

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

Civil Case  
Case No. 18/362 SC/CIVL

**BETWEEN: Fredline Tanarango**

Claimant

**AND: Simeon Seule**

Defendant

*Date of Hearing: 1<sup>st</sup> April 2019 and 28 May 2019*  
*Date of Judgment: 30<sup>th</sup> September 2019*  
*Before: Justice Oliver Saksak*  
*In Attendance: Anna Sarisets for the Claimant*  
*Andrew Bal for the Defendant*

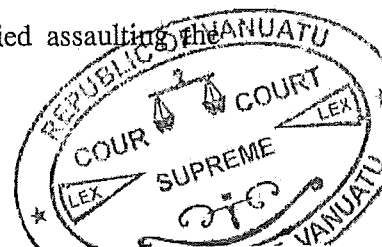
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## JUDGMENT

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### Introduction

1. The Claimant says that in the early hours of 17<sup>th</sup> December 2016 at the Hotel Santo, her superior the defendant in his position then as Minister of Youth and Sport-
  - a) Took her mobile cell phone, threw it hard on the floor damaging it,
  - b) Took her lady's bag and threw it at her, causing its contents to fall off and scattered everywhere in the hotel room including the bathroom and the toilet.
  - c) Punched her in her back, face and neck and kicked her back causing her to fall to the floor,
  - d) Pulled her on her hair and wanted to push her out of her hotel room.
2. She claims as a result of all these the claimant sustained injury to her back. She alleges assault, battery and negligence against the defendant and claims general damages in the sum of VT 1.000.000, special damages of VT 1.000.000 and VT 1.000.000 as punitive damages. Her total claim is VT 3 million.
3. The defendant admitted grabbing the claimant's bag and throwing it on the floor causing its contents to fall out of place. He admitted damaging the claimant's cell phone. He admitted replacing the cell phone and reconciling with the claimant the very next day being 18 December 2016. But the defendant denied assaulting the claimant.



claimant on her face, neck and back. He denied the other three incidents alleged by the claimant to have occurred on 22 and 23<sup>rd</sup> December 2016, and on 9 January 2017. The defendant said he went to the claimant's hotel room to demand the balance of his allowances as his reason for acting in the manner he did.

### The Issues

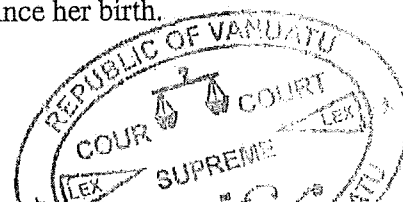
4. The issues raised for consideration are-
  - a) Whether there was assault and battery inflicted on the claimant by the defendant?
  - b) Whether the claimant sustained injury as a result of the assault and battery?
  - c) Whether the claimant is entitled to the reliefs sought?

### Duty of Proof

5. In relation to the alleged assault, battery and injury the Claimant has the duty of proof on the balance of probabilities.
6. Regarding the balance of subsistence allowance the defendant ha the burden of proof to show he was not paid his full allowances.

### Evidence

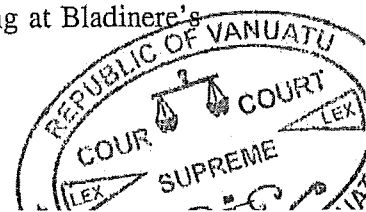
7. The claimant gave evidence herself and was cross-examined. Her brother Kenneth Shedrack gave evidence about a meeting at Bladinere's estate where Joel Nilwo, the defendant's witness admitted he had seen the defendant assault the claimant. Robert Tanarango, the Claimant's husband gave evidence confirming he was present at the meeting at Bladiniere with Joel Nilwo and MP Tomker and how Joel Nilwo told of how the defendant assaulted the claimant in the early hours of 17 December 2016. Doctor Steward Tari was the examining doctor. He gave an opinion that the claimant was physically assaulted on her backside. The medical report is dated 16 February 2017. Albert Kaiapan, the Physiotherapist gave medical report on 17 March 2017 confirming the claimant went to see him complaining of a backache. His examination concluded the claimant has a curve on her spine which she had since her birth.



8. The defendant himself gave oral evidence and was cross-examined. Whilst he admitted grabbing the Claimant's bag and throwing it down causing its contents to fall out of place, and the cell phone being damaged, he denied the assault. He said he was frustrated because the claimant had with-held part of his subsistence allowances. He had sent a Mr Nalau and Mr Nilwo to demand his allowance from the claimant but she refused. He admitted reconciling with the claimant the very next day and replacing her cell phone.
9. Joel Nilwo gave oral evidence. He said the defendant had told him the claimant had withheld part of his allowances. He said the defendant had sent him and Mr Nalau to demand from the claimant the balance for the defendant's allowances but were not successful. He said he was in his room just next door to the claimant's room when he heard noises and ran out to find out. That is when he saw the defendant grabbing the claimant's bag causing her cell phone to fall out and being damaged. He denied seeing the defendant assaulting the claimant. He conceded being at the meeting with the claimant, her husband Robert and brother Kenneth, and MP Tomker at Bladinere's estate, but denied telling them the defendant had assaulted the Claimant as alleged.

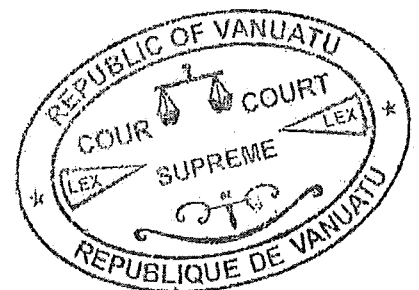
### **Discussion and consideration**

10. First there is quite long delay in formulating this judgment. This is due to the delays in the claimant filing her amended submissions on 17 June 2019 and the defendant as late as 17 September 2019.
11. The evidence of the assault on her by the defendant is a stand alone evidence. But I find her to be a credible witness. She could not expect Wendy Himford, Paul Nalau, and Baptist Firiam to assist her because if they did they would be acting against their Superior who is the defendant.
12. Joel Nilwo was not a credible witness for the defendant. He gave evidence which supported his superior in order not to risk losing his job. He was the only witness who saw the assault but was reluctant to tell the truth. He however told the truth to the claimant, her husband Robert and her brother Kenneth at the meeting at Bladinere's



estate but then was not prepared to admit the truth in Court in his oral evidence under cross-examination. What he said was confirmed by the Claimant, her brother Kenneth and her husband, Robert.

13. The evidence of the Claimant shows there was forcible entry into her room uninvited. Second, there was the grabbing of her bag. Then there was the throwing of the bag at her causing its contents to fall out. Then there was the damage done to her cell phone which the defendant accepted and replaced the next day. Then there was the punching to her head, neck and backside which caused her to fall to the floor. It was then Joel Nilwo came to assist by pulling the defendant out of the hotel room.
14. The defendant said the grabbing was only a joke when at the same time he said he was frustrated. That was not consistent behaviour.
15. The defendant's actions were direct application of force on the claimant. They amounted to assault and trespass on the claimant. The punch to her backside resulted in the backaches that she experienced and went through after the assault. She already had a curved spine. The assault merely contributed to give rise to the pains she suffered. The assault merely amounted to battery as it did not result in injury of a permanent nature.
16. I am therefore satisfied on the evidence that the defendant had assaulted the claimant but the assault amounted only to battery as no permanent harm or injury was caused to the body of the Claimant. I am satisfied she suffered some pain as a result of the punch to her backside. Therefore I find the incident happening at the claimant's hotel room on 17 December 2016 proved. And I find she only suffered injury to her feelings which was only of a temporary nature. I am therefore of the firm view the claimant is entitled to some damages.
17. For the incidents of 22 and 23 December 2016 and of 9 January 2017, I find no evidence in support of these complainants. Her claims in relation to these incidents are dismissed.



18. Coming back to the damages, I award special damages but for a reduced amount. She went to the hospital at least twice. Her out of pocket expenses would cover transport costs, consultation costs and medication costs. I allow only VT 20.000 as special damages. The claimant did not have to prove these as assault and battery are actionable perse. That is trite law.
19. Further, I do not think this is a case where the claimant is entitled to punitive and exemplary damages. Therefore her claim under this head is dismissed.
20. Finally the Claimant's claim for general damages in the sum of VT 1.000.000. I am of the view she is to be awarded damages for this head of damages, but at a reduced amount. First she could have mitigated her losses by going to the police immediately to report the incident which would have subsequently resulted in her being examined medically immediately or even the next day after the incident. For this reason her claim under this head is reduced by half down to VT 500.000. This award covers for the Claimant's pain and suffering, distress and humiliation, inconvenience and disappointment.
21. She claimed interests at 5%. Interests is allowed commencing from 17 December 2016 to the date of judgment in the sum of VT 75.000.
22. Finally the Claimant is entitled to her costs of and incidental to this proceeding.
23. I therefore enter judgment in favour of the claimant for the total sum of VT 595.000 against the defendant, plus costs of the proceeding as agreed or taxed by the Master.

**DATED at Port Vila this 30<sup>th</sup> day of September, 2019**

**BY THE COURT**

  
**OLIVER A. SAKSAK**

**Judge**

