'P1'); a second statement dated 17 February 2009 (Exh. 'P2') and finally a statement dated 4 May 2010 (Exh. 'P3');
 - A sworn statement of **Silas Willie** dated 2 September 2009 (Exh. 'P4'); and
 - A sworn statement of **Mickie Sarginson** dated 4 September 2009 (Exh. 'P5').

Both latter statements merely confirmed the truth of John Reid Willie's statements without addition.

12. The Republic called and produced the following evidence:
 - Two (2) sworn statements of **George Twomey** dated 8 December 2009 (Exh. 'D2(A)') and a second statement dated 15 April 2010 (Exh. 'D2(B)');
 - A sworn statement of **Wycliff Tarilenga** dated 10 December 2009 (Exh. 'D3'). This witness also produced a bundle of documents which comprised the statements compiled for the aborted preliminary inquiry after a defence objection was overruled [Exh. 'D4(A) & D4(B)'].
13. I have also been assisted by the **Statements of Agreed Facts and Issues** filed in the case and which identified the following general issues (unfortunately, without greater precision as to the location or timing of each) viz:



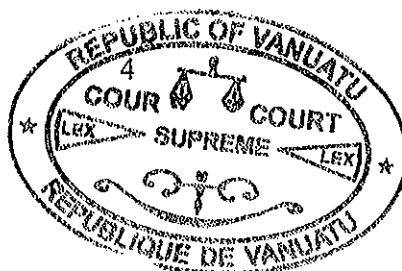
1. *Whether the claimants were wrongly and/or unlawfully arrested by members of Vanuatu Police Force;*
 2. *Whether the claimants were battered or assaulted by members of Vanuatu Police Force;*
 3. *Whether the claimants were unlawfully detained and/or imprisoned by members of the Vanuatu Police Force;*
 4. *Whether the Republic is vicariously liable for the alleged action of members of the Vanuatu Police Force."*
14. At the trial, much of the claimant **John Reid Willie's** cross-examination related to what occurred on **Epi island** after the police investigation team arrived; how? and why? the claimants accompanied the investigating team when they returned to Port Vila; and what happened at the Port Vila police station **after** the claimants arrived from Epi and before they were taken before a Magistrate's Court.
15. The claimants' case is quite straight-forward. They assert that they were under official "*house arrest*" while they were on **Epi island** during the police investigations. They were also obliged to accompany the police team to Port Vila "*as suspects*" for questioning and, on arrival in Vila, they were taken straight to the police station and locked in **cell No. 6** until their release by the Magistrate's Court. In the case of John Reid Willie and Sailas Willie they were released after 21 days whereas Mickie Sarginson was granted bail at his first appearance in the Magistrate's Court on 22 April 2007.
16. The defence's case was that the claimants were never under arrest on **Epi island** and, they were "*invited*" and "*willingly agreed*" to accompany the police investigating team to Port Vila who paid for their airfares. They were locked in the cell only after being formally arrested for an offence of **Intentional Homicide**.
17. I propose to now deal with the claims under the various causes of action pleaded and, where necessary, discuss the evidence in greater detail.

FALSE IMPRISONMENT and **UNLAWFUL ARREST**

18. In **R. v. Deputy Governor of Pankhurst Prison ex parte Hague** (1990) UKHL 8, Lord Bridge said of a claim of false imprisonment:

"An action for false imprisonment is an action in personam. The tort of false imprisonment has two ingredients: the fact of imprisonment and the absence of lawful authority to justify it ... (and) ... any restraint within defined boundaries which is a restraint in fact may be an imprisonment".

(my underlining)



19. Clearly false imprisonment is a tort of strict liability in the sense that once a claimant establishes the fact of imprisonment the onus shifts onto the defendant to prove that the imprisonment was lawful either pursuant to an order of the court or the exercise of statutory power.
20. The tort is reinforced by **Article 5** of the **Constitution** which recognizes, that, subject to the public interest in public order and safety, all persons in Vanuatu are entitled to "*(b) liberty; (c) security of the person; and (i) freedom of movement*". Additionally, **Section 118** of the **Penal Code** makes it a criminal offence punishable with 10 years imprisonment, for any person "... *without lawful authority (to) arrest, detain or confine any other person against this will*".
21. Plainly the Constitution as the "*supreme law ... of Vanuatu*" places great importance on the liberty of the individual such that any wrongful interference with a person's liberty is actionable even without proof of special damage. An unlawful or wrongful arrest or confinement of a person is a classic example of a wrongful interference with a person's liberty and movement.
22. In **Shaaban Bin Hussein v. Cherry Fook Kam** [1969] 3 ALL ER 1626 (PC) Lord Devlin said:
"an arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when, by words, or conduct, he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go".
23. and later:
"... it should be noted that arrest is a continuing act: it starts with the arrester taking a person into his custody (sc by action or words restraining him from moving beyond the arresters control) and it continues until the person so restrained is either released from custody, or having been brought before a magistrate, is remanded in custody by the magistrates' judicial act."
- (*per Lord Diplock in Hologate-Mohammed v. Duke* [1984] 1 ALL ER 1054)
24. In **John Reid Willie's** sworn statement he deposes that on 10 April 2007 the police investigators "... *came down to Burumba village on the island of Epi and gave orders to the three of us claimants (John Reid Willie, Sailas Willie and Mickie Sarginson) not to leave the village until further orders from the police*" ('village restriction orders'). **John Reid Willie** was cross-examined on this assertion and although he accepted that he was **not**



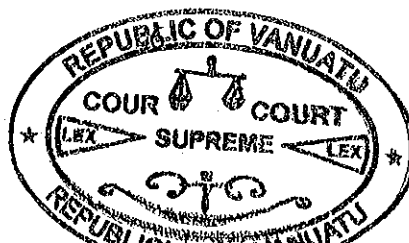
locked inside his house or physically assaulted during the time that he claims he was under "house arrest" at **Burumba village**, he maintained: "*I felt I was not a free man*".

25. Although the claimants' "*village restriction orders*" is not referred to in either of **Chief Inspector George Twomey's** sworn statements, nevertheless he admitted in cross-examination that after he arrived on Epi island he ordered the claimants to remain in their village and not leave and, in re-examination, he clarified that he didn't actually speak to the claimants but he instructed the chiefs and authorities to tell the claimants not to leave their village.
26. In similar vein **John Reid Willie** claims that they were ordered to accompany the police investigating team from **Epi island to Port Vila** for further questioning and to have their statements recorded. They had come "*as suspects under arrest*". He firmly denied in cross-examination that the police had "*invited*" them to come to Vila although he accepted that the police paid for their airfares.
27. **Inspector George Twomey** was equally adamant that he had "*invited the three suspects to come with us to Port Vila for further questioning. They agreed to come with us voluntarily and we flew to Vila on the same day*". He confirmed that the police had paid for the claimants airfares from Epi island to Port Vila. When it was put to him "*that the claimants were suspects and there is a 'need' to take them to Vila for further questioning*" he agreed. He denied arresting the claimants however on Epi island but accepts that at the time of giving them their air tickets "*they were still under my direction and orders*". He frankly admitted that he didn't give the claimants the option to refuse to accompany him to Port Vila.
28. In this latter regard, the statement of **Detective Corporal Joeli David** who was part of the police investigating team that went to Epi island and who made a statement for the purposes of the preliminary inquiry into the charge of intentional homicide against the claimants [*see*: in defence bundle **Exh. D4 (B)**] contains the following revealing passage:

"We arrested these 3 suspects and brought them to Vila on Friday 20 April 2007 and detained them in cell No. 6. on Saturday 21 April 2007 I cautioned (the claimants) over the allegations made against them. The suspects denied the allegations and said they did not know anything about the death of Robert Manuel".

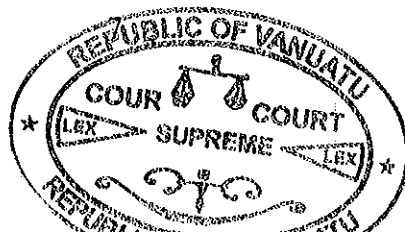
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29. In light of the foregoing, I find as a fact that the claimants were initially under a "*village restriction order*" issued by the police investigating team-leader **Chief Inspector George Twomey** for **10 days** from **10 April** until **20 April 2007** on which day, they were arrested "*as suspects*" and escorted to Port Vila where they were locked in **cell No. 6** at the Port Vila police station.



30. I am satisfied and so find that during the existence of the “*village restriction order*” the claimants were confined to their village and did not feel able to leave the village or move about freely. Likewise I do **not** accept the defence evidence that the claimants were “*invited*” to accompany the police investigating team to Port Vila. I find that they were compelled and had **no** choice but to accompany the police team when it left **Epi island** – quite simply, they were “*suspects*” and their airfares had been paid for.
31. The blanket denial of both the “*village restriction order*” and the claimants’ arrest on Epi island also, effectively, excludes any need to consider **Section 40** of the **Police Act** [CAP. 105] which, in terms, protects the actions of a police officer done “*in good faith in the performance or exercise of any duty or power under the Police Act*”. In other words, the defence says, neither event occurred so there is nothing that needs to be protected under the section.
32. Be that as it may, the next question is: Was there any lawful authority or justification for the “*village restriction order*” on Epi island?
33. I accept, that the “*village restriction order*” was given to facilitate police investigations into the violent death of **Robert Manuel**, by ensuring that any potential witnesses or suspects would not be able to leave their village and would therefore be available to assist the police investigating team, nevertheless, it did constitute an unwarranted curtailment of the claimants’ freedom of movement. Needless to say the same result could have been achieved by a less restrictive order such as one of informing the police investigating team or obtaining its approval before departure from **Epi island** or **Burumba village** should the claimants have been minded to do so.
34. The defence however, denies giving the claimants any “*village restriction order*” and so there can be **no** question of whether or not they were justified in doing so (not even as an alternative). Similarly the defence denies arresting the claimants on **Epi island** and claims instead, that they voluntarily accompanied the police team to Port Vila after agreeing to their invitation. The reason(s) for **Inspector George Twomey** to deny that the claimants were arrested on Epi island is unclear, but, in any event, he is disbelieved.
35. Did the police have any lawful reason or justification to arrest the claimants on Epi island on 20 April 2007?
36. **Corporal Joel David** says they were “*suspects*” and **Section 12 (1)** of the **Criminal Procedure Code** [CAP. 136] authorizes:

“any police officer may ... without ... warrant (to) arrest any person whom he suspects upon reasonable grounds of having committed a cognizable offence”.



A "cognizable offence" is one in which a police officer may in accordance with the schedule (to the **Criminal Procedure Code**) arrest without a warrant. **Intentional homicide** contrary to **Section 106 (1) of the Penal Code** is such a "cognizable offence".

37. The arresting officer in this case, **Detective Corporal Joeli David** did not provide a sworn statement for the defence as he should have. Instead, the defence relies on **Chief Inspector George Twomey's** sworn statement [**Exh. D2(A)**] to the effect that:

"6. The investigations and information obtained from witnesses implicated three suspects known as Silas Willie, John Writ (Reid) and Mickey Sarginson ('the claimants')".

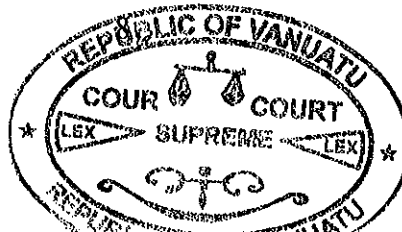
No elaboration has been made or was attempted in the above sworn statement to identify the witnesses or "information" which supported the implication and **no** real attempt was made in cross-examination of the deponent (as it should have been) to clarify the assertion.

38. The situation is not irredeemable, however, because the preliminary inquiry bundle of statements were ultimately produced in the re-examination of **Senior Sergeant Wycliff Tarilenga** (DW2) who had, at one time, handled the aborted prosecution of the claimants before the Magistrate's Court [see: Exh. D4(B)]. One of those statements was from **Chief Inspector George Twomey** expressly given in part "to make a clarification to describe the theory of the killing and the outcome of the investigation that are conducted with regard to ('the claimants')".
39. After outlining how the death came to the attention of the police; the dispatch of a police team from **Port Vila to Epi island**; and what the team did in the days after its arrival on 10 April, the statement has the following significant passages:

"Chief Jack Kalala and the (unidentified) people of Burumba community suspected the three accused persons who were Silas Willie, John Reid Willie and Micky Sarginson.

In the case of Silas Willie and John Reid Willie, the Burumba community referred to them as 'their names stink' with reference to the use of black magic ... There had been 3 deaths with similar circumstances and Silas Willie and John Reid Willie were allegedly involved in these killings using black magic to kill these 3 (unidentified) people.

Based on the circumstances of this case, there is no clear evidence even though at the time of the killing, there were 5 people in the vicinity of the crime scene and yet they did not see or identify anybody physically. However two witnesses heard and recognized



the voice of the suspect John Reid Willie, there is circumstantial evidence showing he was in two places at the same time.

This clearly shows that the killing had been carried out in such a way that couldn't be seen physically but only possible through black magic. The two suspects knew well what they were doing and the result is that we couldn't see exactly who did the killing but was only circumstantially possible in theory. (whatever that may mean)
(my underlining)

On **Chief Inspector Twomey's** own admission, "*there is no clear evidence*" against the claimants other than an allegation that they are known practitioners of "*black magic*" and had used it in committing the offence.

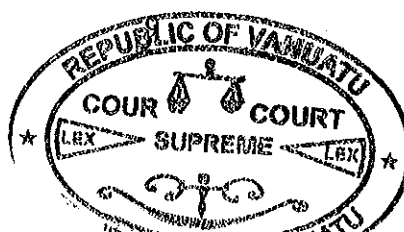
40. I prefer, however, the statement of the officer who arrested the claimants on Epi island, namely **Detective Corporal Joeli David** who was less given to the supernatural influences of '*black magic*' and who said in his police statement:

"The police suspect Micky (Sarginson) because on the evening of Monday 2 March 2007 he went diving with Silas Willie between 18.00hrs and 21.00hrs. The police suspect John Reid Willie because witness Willie Moses and his son heard John Reid Willie call Willie Moses name somewhere around 18.00hrs and 19.00hrs before the time of the incident.

The police suspect Silas Willie because Micky Sarginson said the two of them went diving between 18.00hrs to 19.00hrs whereas police obtained August Kiki's statement as a witness that he saw Silas preparing kava together with John Reid inside old Ati's kitchen between 18.00hrs to 20.00hrs.

With all this information that the police collected it seems that Silas Willie was in two different places at the same time.
(my underlining)

41. Although voice recognition evidence is admissible to prove or establish the identity of the speaker, the courts have long recognized the need for warning and caution to be exercised in considering such evidence, including, identifying any matter which may reasonably be regarded as undermining the reliability of the identification evidence. (**see also:** the judgment of the Court of Appeal in **Tupun v. Public Prosecutor** [2003] VUCA 33 where the Court said: "... *such approach is equally, if not more applicable, in a case concerning voice identification*").
42. In light of the foregoing and in the absence of any real cross-examination about the matter, I have taken the liberty of reading all the translated

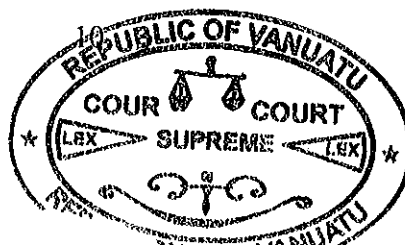


witness statements that were to be tendered at the preliminary inquiry against the claimants and which are contained in the bundle of documents produced by the defence as: **Exh. D4(B)**.

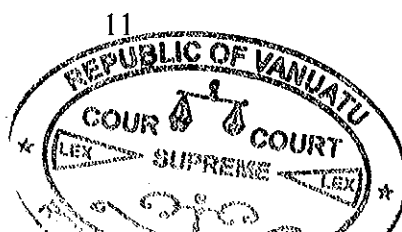
43. It is clear that the establishment of an accurate "*time of death*", was critical in and to the police investigations. Secondly, the movements of persons around that "*time of death*" and in the vicinity of **Bursalo beach** where the deceased's lifeless body was found, was also crucial in narrowing the number of persons that the police might be interested in further questioning. As to the "*time of death*" the witness statements, by exclusion, placed the time of death between **8.05 p.m.** (when he was last sighted alive) and **10.00 p.m.** (when his lifeless body was discovered lying face down on the beach). There is also some evidence that the deceased had "*caused some problems in the past which resulted in the death of a lady teacher*". What the "*problem*" was is undisclosed nor is it known whether or not there were other victims of the "*problem*" who were still alive and who might have had a reason to avenge the teacher's death ('a revenge attacker').
44. The evidence against the claimants is accurately summarized by **Detective Corporal Joeli David** and, in my view, did not constitute "*reasonable grounds*" to suspect the claimants of having killed Robert Manuel. Furthermore, the inadequacy of the evidence is not lessened by community rumours and suspicions that the claimants were practitioners of "*black magic*" who had used it to kill in the past.
45. As the Court of Appeal said in setting aside the convictions in **Malsoklei v. Public Prosecutor** [2002] VUCA 28 where allegations were made that the appellants had used "*black magic*" to kill a woman:

"It appears that the reasoning in the case started from the proposition that there had been magical behaviour and activity which amounted to black magic. Therefore anything which was otherwise contrary to normal human experience and inconsistent with the physical realities of life as lived and experienced was to be swept under the carpet on the basis that black magic explained such factors that seemed to be inexplicable".

46. Also noticeable by its absence, is any serious attempt in the police investigations, to positively disprove the joint alibis of **Silas Willie** and **Mickey Sarginson** who were out fishing at the relevant time, and of **John Reid Willie** who claims that he never left **Burumba village** at any time during that fateful night.
47. Accordingly, I find that the initial "*village restriction order*" issued to the claimants and which confined them to **Burumba village from 10th – 20th April 2007** (i.e. 10 days) was unjustified and unlawful. It constitutes the tort of **false imprisonment**.



48. Likewise I am not satisfied that any "*reasonable grounds*" existed for **Detective Corporal Joeli David** to arrest the claimants "*as suspects*" on 20 April 2007 and escort them from **Epi island** to **Efate** or for the arrest and detention of the claimants in **cell No. 6** at Port Vila Police station upon their arrival.
49. In the absence of any serious inquiries or investigation by the police to disprove the claimants' alibis or to discount the possibility of a "*revenge attacker*", the state of the police evidence against the claimants did not change as a result of their caution interview answers, and, in my opinion was insufficient to support the joint charge of **Intentional Homicide** proffered against them in the Magistrate's Court on 22 April 2007.
50. I therefore uphold the claims of **false imprisonment** and **unlawful arrest** and turn to consider what damages should be awarded to the claimants against the first and third defendants.
51. In this regard, I have considered the awards in **Harrison v. Holloway No. 1 and No. 2** [1984] VUCA 7; **Benard v. Minister of Immigration** [2001] VUSC 20; **Michel and Others v. Government of Republic of Vanuatu** [2003] VUSC 133; **Alick v. Commissioner of Police** [2003] VUSC 131; **Elisa v. Government of the Republic of Vanuatu** [2004] VUSC 93; **Rodrigues v. Republic of Vanuatu** [2005] VUSC 152; **Commissioner of Police v. Garae** [2009] VUCA 9.
52. In making the awards I am also conscious that the "*village restriction order*" confined the claimants to the familiar surroundings and comfort of their homes and families and did not deny them visitors. Though their movements were curtailed, it was not as debilitating as being detained in a police station cell on a completely different island. Accordingly for the 10 days covered by the "*village restriction order*" I award the claimants **VT150,000** each.
53. For their wrongful arrests on 21 April and forced transportation from **Epi island** to **Efate** and subsequent detention in **cell No. 6** at Port Vila police station I award each of the claimants the following sums:
- **To John Reid Willie and Silas Willie** who were kept in custody for a further 14 days upon the application of the police prosecutor who had no reasonable grounds for seeking their remand, a sum of **VT500,000** each; and
 - **To Mickie Sarginson** a sum of **VT150,000**.
54. In summary, judgment is entered for the claimants against the first and third defendants jointly and severally as follows:
- **John Reid Willie** – VT(150,000 + 500,000) = **VT650,000**;




- **Silas Willie** – VT(150,000 + 500,000) = **VT650,000**;
- **Mickie Sarginson** – VT(150,000 + 150,000) = **VT300,000**.

55. I also order interest of **5% per annum** on the above sums with effect from **7 October 2007** until fully paid up. The claimants are also each awarded costs summarily assessed at **VT50,000**.

DATED at Port Vila, this 26th day of January, 2012.

BY THE COURT


D. V. FATIAKI
Judge.

