

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

**Civil  
Case No. 15/91 SC/CIVL**

**BETWEEN: Donald James**  
*Claimant*

**AND: Republic of Vanuatu**  
*First Defendant*

**AND: Commissioner of Police**  
*Second Defendant*

**Coram: Justice Aru**

**Counsel: Mr. E. Molbaleh for the Claimant**

**Mr. S. Aron for the First and Second Defendants**

---

## **JUDGMENT**

---

### **Introduction**

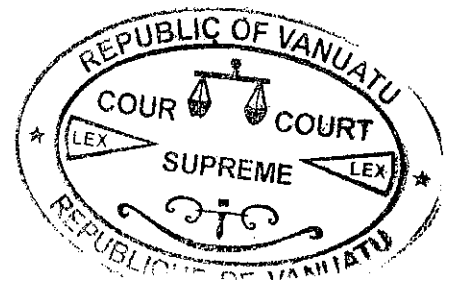
1. This is a claim for unlawful arrest and detention.

### **Background**

2. The claimant is a Police officer.
3. On 10 December 2011, two Police officers namely Superintendent Jackson Noal and Chief Inspector Frazer Tambe arrested the claimant at the WWW shop at Melcoffee area opposite the Tana Russet Shopping Mall in Port Vila.
4. The two officers took the claimant to the Central Police station in town where he was detained in the Police cells and released the next day.

### **The claim**

5. The claimant claims that his arrest and detention was unlawful. He claims that there was no complaint and he was arrested without an arrest warrant then wrongfully detained for more than 24 hours without being brought to Court and without any charges laid against him. The relief sought as pleaded are as follows:-
  - a) VT 5million for unlawful arrest;
  - b) VT 5million for unlawful detention;



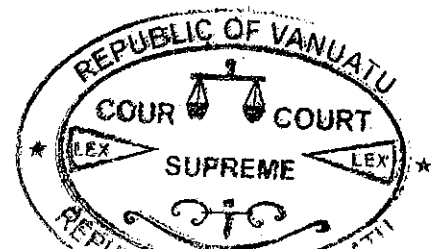
- c) VT 500,000 for damages for assault;
  - d) VT 500,000 for punitive damages;
  - e) Interest; and
  - f) Costs
6. In support of the claim, the claimant relies on his own evidence **Exhibit C1 to C3**; the evidence of Mr Willie Reuben Marae, a nurse practitioner who observed the claimant at the Vila Central Hospital (the VCH) **Exhibit C4**, and the evidence of Mr Tony Roy a relative of the claimant who was with the claimant at the time of his arrest **Exhibit C5**.
7. The claimant and Mr Marae were cross examined on their evidence. Mr Roy was not cross examined.

### Defence

8. The defendants deny the claim. They say that around 11.00am on 10 December 2011 a complaint was made from the WWW shop to the Police station that the claimant was drunk and disorderly and damaging property inside the shop. Mr Noal and Tambe responded to the complaint. As the claimant was very drunk, reasonable force was used to arrest him. No warrant of arrest was required as the offences were cognizable offences. The claimant was detained overnight and released before the expiration of 24 hours.
9. The defendants deny any wrong doing and say that the claimant is not entitled to the relief sought. They rely on the evidence of Mr Jackson Noal, **Exhibit D1**; the evidence of Mr Fazer Tambe **Exhibit D2** and the evidence of Mr David Nambaru **Exhibit D3**. All three were cross examined.
10. The defendants also rely on the evidence of Mr Alfred Bice **Exhibit D4** and the evidence Mr Noel Saul **Exhibit D5** and **Exhibit D 6**. These three sworn statements were tendered by consent.

### Issues

11. The parties agreed the following issues to be determined:-
- a) Whether or not the arrest was lawful?
  - b) Whether or not the Police officers assaulted the claimant at the time of his arrest?
  - c) Whether or not the detention of the claimant in Police custody was lawful? and
  - d) Whether or not the claimant suffered any damage as a result of his arrest and detention?



## Law

12. The following provisions of the **Criminal Procedure Code [CAP 136]** (the CPC) are of relevance:-
13. A cognisable offence is defined by the CPC to be “*any offence for which a police officer may in accordance with the Schedule or under any law for the time being in force, arrest without warrant*”. The Schedule to the CPC lists the following offences as cognisable offences:-

*“Offences against Property*

.....

125. *Theft, misappropriation and false pretences.* [May arrest without warrant]

133. *Malicious damage.* [May arrest without warrant]

.....”

14. Section 4 (2) provides:-

*“4. Arrest how made*

.....

*(2) If a person forcibly resists the endeavour to arrest him, or attempts to evade arrest, such police officer or other person may use all means necessary to effect the arrest.*

.....”

15. And s12 (1) states that :-

*“12. Arrest by police officer without warrant*

*(1) Any police officer may, without an order from a judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence.*

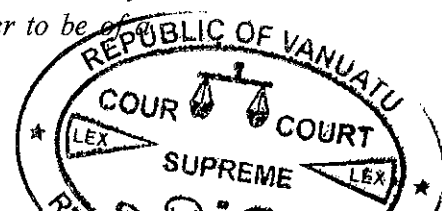
.....

”

16. Furthermore s18 provides as follows:-

*“18. Detention of person arrested without warrant*

*(1) Subject to subsection (2) when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the State, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of*



*serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable.*

*(2) The officer in charge of the police station may release a person arrested on suspicion of committing any offence, when after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with a prosecution for the offence.”*

17. Under the Police Act [CAP 105 ], s36 also provides for the use of reasonable force by members of the Police force and states :-

**“36. Use of reasonable force**

*Any member of the Force may use all such force as may be reasonably necessary in order to prevent crime or to effect or assist in effecting a lawful arrest.*

”

## **Discussion**

### **The complaint**

18. These proceedings arise as a result of a call for assistance to the Police station by a Mr Andre Kasso a security officer at the WWW Shop. On 10 December 2011, sometime in the morning he reported that the claimant was damaging goods in the shop and threatening the owners. As a result the claimant was arrested and detained and released the next day. Mr Alfred Bice, the Senior State Prosecutor, confirmed that following completion of the Police investigations, the file was forwarded to them for prosecution. He drafted the charges but for reasons of conflict given that the claimant was a Police officer, the file was transferred to the Public Prosecutors Office (PPO) for prosecution. Mr Saul of the PPO confirmed receipt of the file. He annexed a copy of the formal written complaint by Mr. Kasso “NS1” and other witness statements including a copy of the finalised charges “NS2” containing two counts; one count of abusive or threatening language contrary to s 121 of the Penal Code [CAP 135] and one count of malicious damage to property contrary to s 133 of the Penal Code.
19. The proceedings were filed in the Magistrates Court as Criminal PI Case No 3051 of 2016 **PP v Donald James & Or**. On 15 September 2017 the case was dismissed by the Senior Magistrate for want of prosecution.
20. In his evidence, **Exhibits C1 and C2**, the claimant says that on the day he was arrested he was in a Chinese shop in town trying to stop another man who was drunk and causing a nuisance and disturbing the owner of the shop. When the Police arrived they arrested him instead and detained him at the Police station. This evidence is contradicted by the evidence of Mr Tony Roy **Exhibit C5** who was with the claimant at the time of the



arrest. Mr Roy says they were sitting in their car outside a Chinese shop in town when the Police arrived. The claimant wanted to talk to the Police officers but instead they were both arrested and taken to the police station. He did not mention another person causing the disturbance.

21. The claimant produced no evidence from the person he alleges he was trying stop from disturbing the shop owner. As a Police officer, the claimant's evidence is self-serving and is misleading. Turning to the issues, I deal with the first and second issues together.

- a) *Whether or not the arrest was lawful?*
- b) *Whether or not the Police officers assaulted the claimant at the time of his arrest?*

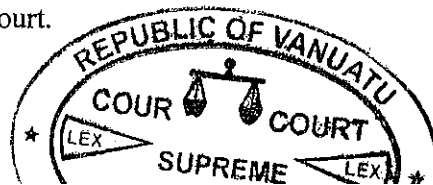
22. Mr Molbaleh submitted that the claimant's arrest was unlawful as the claimant was assaulted. Pursuant to s12 (1) of the CPC a police officer may arrest any person without a warrant if he suspects upon reasonable grounds that the person has committed a cognisable offence. Theft and damage to property are cognisable offences. Under cross examination the claimant agreed that he was arrested for theft and damage to property and agreed that both offences are cognisable offences. No warrant of arrest was required. The claimant was lawfully arrested. Both Mr Noal and Mr Tambe gave evidence that when they arrived on the scene, the claimant was heavily drunk and got aggressive towards them.

23. He was arrested and asked to enter the Police van (the Cage). When he refused, Mr Noal placed his hands around the claimant's neck to prevent any resistance and the claimant fell to the ground. Mr Noal had to lift the claimant and put him inside the Cage. The CPC and the Police Act empower the arresting officers to use all means and force necessary to reasonably effect a lawful arrest. The circumstances warranted the use of reasonable force to get the claimant to comply with his arrest given his physique and aggressive behaviour. The medical report prepared by Mr Marae concerning injuries sustained by the claimant allegedly during his arrest is questionable. It does not state the time of observance and it is not stamped as an official document of the VCH. Mr Marae admitted in cross examination that he forgot the stamp. Furthermore, the claimant was not observed by a doctor.

24. I deal with the two remaining issues together.

- c) *Whether or not the detention of the claimant in Police custody was lawful?*
- d) *Whether or not the claimant suffered any damage as a result of his arrest and detention?*

25. Mr Molbaleh submitted that the detention was unlawful and the claimant is entitled to damages. Section 18 of the CPC recognises that a person may not be detained for more than 24 hours without being charged and taken before a Court.



26. Both Mr Noal and Mr Tambe said the claimant was taken to the Police station and Mr Pakoasongi detained him in the Police station cell at around 12.15pm the same day. As the claimant was a police officer, Mr Noal informed Mr David Nambaru of the Professional Standards Unit (the PSU) that the claimant was being detained in the Police cell but could not be interviewed as he was very drunk and that they were to attend to him.
27. Mr Nambaru who is now retired said at 6.00 am on 11 December 2011, he informed the claimant of his rights before proceeding to interview him. The claimant opted to remain silent and was released from the Police custody. Mr Nambaru recorded the offences in the Police Occurrence Book. He stated that he completed the investigation and the file was transferred to the State Prosecution for the laying of charges. Under cross examination he maintained his evidence that the claimant was released at 6.00 am.
28. No other evidence disputes that or contradicts Mr Nambaru's evidence. The claimant under cross examination agreed that Mr Nambaru released him from the Police cell and that it was recorded in the Police Occurrence Book. The detention was therefore lawful.

#### Damages

29. The claimant claims VT 1 million in total for damages and punitive damages. The Civil Procedure Rules provide that any claim for damages must be properly pleaded and particularised. The claimant's claim for damages must fail. It is not properly pleaded and particularised. It is only referred to in the prayer for relief.

#### Conclusion

30. The claimant was arrested detained and prosecuted in accordance with the law. Therefore the claim must fail and is hereby dismissed. The defendants are entitled to costs in the sum of VT150, 000 to be paid within 21 days.

DATED at Port Vila this 15 day of October, 2020

BY THE COURT

D. Aru  
Judge

