

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

Civil Case No.145 of 2008

**BETWEEN:** GENEVIEVE TCHIVI  
Claimant

**AND:** WILLY AUGUST LAPI  
Defendant

*Coram: Vincent Lunabek Chief Justice*

*Counsel: Mr. Stephen Tari Joel for the claimant  
Mr. Henzler Vira for the defendant*

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**JUDGMENT**

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**Introduction**

1. The claimant and the defendant lived in a defacto relationship for 4 years between approximately 2003 and 2007. They had two children born in 2006 and 2007. In July 2008 the defendant violently attacked the claimant. He cut off her right hand and cut off four fingers of her left hand and part of her thumb.
2. In these proceedings the claimant seeks VT20 million general damages and special damages for the injuries suffered as follows:
  - (a) The cost of having prosthetic hands fitted in Australia VT 1,314 850;
  - (b) The costs arising from the immediate aftermath of the assault VT122,906;
  - (c) The costs of hospitalization and associated costs VT16,000.

Special damages claim totals VT1,427,768.

3. The defendant, who was imprisoned as a result of the assault, does not deny he caused the injury. In his statement of defence he claims that the assault only occurred after he saw the claimant with another man and when the claimant alleged the defendant was

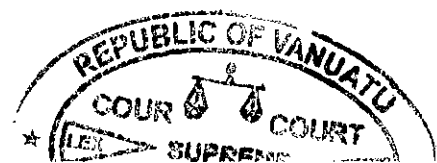


not the father of their children. The defendant says the claimant is not entitled to the damages sought.

4. The defendant did not give evidence at trial. Remarkably counsel for the defendant in final submissions at trial attempted to put what was claimed to be the defendant's version of events in relation to the assault. I do not take that aspect of the defendant's case into account in this judgment. Counsel for the defendant cannot present evidence not given before the Court in final submissions to the court. The defendant in his pleadings accepted that he had caused the injuries to the claimant.

### **The Facts**

5. I set out below the claimant's evidence of the detail of this violent assault by the defendant. I accept the claimant's version of the events are truthful and accurate. The horror and violence of the defendant's assault on the claimant speaks for itself.
6. The defendant had a history of violence toward the claimant before the assault which gives rise to these proceedings. In May 2007 the Vanuatu Women's Centre wrote on the claimant's behalf to the defendant saying that the defendant had been violent to the claimant and advising him that he should stop the violence.
7. Unfortunately this letter had no effect on the defendant. Within a year the claimant obtained a Domestic Violence Protection Order in her favour against the defendant from the Magistrate's Court. But this order did not dissuade the defendant. The claimant then sought a further Protection Order but before that application could come to court this assault occurred.
8. On 26 July 2008 the claimant saw the defendant at a bar in Port Vila. The defendant said he wanted to speak to the claimant. They went outside. When they did so the defendant forced the claimant into a taxi. She was taken initially to the defendant's sister's house and then to the defendant's home.
9. The defendant then used a bush knife to attack the claimant. A significant struggle then ensued. Eventually the defendant hit the claimant on the head with a piece of fire wood.



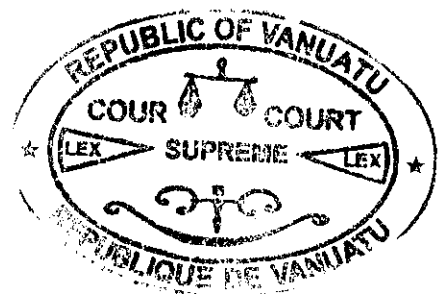
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She fell down. It seems probable she may have been unconscious for a short period. The defendant then grabbed the claimant's right hand and with a significant number of blows cut the right hand completely off at the wrist. He then cut off four fingers off her left hand as well as cutting off part of her thumb. The claimant was then taken to hospital with severe injuries and substantial loss of blood.

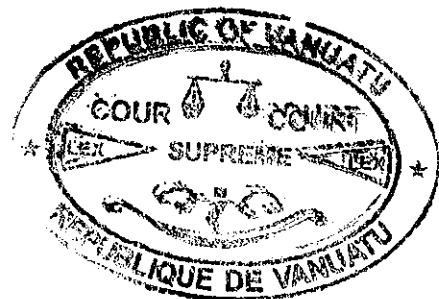
10. The hospital report notes that the claimant's right hand was completely severed. This was not a clean cut. Her hand had been repeatedly chopped at. The claimant also lost her second, third, fourth and fifth fingers of her left hand. Part of her thumb of her left hand was amputated. She also had deep severe cuts to her left hand. She had two significant wounds to her head one 10cm and the other 15cm as well as a superficial wound and significant bruising to her back.
11. The claimant suffered severe and prolonged pain. Given the defendant's pleading and the fact that he was convicted of this severe assault liability for damages is established on the balance of probabilities.

### Damages

12. There was no real challenge by the defendant to the special damages claimed by the claimant (see paragraph 2 above). I am satisfied that all special damages claims were justified. These were the costs necessarily incurred as a result of this assault. I award therefore VT1,447,768 as special damages.
13. I turn now to the question of general damages. The defendant's counsel suggested that given what the defendant claimed the claimant had said about who the father of their children were that this comment somehow lessen the seriousness of his assault on the claimant. I reject this claim. First as I have noted there is no evidence to support the defendant's claim that the claimant told him he was not the father of their children. It is clear that he is. In any event even if the words were spoken they would not have in any way excused this cowardly and vicious attack. The suggestion in the defendant's submissions that the defendant was somehow compelled to assault the claimant in the way that he did is nonsense.



14. The defendant says that based on the case of *Solzer v. Garae* [1989-1994] 2 VANLR 528 an award of damages of no more than VT3 million was appropriate in this case. Mr. Solzer suffered a head injury and three fractures of the skull and face in a car accident. He was awarded VT3 million in damages. There is no valid comparison to be made between the facts of this case and the facts of the Solzer's case. What the Solzer's case does however is provide a framework for assessment of general damages in Vanuatu for personal injury cases based on the assessment of damages in the United Kingdom. I adopt the approach of the Court in the Solzer's case.
15. The 2006 edition of the Guidelines for the Judicial Assessment of General Damages in Personal Injury cases in the United Kingdom identifies the range of damages payable there for personal injury. A substantial variety of injuries are identified in the Guidelines with ranges within those guidelines for severe injury within the category and downwards.
16. In this case the claimant has lost the effective use of her right hand and almost all of the use of her left hand. The 2006 guidelines suggest that for the loss of use of both hands a damages award of between £81,500 and £117,000 is appropriate. These guidelines relate to 2006 two years before these proceedings were issued. Some small increase based on inflation would therefore be justified. The claimant's loss of use of both hands and the terrible circumstances of this assault means the damages should be near the top of guideline range. I consider therefore based on the UK Guidelines a sum of £110,000 would be appropriate in the United Kingdom. In accordance with the Solzer formula I reduce this amount by 50% to £55,000. Based on a conversion rate of VT170 to the £1 the amount of damages assessed on this basis will be VT9,350,000. I am satisfied that this sum is the proper sum to be awarded to the claimant for general damages.
17. The claimant therefore will be awarded damages as follows:
- (a) General damages VT9,350,000;
  - (b) Special damages VT1,447,768.



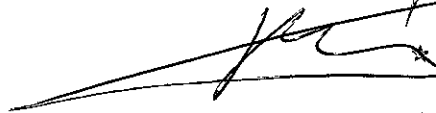
18. Interest will be payable on the total sum of general damages and special damages at 5% from the date of filing of these proceedings which I understand to be the 18<sup>th</sup> September 2008 to the date of this judgment.

**Costs**

19. I am satisfied that the claimant should have costs against the defendant on standard basis to be agreed or determined. If costs are not agreed but are to be determined, the claimant should file a memorandum within 14 days detailing costs sought and the defendant has a further 14 days within which to reply.

**DATED at Port Vila this 10<sup>th</sup> day of December 2014**

**BY THE COURT**

  
**Vincent LUNABEK**  
**Chief Justice**

