

**BETWEEN: CHARLEY AISSON SOLONG**

First Claimant

**AND: AIRPORTS VANUATU LIMITED**

Second Claimant

**AND: REPUBLIC OF VANUATU**

Defendant

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Mr. Britten Yosef of Daniel Yawha & Associates for Claimants  
Ms Christine Lahua of State Law Office for Defendant*

**Date of Hearing:** 25<sup>th</sup> October 2013

**Date of Judgment:** 5<sup>th</sup> February 2014

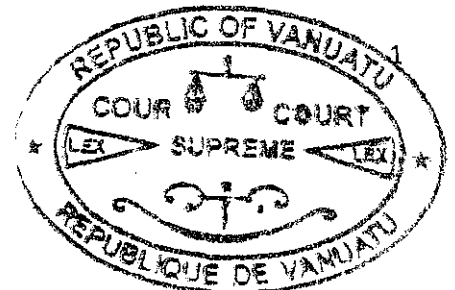
## **JUDGMENT**

### Nature of Claim

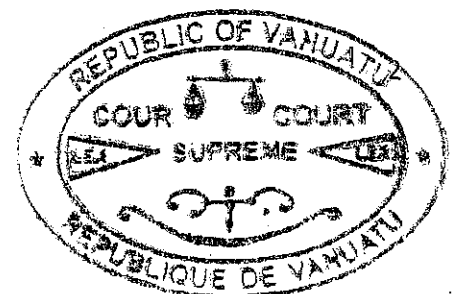
1. This is a claim in tort for damages following bodily injuries sustained by the Claimant when two policemen allegedly assaulted him in the afternoon of 9<sup>th</sup> March 2012.

### Facts

2. The Claimant is a fireman within the Aviation Rescue Fire Fighting Service of Airports Vanuatu Limited, Second Claimant as the employer.



3. At or about 1415 hours on 9<sup>th</sup> March 2012 at his work station at Pekoa Airport two policemen by name of Eric Bob and Wilson Kali approached the Claimant and demanded that he accompany them to the police station.
4. After seeking permission from his superior officer, the Claimant accompanied the two policemen in a police vehicle. Corporal Eric Bob was the driver. Both policemen were in uniforms.
5. They travelled back into town where they picked up a certain woman by the name of Nicole and then drove to the Police Community Hall which is located within the precinct of the Police Headquarters in Luganville.
6. They got off the Police vehicle and entered into the Police Community Hall. It was here that Eric Bob questioned him about some money he borrowed under a money lending scheme operated by Nicole.
7. Without the opportunity for the Claimant to answer the question posed, Wilson Kali started to assault the Claimant by punching him twice on his face and chest and then pushing him, causing him to fall to the floor. Whilst on the floor Wilson Kali kicked the Claimant once. Wilson Kali also tore the uniform of the Claimant during the assault.
8. Corporal Eric Bob assisted in the assault by pushing the Claimant towards Wilson Kali after which Wilson Kali kicked the Claimant again with his police boots.
9. The Claimant sustained injuries and felt severe pains in his back and spine.
10. The Claimant attended the Northern District Hospital for treatment at about 1435 hours on the same day. A medical report was issued showing the following –
  - (a) Abrasion on right elbow (back)
  - (b) Abrasion on left face; and
  - (c) Confusion on left back.



## Allegations

11. The Claimant alleged the following –

- (a) Wilson Kali kicked him 3 times.
- (b) Eric Bob pushed him towards Wilson Kali who kicked him again with his Police boots and tore his uniform.
- (c) He was hospitalized for 2 weeks and suffered severe pain as a result.
- (d) He was absent from work for 10 days.
- (e) The State is vicariously liable for the tortuous actions of the two policemen.

## Claims/Reliefs

12. The First Claimant claims damages in the sum of VT370,000 under the following heads:-

- (a) Special damages – VT20,000
- (b) Humiliation – VT50,000
- (c) Pain and Suffering – VT300,000.

13. The Second Claimant claims –

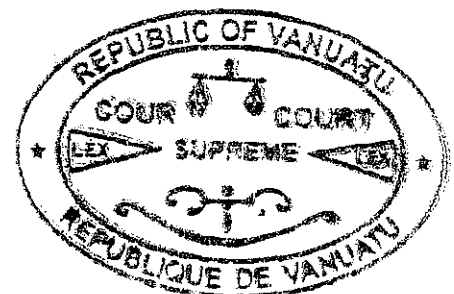
- (a) Punitive damages – VT5,000,000; and
- (b) Damage to uniform and badge – VT100,000.

## Defence

14. Eric Bob and Wilson Kali are not named as Defendants in this proceeding. But in their evidence they denied Wilson Kali kicked the Claimant three times. They further say that the matter was personal to Wilson Kali and the First Claimant.

15. The State denies –

- (a) Any vicarious liability for the actions of the two policemen on grounds that –

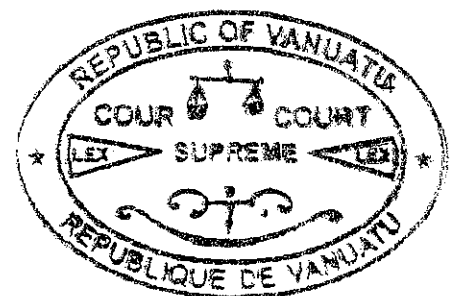


- (i) Constable Wilson Kali was charged separately for the assault and was fined in the Magistrates Court for VT12,000 and ordered to pay damages in the sum of VT15,000.
  - (ii) The assault by Constable Wilson Kali was done outside the scope of his duties.
  - (iii) Police Force Members are not employees or servants of the Republic of Vanuatu.
- (b) In relation to the claims by the Second Claimant, the State denies that the absence of the First Claimant from duties as a result of the assault did jeopardize the operations of the Second Claimant.
- (c) The State alleges that the Claimants are not entitled to any claims or reliefs sought.

Facts or Matters Accepted And Not In Issue

16. The following matters are not disputed and are not in issue –

- (a) That on the date of the assault the policemen were in police uniform and were using a police vehicle.
- (b) They were doing what they did during official working hours.
- (c) The assault took place at the Police Community Hall.
- (d) In the course of the assault the Claimant fell down and that his uniform was torn by Wilson Kali.
- (e) Constable Wilson Kali was charged separately for the assault and was convicted, fined and ordered to pay damages to the Claimant.

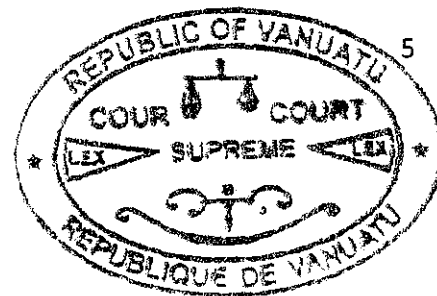


## Evidence From the Claimants

17. The First Claimant Charley Solong gave evidence orally and by sworn statements dated 22<sup>nd</sup> June 2012 tendered as exhibit C1 and of 9<sup>th</sup> September 2013 tendered as exhibit C2.

In brief summary his evidence was that on 9<sup>th</sup> March 2012 he was at his workplace at the Pekoa Airport at about 1415 hours when Eric Bob and Wilson Kali arrived in the police vehicle and demanded that he get into the vehicle with them to go and sort out a matter. He sought permission from his superior and got into the police truck. The policemen were in uniform. Eric Bob drove. They went into town to pick up one Nicole and then drove back to the Police Station. They turned into the Police Station but when Eric Bob saw others at the Station he turned instead to the Police Community Hall. They got out of the police vehicle. He was made to sit on a seat and Wilson Kali said: *"Yu talem se yu nomo I givim mani long mi...?"* Without a chance to respond Wilson Kali punched him. Later, Wilson Kali kicked him and he was about to fall but Eric Bob held on to him and pushed him again towards Wilson Kali who delivered another kick sending him to the floor. He felt dizzy and in great pain. He called out *"Daddy"*. He said Nicole and Willie Samuel were present. He said Willie Samuel only came on the scene when he heard his cry. He then went out onto the main road where he fell down. He said he managed to stop a taxi which took him to hospital. He was examined and discharged. He attended treatment two times each week spending about VT200 each visit. He spent VT980 on Aspro-Clear tablets purchased from the drug store. He estimated spending VT30.000. He took 10 days sick leave. He said Eric Bob took his uniform and mended it and returned it to him. He said they performed custom reconciliation with him after realizing they had done wrong. He said when Willie Samuel arrived they called up another policeman by name of Paulwin. When he arrived he told them that the policemen had assaulted the Claimant for no reason.

18. Dr. Adelfa Destura gave evidence orally to merely confirm that she examined the Claimant at 2.35 pm on 12<sup>th</sup> March 2012 at the Northern District Hospital and



provided the Medical Report annexed to her sworn statement dated 12/03/012 as annexure AD1. Her statement is exhibited as C3. Her findings were –

(a) Abrasion on right elbow (back).

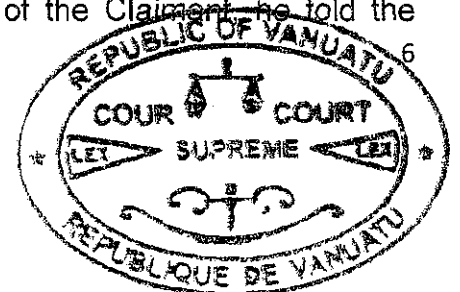
(b) Abrasion on left face.

(c) Confusion on left back.

Defence Counsel did not ask question in cross-examination.

19. George Bethel Mawa gave oral evidence to confirm his evidence by sworn statement dated 22<sup>nd</sup> June 2012 tendered as exhibit C4. Objections were made in relation to paragraphs 13 and 14. After considerations of submissions, the Court overruled the objection in relation to paragraph 13 but allowed that made in relation to paragraph 14. Paragraph 14 was therefore not admitted. The witness confirmed the two policemen approached the Claimant at 14:15 pm on 9<sup>th</sup> March 2012. That the Claimant sought permission from him to go with the two policemen who were in uniform. He confirmed that when the First Claimant did not return within an hour he made inquiries as he was really concerned the safety of inbound aircrafts that evening would be prejudiced by having a shortage to the required number of firemen according to the safety regulations. Finally at 1615 hours, the Claimant himself rang from hospital to inform his superior that he was hospitalized following his assault by the two policemen. Defence Counsel did not cross-examine this witness.

20. Kevin Dick Abel gave oral evidence to confirm his evidence by sworn statement dated 21<sup>st</sup> June 2013 (exhibit C5). Paragraph 13 of this statement was objected to and the Court allowed the objection and disallowed paragraph 13 as part of the evidence. The witness further confirmed his further evidence by sworn statement dated 27<sup>th</sup> October 2013 (exhibit C6) confirming that the Second Claimant is a private local company limited by shares. He annexed a copy of its certificate of incorporation as proof (Annexure KA1). He explained the basis of claiming VT5.000.000 being for punitive damages. He explained that during the 10 days absence from duties by the First Claimant, the Second Claimant was technically operating in breach of the Civil Aviation Act by operating an incomplete fire service. In relation to the uniform of the Claimant, he told the

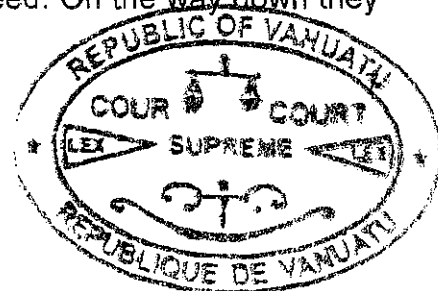


Court that it had been purchased from France at approximately VT100,000. He confirmed the AVL Badge was from Australia.

### Evidence From the Defendants

21. The first defence witness was Constable Kali who confirmed his evidence by sworn statement dated 13<sup>th</sup> May 2013 (exhibit D1). He confirmed being on duty full day on 9<sup>th</sup> March 2012. He confirmed Eric Bob accompanied him to the airport at 2.15 pm to see the Claimant to sort out a personal matter. He confirmed they picked up the Claimant and returned to town to pick up Nicole, Jeffrey Silas' secretary. They then went to the Police Hall. There they had a round table discussion with the Claimant and Nicole about a VT50,000 borrowed by the Claimant from the lending scheme. He said the Claimant had given them contradicting answers in relation to whom he repaid the money to. He said in his first answer the Claimant said he paid the money to Wilson Kali (deponent) but later said he paid the money to Paulwin. This made him angry therefore he stood up and punched the Claimant about 2 times on the chest and face. He then pushed the Claimant causing him to fall to the floor. Then he kicked him once. He explained why the meeting took place at the Community Hall instead of at the Police Station as it was a personal matter. He confirmed he was charged on 2 April 2012 with Intentional Assault and Malicious Damage to Property. He was fined VT12,000. He paid damages in the sum of VT15,000 and paid prosecution costs at VT2,000. He confirmed paying all these sums on 7<sup>th</sup> May 2013. He confirmed being in police uniform.

22. Corporal Eric Bob gave evidence confirming his sworn statement dated 30<sup>th</sup> May 2013 (exhibit D2). He said on 9<sup>th</sup> March 2012 Constable Wilson Kali went into his office at the Police Headquarters and asked the he accompany him to Pekoia Airport to look for the First Claimant about a personal matter involving them. He said they arrived at the airport and asked to see the Claimant. They sought permission to see him and asked him to accompany them to the Community Hall to have a round table meeting. That the Claimant agreed. On the way down they



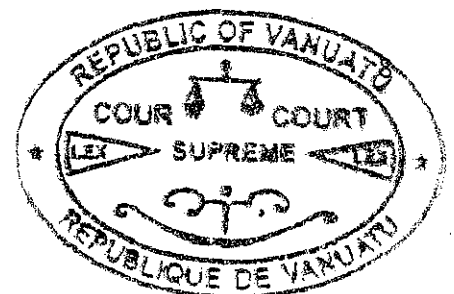
stopped to pick up Nicole then proceeded to the Hall where they had a meeting about a VT50,000 the Claimant had borrowed from the lending scheme of Jeffrey Silas. He said when he asked the Claimant to whom he had repaid moneys, his first answer was to Kali. When asked a second time the Claimant said he had paid the money to Paulwin. He confirmed that when Kali heard this contradictory answers, he stood up and punched the Claimant two times and pushed him causing his fall. He confirmed Kali kicked the Claimant once and then tore his uniform. He said he apologized to the Claimant and helped him get up. He said at no time did he assault or attempt to prevent the Claimant from leaving. He confirmed he was charged with aiding intentional assault on 2 April 2012 but was acquitted of the charge. (See Annexures EB1 and EB2).

23. Willie Samuel, Assistant Commissioner of Police and Commander North gave evidence confirming his statement dated 10<sup>th</sup> June 2013 (exhibit D3). His evidence was that on 22 March 2012 Eric Bob and Wilson Kali were interdicted from duties as a result of the assault on the first Claimant. He said that disciplinary proceedings were taken against both policemen on 9<sup>th</sup> March 2012. He said the disciplinary proceedings against Eric Bob was withdrawn but confirmed Wilson Kali was charged and pleaded guilty. He was convicted and fined and ordered to pay damages. He confirmed disciplinary proceeding against Eric Bob was withdrawn due to his acquittal by the Magistrate's Court. He said the actions of Wilson Kali were not in the course of his duties.

### The Issues

24. Counsel for the First and Second Claimants submitted four legal issues for consideration and determination by the Court as follows:-

- (a) Whether Eric Bob and Wilson Kali as police officers servants of the defendant?
- (b) Whether Eric Bob and Wilson Kali as police officers were on official duties on 9<sup>th</sup> March 2012?

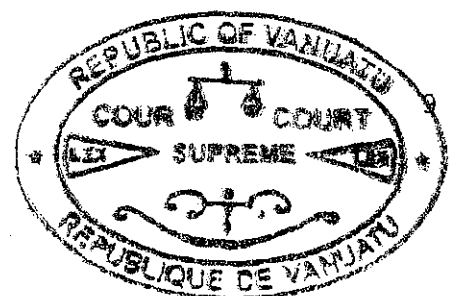




- (c) Whether Eric Bob and Wilson Kali as police officers committed the torts of assault and battery against the First Claimant during the course of their duties on 9<sup>th</sup> March 2012?
- (d) Whether the reckless actions of the two policemen caused the First and Second Claimants to suffer losses?

### Discussions And Considerations

25. Counsel for the Claimants filed written submissions on 7<sup>th</sup> November 2013. The State filed written submissions on 19<sup>th</sup> November 2013. Counsel for the Claimants filed submissions in reply on 9<sup>th</sup> December 2013. The Court is grateful to Counsel for their helpful submissions.
26. On the First issue of whether the two policemen Eric Bob and Wilson Kali are servants or employees of the State. I accept Mr. Yawha's submissions on this issue and answer this issue on the affirmative for the following reasons –
- (a) The Police Force exists under the Police Act [Cap. 105] and operates under the portfolio of the Ministry of Internal Affairs.
- (b) Section 4 of the Police Act states that the Force shall be employed throughout Vanuatu for the purposes set out from (a) – (e). These are preservation of peace and maintenance of order; protection of life and property; enforcement of laws; prevention and detection of offences and the production of offenders before the Court; and such other duties expressly provided by law.
- (c) The Members of the Force are paid salaries from moneys allocated by the Government for the performance of their public duties under Section 4 of the Act. Section 16 of the Police Amendment Act No. 22 of 2010 provides that –
- “The Government is to provide a sufficient budget to the force and the Commission to perform their functions efficiently, effectively and properly.”*



27. On the second issue of whether Eric Bob and Wilson Kali as policemen were on official duties on 9<sup>th</sup> March 2012 when they committed the assaults? The clear evidence is that both policemen were wearing police uniforms. Further, they drove and used a police vehicle. The time was 2.15 pm. Eric Bob was in his office at the Police Headquarters when Wilson Kali went to ask him to accompany him to the airport to see the First Claimant. From those evidence, the Court accepts the Claimants' submissions that the two policemen were on official duties at the time of the assault.

28. On the third issue of whether the two policemen committed the torts on the First Claimant in the course of their employments?

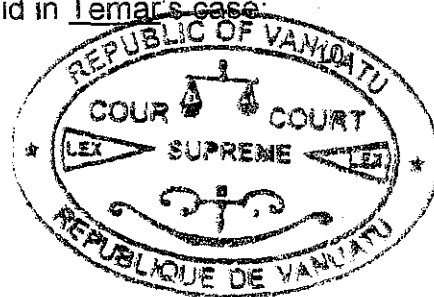
I accept Mr. Yawha's arguments and submissions on this issue to answer this issue in the affirmative.

Counsel for the State relied on the cases of Ayamiseba v. The Republic of Vanuatu [2008] VUSC 15 to submit that the State could not be vicariously liable for the tort of the two policemen. Counsel further relied on the case of Temar v. Government [2005] VUCA 30 to submit that the actions of the two policemen were not authorized and were wrongful acts therefore the State could not be held liable or responsible. Those cases do not assist the State but are against them.

29. Tuohy J in Ayamiseba's case said this:

*"Once it is established that a servant of the Government has committed a tort, the Government will be vicariously liable; according to the ordinary tort principles, only if the servant committed the tort "in the course of employment." This means that the tortuous act must be closely connected with the duties of the employment. The Government, like a private employer; is not liable for the act of a servant that is unconnected with the duties of employment."* (emphasis added).

30. The relevant and important words are "closely connected with the duties of the employment" and "unconnected". The Court of Appeal said in Temar's case:



"If the unauthorized and wrongful act of the servant is not so connected with the authorized act ....., but is an independent act, the master is not responsible; for in such a case the servant is not acting in the course of his employment, but has gone outside it." (emphasis added).

31. What was it that made the acts of Eric Bob and Wilson Kali "closely connected" with their official duties? From the evidence the following facts are available:-

- (a) Both policemen were in police uniforms.
- (b) They used the police vehicle.
- (c) They drove during official working hours.
- (d) They brought the Claimant out of his work place to the Police Community Hall for "round-table discussions".
- (e) They brought Nicole along as well to the "round-table discussions".
- (f) Eric Bob asked questions to the Claimant about borrowed moneys and repayments.

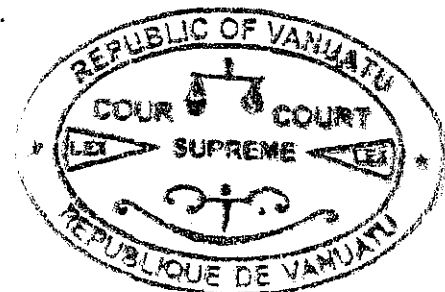
I find it difficult to see how these factors are not unconnected to the duties of these policemen. Instead I find they are so closely connected that they fall within the ambit of "in the course of their employment".

For those reasons, I answer this issue in the affirmative.

32. On the fourth issue of whether the reckless actions of the two policemen caused losses to the First and Second Claimants?

From the evidence it is clear only Wilson Kali assaulted the First Claimant. It is also clear that Eric Bob did not assault the Claimant. At best there is evidence that he aided and facilitated the assault by –

- (a) Willingly accompanying Wilson Kali to the Aripport without any questions asked. This implies he was well aware of the subject-matter.
- (b) He did the interrogation or questioning of the complainant.
- (c) When Wilson Kali started to assault the complainant, Eric Bob did nothing to stop Wilson Kali from further assaulting the Claimant.



(d) He stood in the way and pushed the Claimant back towards Wilson Kali so that Wilson Kali could deliver some more punch or kicks.

For these reasons I find that Eric Bob aided the assault of the Claimant by Wilson Kali and accordingly he is liable on that basis.

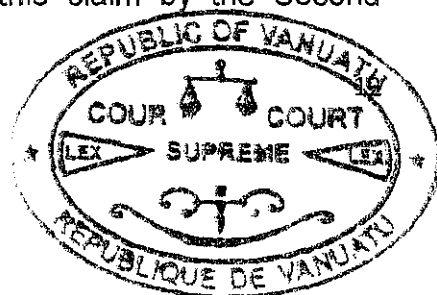
33. As for Wilson Kali, it is abundantly clear that he was the principal offender. He pleaded guilty in the Magistrate's Court and was fined and ordered to pay a fine, damages and prosecution costs. It is also abundantly clear that he tore the uniform of the First Claimant. For these reasons he also is liable. I answer this issue in the affirmative.

#### The Second Claimant's claims

34. There are two limbs to the Second Claimant's claims. The first is in relation to the uniform in the sum of VT100.000. The second is in relation to punitive damages of VT5 Million.

35. As regards the uniform, the evidence was that Eric Bob repaired it and returned it. Wilson Kali paid damages in the sum of VT15.000 but it is not known what was that in relation to. Dick Abel did not produce any evidence to prove the actual cost of the uniform and the badge. But in all probability, I accept that the fireman's uniform must be an expensive piece of equipment. But on the other hand, there was no evidence that it was put completely out of use by the assault on the First Claimant. There is therefore no basis for this claim and it is hereby dismissed.

36. As for the claim of VT5.000.000, I accept the State's arguments and submissions that there is no basis for this claim. Accordingly, this claim by the Second Claimant is also dismissed.



## Conclusions

37. The First Claimant is successful in his claims and judgment is entered in his favour for the following amounts –

- (a) Special damages – Nil as he had been paid VT15.000 as damages in the Magistrate's Court.
- (b) General Damages covering pain and suffering and humiliation – VT400.000.

38. The State is vicariously liable with the two policemen for their torts. I order that the damages be apportioned as follows:-

- (a) Wilson Kali will pay VT200.000 to the Claimant.
- (b) Eric Bob will pay VT100.000 to the Claimant
- (c) The State will pay VT100.000 to the Claimant.

These liabilities are several.

## Costs

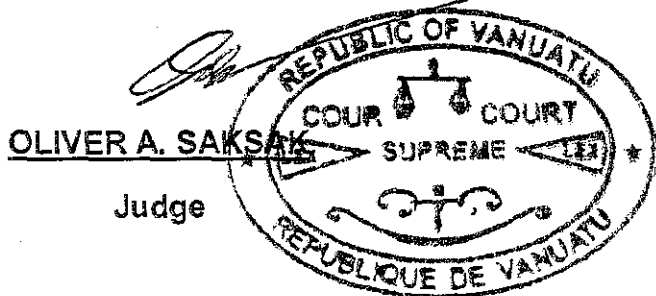
39. The First Claimant only is entitled to his costs of and incidental to this action. There will be no costs to the Second Claimant. Wilson Kali and Eric Bob will pay the First Claimant's costs of the action as agreed or taxed. Wilson Kali will pay 60% of the Claimant's costs and Eric Bob will pay 40% of it.

**DATED at Luganville this 5<sup>th</sup> day of February 2014.**

**BY THE COURT**

**OLIVER A. SAKSAK**

Judge



## ADDENDUM

1. In addition to paragraph 14 of the judgment the following sentence shall be added as an integral part of the judgment:-

"Due to the extensive defences of the two policemen, it has become necessary for the Court to exercise its discretionary powers under Rule 3.2(1) of the Civil Procedure Rules No. 49 of 2002 to Order that Wilson Kali and Eric Bob be joined as Second Defendants in this proceeding. Accordingly, I so order."

2. In future, references to this case Charley Aisson Solong shall be named as First Claimant, Airports Vanuatu Ltd as Second Claimant and the Republic of Vanuatu as First Defendant and Eric Bob and Wilson Kali as Second Defendants.
3. This copy of the Judgment shall substitute those issued to Counsel, which are to be discarded.

DATED at Luganville this 5<sup>th</sup> day of February 2014.

BY THE COURT

  
OLIVER A. SAKSAI

Judge

