

BETWEEN: Jean Luc Tebeim (John Luke)

Claimant

AND: Walter Furet

Defendant

Date of HEARING: 23rd – 24th June 2020
Date of Decision: 26th June 2020
Before: Justice Oliver. A. Saksak
In Attendance: Mr Eric Molbaleh for the Claimant
Mr John Malcolm and Ms Motuliki for the Defendant

JUDGMENT

Facts

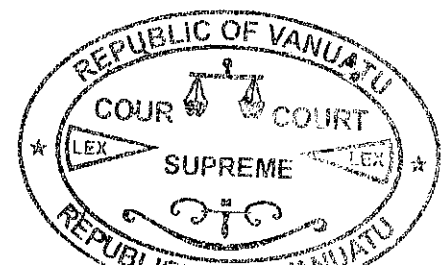
1. On 7th October 2016 the Claimant's bus collided with a strayed cow at No. 2 Lagoon Road towards Teouma Bridge. The bus was damaged and has gone out of service from that date. The claimant alleges the cow came from the defendant's fence. He alleges the fence was broken. He alleges negligence on the defendant's part. He claims damages for loss of incomes at VT 10.000 per day, VT 2 million being the value of the bus, damages for negligence, general damages and 15% interest with costs.

Defence

2. The defendant denies negligence and liability for any damages and loss of income.

Hearing

3. A trial hearing was held for half a day on 23rd June and also for the morning of 24th June 2020. The Claimant called four witnesses in support of his claims. These were the claimant himself, his driver Batmwei Luke Tabiaga, Emile David, a passenger and Mrs Marie Joseph Tebeim. All witnesses were cross-examined by counsel for the defendant.
4. Mr Malcolm made a no-case submissions. The Court declined the application reaching the conclusion as to liability as to ownership of the fence but no evidence as to damages. On that basis the defendant opted not give any evidence.



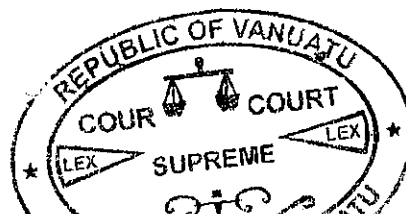
5. Oral submissions were heard from Mr Molbaleh and Mr Malcolm. Mr Molbaleh sought leave to file evidence as to assessment of damages. Upon objection by Mr Malcolm, leave was declined by the Court.

The Issues

6. The Issues are-
 - (a) Whether the Defendant is liable?
 - (b) Whether the Defendant owns the fence and the cow?
 - (c) Whether the Defendant was negligent?
 - (d) Whether the Claimant has proved his damages? And if so, is he entitled to damages and to how much?

Discussion

7. First on the issue of liability the claimant produced the company Extract as Exhibit C6 by consent. This document shows the Company as Societe Pastorale De La Lumpate Limited. It was re-registered on 20th January 2016. It was originally incorporated on 19th November 1985. The individual Shareholder is Walter Dick Furet appointed since 29th July 2016. He is one of the 2 directors of the Company.
8. In its defence dated 30th April 2018 the defendant at paragraph admitted it own fences between the No. 2 Lagoon area and the road to Etas and Eratap, but does not admit the allegations. From the evidence from the Claimant's witnesses no other persons or company owns a fence with cattle in that area except the defendant. Therefore on the balance of probabilities the fence and the cattle belongs to the defendant. On that basis there is a finding as to liability. The first and second issues are answered as "Yes".
9. The third issue is about negligence. From the evidence of the driver Batmwei Luke Tabiaga and his passenger Emile David the cow suddenly crossed into their path or way and caused the collision. It was about 8:00pm in the night. Certainly the defendant could not possibly be the cause of that collision, therefore there can be no negligence on his part. The cow is mansuetae naturae and the defendant clearly had no knowledge of any evil propensity in this animal at the time of Collision or at any other time. The Solomon Island case of Funua & Cattle Development Authority [1983] SBMC 1 is directly on point and is applicable.
10. But the submission and evidence show a hole in the fence which the claimant submitted was the failed responsibility of the defendant to ensure the fence was secure so as not to allow cattle to stray. Mr Luke Tabiaga referred to some photographs annexed as BLT 3, BLT4 and BLT 5. The photographs in BLT 3 and BLT4 show holes in the fence. BLT5 shows 2 small posts laying inwards into the fence.



11. The difficulty I have with those photographs is that first it is unclear who took them and when. Both the claimant and Mr Tabiaga said they took the photographs. The Court would be comfortable with photographs taken by a policeman or another independent person and that if the photographs were taken immediately after the accident, say on 8th October 2016.
12. The Court is cautious to accept and admit the photographs as evidence to show negligence on the part of the defendant.
13. The collision that occurred on 7th October 2016 is still a mystery. The photographs at BLT 10 and BL7 11 show the front of the bus as badly damaged. But the driver and his passenger have not stated in their evidence if they were injured and were taken to hospital for treatment. There is no such evidence.
14. Finally the issue of damages. In my view on his evidence the claimant has not proved his damages. The onus is on him to do so. He simply could not dump his claim in the Court in the way he has done and expect the Court to do an assessment. He had to prove each claim specifically by admissible and relevant evidence. But even if he does have some evidence, having failed to prove negligence, it is unnecessary to make any assessment of any damages claimed. It would merely be an academic exercise that would serve no real purpose.

The Result

15. For the foregoing reasons the claims of the claimant fail in its entirety and they are accordingly dismissed.
16. In the circumstances of the case, it is my view there should be no order as to costs. Each party should bear its own costs.

DATED at Port Vila this 26th of June 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

