

**BETWEEN:** **Jean Tucktat**  
Claimant

**AND:** **Vira Talivo**  
First Defendant

**AND:** **Hugo Belbong**  
Second Defendant

**AND:** **Tahe Viti**  
Third Defendant

**AND:** **Jean Rene**  
Fourth Defendant

*Date of Trial:* 17 April 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Claimant – Mr J. Vohor  
Defendants – Ms M. Vire  
*Date of Decision:* 28 April 2023

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**JUDGMENT**

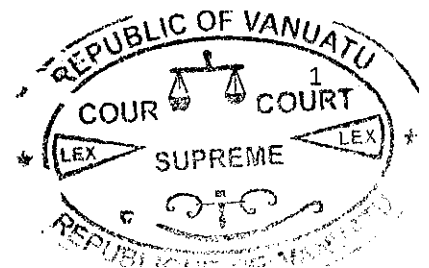
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**A. Introduction**

1. This was a claim in defamation against the First, Second and Fourth Defendants Vira Talivo, Hugo Belbong and Jean Rene, respectively. Allegations of arson were made against the Third Defendant Tahe Viti.

**B. Background**

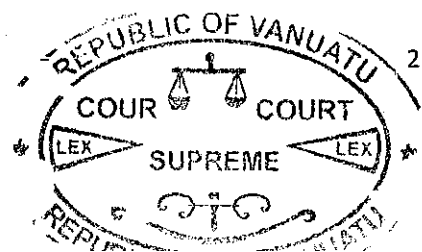
2. This matter has an unfortunate background. The Claimant Jean Tucktat and his family lived at Aluaru village on Malo island, since just after Independence. In late 2020, Mr Tucktat was accused of practising witchcraft including, it is alleged, by way of the defamatory statements the subject of this matter. The chiefs of Aluaru ordered him and his family to leave Malo within 24 hours. They did. They have not returned to Malo.
3. Mr Tucktat and the Defendants are related as brothers.



4. The Claim alleged defamation in respect of the following two events:
  - a) That on 2 September 2020, Mr Talivo spoke with Mr Tuckt at Aratas area at South Santo and told him Mr Belbong's message that he (Mr Belbong) was sick as a result of what Mr Tuckt did to him; and
  - b) That Mr Viti and Mr Rene were both present at the community meeting held at Alarua village on 3 October 2020 and Mr Rene made a defamatory statement concerning Mr Tuckt.
5. The Claim also alleged that in June 2019, Mr Viti and a third party burnt down 2 houses belonging to Mr Tuckt and his family. That was the only allegation against Mr Viti. This aspect of the Claim was abandoned at trial.
6. Damages were sought.
7. The Claim was disputed on the basis that on 2 September 2020, the only 2 persons present were Mr Tuckt and Mr Talivo. No one else was in sight when Mr Talivo relayed Mr Belbong's message to Mr Tuckt. It was alleged that the statements on 3 October 2020 were made during the discussions at a community meeting called by the chiefs to deal with the allegations of witchcraft against Mr Tuckt. The Defendants deny injuring Mr Tuckt's character and reputation and say that his grievances should be directed against the chiefs.

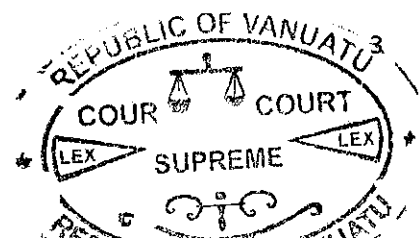
C. Evidence

8. The Claimant **Mr Tuckt** deposed in his Sworn statement filed on 12 September 2022 [**Exhibit C5**] that after he and Mr Talivo spoke, he returned to Aluaru village at Southeast Malo and heard that news about him 'poisoning' Mr Belbong and several others had spread everywhere. The Southeast Malo community talked about him for the next month and then the Aluaru community meeting was held on 3 October 2020. At the meeting, the Third Defendant Tahe Viti and his mother Vomulei talked against him at the meeting and said in front of everyone that they were there when Mr Tuckt brought a bag of mangoes to Viti's (Mr Viti's father's) house and after Viti ate the mangoes, he shat blood and died. After everyone heard this, they wanted to beat up Mr Tuckt and his family and said terrible things to them then the chiefs decided that he and his family must leave Malo island.
9. In his Sworn statement filed on 7 June 2022 [**Exhibit C6**], Mr Tuckt deposed that many people attended the 3 October meeting at the Aloaru Community hall. Both Mr Viti and Mr Rene were there. The people shouted at him and his family, telling them to return to Vao and Malekula and even made a threat to kill them. His granddaughter was so scared that she cried. The people present were swearing at them and he was so scared that they would beat them up that he told the chiefs to end the meeting and declare their decision because he was frightened for his and his family's safety. The chiefs' decision was that they move out of Malo the next day before sunset. He and his family cried and felt ashamed. The next day, he went to his mother's grave and cried for one last time as he knew he would never again set foot on Malo and be near his mother's grave. He detailed his expenses of moving off Malo to Santo, the hardship they experienced, the



devastation he felt and the property including houses, solar system, plantations, gardens, animals and retail shop that they left behind on Malo.

10. In his sworn statement filed on 8 July 2022 [**Exhibit C7**], Mr Tucktat deposed that before the 3 October 2020 meeting, Mr Viti placed namele leaves stopping him from accessing the beach to his coconut and cocoa plantations and garden at Apura on Malo. Mr Viti also placed namele leaves stopping Mr Tucktat from going to the CMC church and Church of Christ. He set out more detail of the expenses incurred in leaving Malo and the hardship that he and his family experienced.
11. In his sworn statement filed on 12 September 2022 [**Exhibit C8**], Mr Tucktat deposed that at the 3 October 2020 meeting, there was much talk about a bottle with liquid inside. Mr Rene said he found a bottle like that buried in his yard. The bottle was Mr Tucktat's 'protector.' He had put the 'protector' in his yard because he was frightened of Mr Rene after he heard a witchcraft story about him. His wife threw the bottle into Mr Rene's yard after Pastor Joseph Luc of CMC Church did a deliverance prayer at their yard.
12. In cross-examination, it was put to Mr Tucktat that the chiefs called the community meeting at Aluaru. He disagreed saying that Mr Tahe Viti went to the chiefs and alleged that Mr Tucktat made his father sick so the chiefs called the meeting. It was again put to Mr Tucktat that the chiefs were the ones who called the community meeting. He agreed. He also agreed that chiefs call a meeting to resolve an issue or problem within the community. It was put to him that the chiefs decided that he must leave Malo. He agreed that the chiefs decided this after he stopped the meeting when the people there wanted to beat him and his big brother. When his grandchild cried, he told the Chairman to please stop the meeting as he was frightened that they would burn his place and beat them up. So, he stopped the meeting and accepted the chiefs' decision that he leave Malo within 24 hours. He did not think to ask for the Police to help him. He agreed that many people at the community meeting spoke against him and wanted to beat them up although he does not know why. That is why he stopped the meeting. Mr Tahe Viti's mother Vomulei said at the meeting that he brought a bag of mangoes to Mr Viti's father who ate them then shat blood until he died. Silas, who was also at the meeting, brought an item that he said was an item of Mr Tucktat's witchcraft whereas Mr Tucktat said it was his 'protector' that Pastor Joseph had already prayed over. He repeated that it was Mr Tahe Viti's mum who said about the bag of mangoes.
13. In re-examination, Mr Tucktat stated that the only 2 Defendants at the community meeting were Mr Viti and Mr Rene. Mr Rene did not speak about 'poison.' It was Mr Viti and his mother who spoke. Mr Viti's mother said that he took a bag of mangoes to Hugo's house, their father at it then shat blood until he died. Mr Rene did not say anything.
14. Mr Tucktat's account was consistent in examination-in-chief and cross-examination. He told his story willingly and I considered that he was endeavouring to assist the Court with the truth. I accepted his evidence.
15. The First Defendant **Mr Talivo** deposed in his Sworn statement filed on 21 July 2021 [**Exhibit D1**] that he spoke with Mr Tucktat on 2 September 2020 to pass on Mr Belbong's message. They were the only 2 persons present and no other person heard them. Mr Tucktat needs to address his grievances with the chiefs who made the

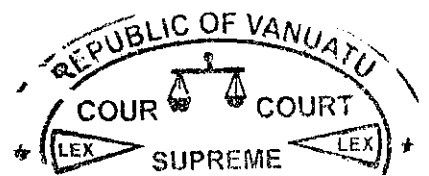


decision to remove him from Malo. Mr Talivo maintained his account in cross-examination and I accepted his evidence.

16. The Second Defendant **Mr Belbong** deposed in his Sworn statement filed on 1 July 2021 [**Exhibit D2**] that in 2020, he was sick and semi-paralysed but the hospital could not help him so he went to his cousin Sepe to find out through custom 'leaf medicine' what had happened to him. Sepe did the custom ceremony and said that one amongst their own family had 'spoiled' him. Sepe said he could not say the name of that person but would give the 'leaf' to Mr Belbong who would sleep and see in his dream who had 'spoiled' him. Mr Belbong slept and dreamed of Mr Tucktat. So, he sent Mr Talivo to go and tell Mr Tucktat about his (Mr Belbong's) custom treatment and dream, and to tell him to stop his actions of spoiling others.
17. In cross-examination, Mr Belbong agreed that he sent Mr Talivo to go and speak with Mr Tucktat. Mr Belbong and Mr Tucktat's gardens are adjacent to each other at Aratas. Sepe gave him the custom treatment but would not tell him the name of the man that he saw had spoiled Mr Belbong; he gave the 'leaf' to Mr Belbong telling him that he would see in his sleep who had caused him to be sick. He took the leaf, fell asleep and saw himself and Mr Tucktat at his (Mr Belbong's) garden. After he saw this, he called Mr Talivo to see Mr Tucktat and tell him that he took leaf medicine, slept and saw Mr Tucktat in his dream. Mr Belbong agreed that Sepe never told him anyone's name but told him to take the leaf, sleep and then he would see who had made him sick.
18. It was put to Mr Belbong that as they were neighbours at Aratas, it would be normal to see Mr Tucktat in his dream. He answered that he took leaf medicine and then dreamed of Mr Tucktat. It was put to him that he lied that Mr Tucktat 'poisoned' him. He replied, 'Sepe gave me the leaf and said I would sleep and see for myself who made me sick' ("*Sepe I givim lif lo me, I talem se yu nomo bae yu silip, yu luk man we I mekem yu.*"). It was put to Mr Belbong that did he see in his dream that Mr Tucktat 'poisoned' him? He replied, 'He (Sepe) said that when you sleep you will see the man. When I slept, I saw Mr Tucktat so that is who I thought of' ("*Hemi se time yu silip, bae yu luk whu ia man. Time mi silip, mi luk hem so tingting blo mi I kam lo hem ia nao.*").
19. Mr Belbong denied knowing about the Alarua village meeting on 3 October 2020. He denied that what he said to Mr Talivo about witchcraft led to the 3 October 2020 meeting – he said that what he was part of happened on Santo but the meeting was on Malo which he did not know about until he heard that Mr Tucktat had been ordered to leave Malo.
20. Mr Belbong's account was unchanged in cross-examination. He repeated in cross-examination what he had set out in his sworn statement. He was forthright in his answers. I considered that he was endeavouring to assist the Court with the truth and accepted his evidence.
21. The following witnesses were not available for cross-examination; I gave no weight to their evidence: **Johnny Neirove** [**Exhibit C1**], **Paul Metektukta** [**Exhibit C2**], **Joseph Luc** [**Exhibit C9**], **Mr Viti** [**Exhibit D3**] and **Mr Rene** [**Exhibit D4**].

D. Discussion

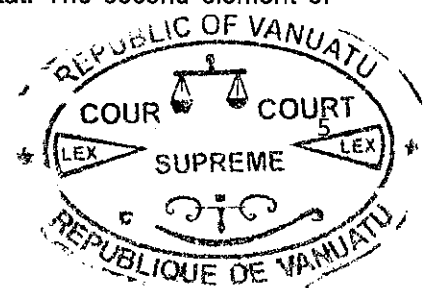
22. In *Naliupis v Buletare* [2022] VUCA 2 at [59]-[63], the Court of Appeal stated as follows:



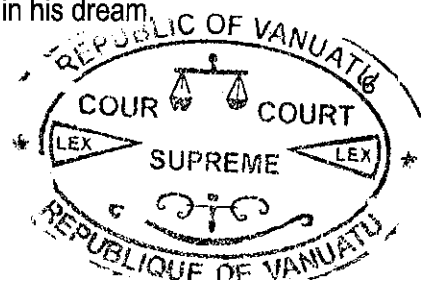
59. The elements of the tort of defamation comprise (relevantly for present purposes):
- (1) a communication by the defendant to a third party;
  - (2) the communication conveying an imputation concerning the claimant; and
  - (3) the imputation being defamatory of the claimant.
60. It is fundamental to an action of slander that the claimant prove the making of the particular slander alleged. A person cannot be found to have defamed another without proof that the person did, verbally or in writing, publish the defamatory matter. In a case of slander, this requires the claimant to prove that the defendant did speak the words said to constitute the slander.
61. The proper pleading of a claim of slander requires that the person to whom the impugned words were spoken be identified. As the Judge noted, this requirement is confirmed by Bullen & Leake & Jacob's Precedents of Pleadings (13<sup>th</sup> ed), Sweet & Maxwell at 624. This may be done by identifying the particular persons to whom the words were spoken or by identifying those persons as a class, for example, a particular radio audience. But there must be some identification.
62. *In the present case, the appellant did no more than allege that Mr Buletare and Mr Rocroc had made statements to "third parties." There was no identification of those third parties, whether by name, description or class.*
63. *However, there is a more fundamental difficulty for the appellant. That is the Judge's finding that none of the appellant's witnesses said that they had heard Mr Buletare or Mr Rocroc make either of the statements said to constitute the pleaded slanders.*

*(my emphasis)*

23. As set out in *Naliupis v Buletare*, the elements of defamation where slanderous statements are alleged are as follows:
- a) a communication by the defendant to a third party;
  - b) the communication conveying an imputation concerning the claimant; and
  - c) the imputation being defamatory of the claimant.
24. The case against the First Defendant Mr Talivo falls over at the first hurdle as the alleged slander pleaded in the Claim was spoken in a conversation between Mr Talivo and Mr Tucktat only. They were both clear in their evidence that they were the only 2 persons present when they spoke with each other at Aratas at South Santo. There is no pleading that Mr Talivo communicated with a third party, therefore Mr Talivo cannot be held liable in defamation.
25. In sending Mr Talivo to go and tell Mr Tucktat his message, the Second Defendant Mr Belbong sent a communication to a third-party being Mr Talivo. The first element of defamation is satisfied.
26. Mr Belbong told Mr Talivo to go and tell Mr Tucktat that he (Mr Belbong) went to Sepe who gave him leaf medicine and told him he would see in his sleep who had made him sick, then he slept and saw Mr Tucktat in his dream. The communication from Mr Belbong conveyed an imputation concerning Mr Tucktat. The second element of defamation is satisfied.



27. It is offensive to anyone's character and reputation to be accused of practising witchcraft. Such imputation was defamatory. The last element of defamation is satisfied.
28. In *Jiang Su Provincial Construction Group (Vanuatu) Ltd v Zhinjian Pang* [2021] VUCA 33 at [35]-[40], the Court of Appeal stated as follows:
35. *We accept from the outset the submissions of the Appellant's Counsel that the rationale of the defence of qualified privilege is the law's recognition that there are circumstances when there is a need, in the public interest, for a particular recipient to receive frank and uninhibited communication of particular information from a particular source: see Reynolds v Times Newspapers Ltd [1999] UKHL 45; [1999] 3 WLR 1010. These occasions have been described, traditionally, in terms of persons having a duty to perform or an interest to protect in providing the information. We note further, that if, adopting the traditional formulation for convenience, a person's dominant motive is not to perform this duty or protect this interest, he is outside the ambit of the defence.*
36. In *Horrock v Lowe* [1975] AC 135 at page 150, Lord Diplock said this:
- "Even a positive belief in the truth of what is published on a privileged occasion ... may not suffice to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. The commonest case is where the dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames."*
37. *Lord Diplock continued by noting that there may be other improper motives, which destroy the privilege. He instanced the case where a defendant's dominant motive may have been to obtain some private advantage unconnected with the duty or the interest which constitutes the reason for the privilege.*
38. *Lord Diplock's observations are on point to the extent that they enunciate the principle that express malice is to be equated with use of a privileged occasion for some purpose other than that for which the privilege is accorded by the law.*
39. *In the present case before the Court, we observe the following:*
- a. *The Appellant and the Respondent have contractual agreements between them. Issues arose between them in the execution of the said agreements causing grievances;*
  - b. *The Respondent was an aggrieved private citizen and he has the recourse to the courts in his disputes and differences with the Appellant;*
  - c. *The Appellant had attempted to settle the matter amicably prior to, during and after the protests by the Respondent;*
  - d. *The Respondent sought instead to protest for 4 days at peak traffic hours on the main intersections with allegations that the Appellant says are defamatory.*
40. *The Appellant alleged that the actions of the Respondent were devised to tarnish the reputation of the Appellant and do not qualify for the defence of privilege.*
37. There is no suggestion that Mr Belbong was motivated by personal spite or ill will towards Mr Tucktat.
38. I accept that Mr Belbong had gone to the hospital with no avail therefore went to Sepe for leaf medicine to discount the possibility that he had been the victim of witchcraft. He took the leaf medicine from Sepe then saw Mr Tucktat in his dream.



39. I also accept that Mr Belbong positively believed that as he had seen Mr Tucktat in his dream, that meant that Mr Tucktat had practised witchcraft to make him sick. As he and Mr Tucktat are brothers, he felt it was his duty to pass a message to Mr Tucktat that he had taken 'leaf medicine' from Sepe, had seen Mr Tucktat in his dream and that Mr Tucktat must "stop his actions of spoiling others". In other words, he suspected Mr Tucktat of practising witchcraft and felt it was his duty or in their common interest to tell Mr Tucktat that. I consider that accordingly, this was an occasion where the defence of qualified privilege applied and therefore the Claim for defamation fails against Mr Belbong.
40. The only aspect of the Claim against the Third Defendant Mr Viti was abandoned at trial.
41. It was pleaded in the Claim that the Fourth Defendant Mr Rene said at the community meeting that he also found a few bottles buried in his yard. Mr Rene's statement was made in the context of bottles of liquid shown at the community meeting and stated to be Mr Tucktat's 'poison' whereas Mr Tucktat said that it was his 'protector' against witchcraft. Mr Tucktat stated firmly in re-examination that Mr Rene did not speak about 'poison' – it was Mr Viti and his mother who did so. On Mr Tucktat's own evidence, Mr Rene did not make any defamatory statement against him.
42. For the reasons given, Mr Tucktat has failed to prove the Claim on the balance of probabilities.
- E. Decision and Result
43. The Claim is **dismissed**.
44. It was the chiefs concerned who made the decision that Mr Tucktat and his family must leave Malo. However, the statements emanating from Mr Belbong and Mr Talivo conveyed the suspicion that Mr Tucktat was involved in witchcraft. Allegations of Mr Tucktat practising witchcraft led to the chiefs' decision. In the circumstances, the First and Second Defendants are to bear their own costs.
45. The Claim against the Third Defendant was only abandoned at trial. The proceeding was therefore quite unnecessarily prolonged against him and hence he is entitled to costs on an indemnity basis. The Claimant is to pay the Third Defendant's costs on an indemnity basis as agreed or as taxed by the Master. Once set, the costs are to be paid within 28 days.
46. The Claimant is to pay the Fourth Defendant's costs on the standard basis as agreed or as taxed by the Master. Once set, the costs are to be paid within 28 days.

DATED at Port Vila this 28<sup>th</sup> day of April 2023  
BY THE COURT

*VM Trief*  
Justice Viran Molisa Trief

