

BETWEEN: Leong Bong
Claimant

AND: Republic of Vanuatu
Defendant

Date: Tuesday, 26 June 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mr J. Ngwele for the Claimant
Mr S. Aron for the Defendant

JUDGMENT

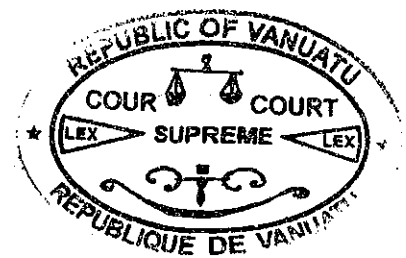
A. Introduction

1. Mr Bong claimed to have been unlawfully arrested in July 2013, and unlawfully detained for 17 hours. He sought compensatory and exemplary damages, plus interest and costs. The Claim was disputed by the State.
2. Although this matter was set down for a 2-day hearing, it did not get started on 25 June 2018 as there was no Bislama interpreter. That was rectified overnight, and the case was heard on 26 June 2018. I gave an oral decision immediately – Mr Ngwele asked that I also produced a written judgment. This is it.

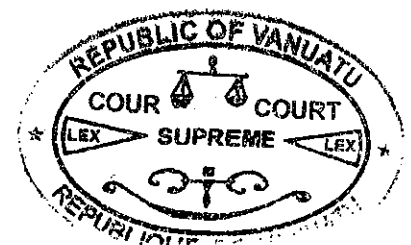
B. The Claimant's Case

3. Mr Ngwele had briefly opened his case explaining that he intended to call only his client and that the issues for my determination were likely to be:

- Was Mr Bong arrested for a cognisable offence?



- Was he arrested for a breach of the peace in the presence of the police officers?
 - Was he arrested for obstructing the police officers in the execution of their duties?
4. Mr Bong confirmed that his sworn statement, made on 21 June 2018, was true and correct.
 5. In cross-examination Mr Bong confirmed that he and his friends had been drinking in the afternoon and were laughing and joking to such an extent that a person in the vicinity had complained about the noise and disturbance to the police. When the police officers attended the scene, most of Mr Bong friends had run off – leaving just Mr Bong and 2 others still there, with empty alcohol bottles lying around and one bottle of whisky. Mr Bong confirmed that one of the group was very, very drunk – and that he was drunk, but not that drunk.
 6. Mr Bong could not really recall much of what had occurred. Given that he and his 7 friends had apparently consumed 4 bottles of whisky between, albeit mixed with Coca-cola, and taking into account the lapse of time since 2013, that was no great surprise. He did recall that the police had arrested him but could not remember what for. He could not recall saying he was the son of a policeman – yet in his sworn statement he specifically mentioned his embarrassment resulting from that fact.
 7. Mr Bong said that he had been kept in a cell from late afternoon on Wednesday until early the next morning. The Claim, prepared by counsel, focussed on his tender age and the state of that cell as being unfit for human occupancy. Mr Bong made no mention of his youth at the time as being an aggravating aspect. He only mentioned the terrible smell, and the fact that he was cold. He said he was not given water when asked if he'd been offered food or drink. When I asked if he'd slept at all, he answered "No". I questioned his response, given the alcohol consumed and the time spent in the cell. Then he changed his answers, accepting that he had drifted off – and he further said that he only slept fitfully and for not very long.
 8. Mr Bong was unconvincing. The most telling answer he gave was relating to what the police officers did on arrival at the scene – he said: "All I can recall is that they arrested me". In my assessment of him, Mr Bong was a very poor witness. He would not look up or speak up. It was as if he was embarrassed to be making the claim. He simply answered questions on the basis of what he thought would assist his claim, rather than with any attempt to restrict himself to what he could accurately recall. I determined it was unsafe to rely on his testimony, especially without any corroboration of material matters which could have been produced as part of the claimant's case.
- C. Onus of proof
9. The onus, in a civil case, is for the Claimant to establish the basis for his claims. While I had the advantage of seeing a statement of Defence and sworn statements in support, they could not come into my thinking at the conclusion of the claimant's case – those statements were not part of the evidence at that stage.
 10. This claim, on the basis of what Mr Bong told me, was simply unsubstantiated. There was evidence that Mr Bong had been arrested and detained. He needed to establish, by his evidence, that those two acts were unlawful. He failed abjectly to do so.

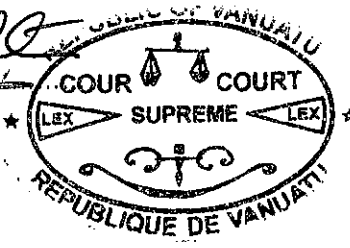


D. Decision

11. Accordingly, I invited Mr Aron to make submissions along the lines of no case made out, and after hearing from Mr Ngwele in response, I dismissed the claim.
12. Mr Aron sought VT 100,000 in costs. After I queried whether he thought Mr Bong was in a position to pay such, he reduced his claim to VT 60,000 – Mr Ngwele agreed to that sum. I therefore awarded the defendant VT 60,000 costs.

**Dated at Port Vila this 26th day of June 2018
BY THE COURT**

Andrée Wiltens
Justice G.A. Andrée Wiltens

The seal of the Supreme Court of Vanuatu is circular. At the top, it reads "REPUBLIC OF VANUATU". In the center, there is a scale of justice. Below the scale, the words "COUR" and "COURT" are written on either side, with "SUPREME" in the middle. At the bottom, the words "LEX" are written on either side of "SUPREME". The bottom of the seal reads "REPUBLIQUE DE VANUATU".