

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

**Civil Case
No. 21/777 SC/CIVL**

BETWEEN: Peter Rex Tau
Claimant

AND: Republic of Vanuatu
Defendant

Date of Trial: 31 January 2024
Before: Justice V.M. Trief
In Attendance: Claimant – Mr D.K. Yawha
Defendant – Ms J.E. Toa
Date of Decision: 17 June 2024

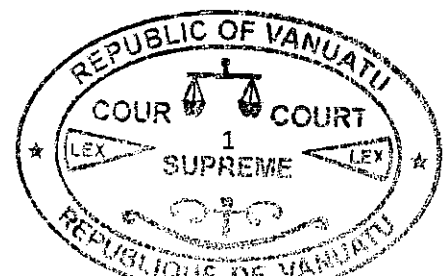
JUDGMENT

A. Introduction

1. This was a claim for damages in respect of the alleged unlawful arrest and false imprisonment of the Claimant Peter Rex Tau by the Police on 21 May 2017. The claim is disputed.
2. Counsel both stated that there was no need to cross-examine any witnesses and asked the Court to make its decision following the filing of written submissions. This is the decision.

B. Pleadings

3. By the Claim filed on 16 March 2021, Mr Tau alleged that his arrest on 21 May 2017 was unlawful because the Police had not completed a full investigation before



arresting him which was contrary to the *Criminal Procedure Code* [CAP. 136] (the 'CPC') and which caused him great humiliation. It was alleged that Mr Tau was refused a shower and that he was induced to accept his arrest by the representation that a lawyer had been arranged for him who would meet him on arrival at the airport in Vila. It was also alleged that the Police refused to listen to his explanations for the ulterior motives underlying the arrest. The relief sought includes VT2,500,000 damages for pain and suffering, VT2,000,000 damages for false imprisonment, VT1,000,000 damages for unlawful arrest, VT2,000,000 damages for humiliation and embarrassment, and VT2,500,000 punitive damages, as well as interest, costs and any other order deemed just.

4. By its Defence filed on 1 September 2019, the Defendant State denied the claim of unlawful arrest and false imprisonment. It alleged that Mr Tau was arrested on 21 May 2018 pursuant to subs. 12(1) of the CPC following a complaint lodged on 26 March 2018 alleging threats, incest and unlawful sexual intercourse. On the same day, Mr Tau was flown by plane to Port Vila, detained in Cell No. 6 and remanded in custody by order of the Magistrates' Court issued on the same day. On 4 June 2018, he was released on bail. He stood trial in the Supreme Court. By Verdict dated 14 June 2019, he was found not guilty and acquitted. It alleged that Mr Tau was lawfully arrested on reasonable suspicion for committing a cognisable offence, and then lawfully obtained. It denied that Mr Tau suffered loss and damage as alleged.

C. The Law

5. Section 1 of the CPC contains the following definition of "cognisable offence":

1. *In this Code, unless the context otherwise requires –*

...

"cognisable offence" means 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;

6. Subsection 12(1) of the CPC provides as follows:

12. (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.*

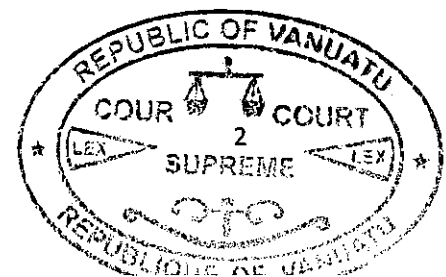
7. The Schedule provides as follows:

SCHEDULE

(section 1)

COGNISABLE OFFENCES

Note: The entries in the second column of this schedule, headed "Offence" are not intended as definitions of the offences described in the several corresponding sections of the Penal Code or even



as abstracts of those sections, but merely as references to the subject of these sections, the number of which is given in the first column.

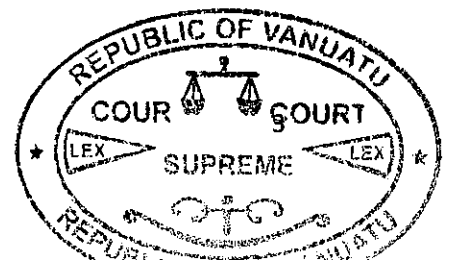
<u>Section</u>	<u>Offence</u>	<u>Whether the Police may arrest without warrant</u>
...		
Offences Against Morality		
91	Rape	May arrest without warrant
95(2)	Incest	May arrest without warrant
...		
97(1) and (2)	Unlawful sexual intercourse	May arrest without warrant
...		
Offences Against the Person		
...		
115	Threats to kill person	May arrest without warrant
...		

D. Evidence

8. The standard of proof that Mr Tau was required to establish to succeed in his Claim, was "on the balance of probabilities." That is, that his assertions were more likely than not to be correct. There was no onus on the State to establish facts or their non-liability.
9. I assessed the credibility and accuracy of a witness' evidence by looking firstly for consistency within a witness' account. Secondly, I looked for consistency when comparing that account with the accounts of other witnesses, and then, when comparing the account of a witness with the documentary evidence. I also had regard to the inherent likelihood of the situation then prevailing.
10. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts.
11. I now set out my summary of the relevant evidence of each witness, and my assessment of what weight should be given to their evidence.

The Claimant's Evidence

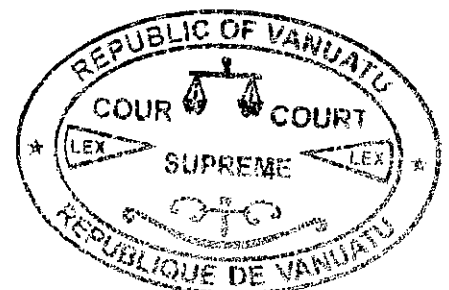
12. The Claimant **Mr Tau** deposed in his Sworn statement filed on 22 April 2021 [Exhibit C1] that he is a senior Police officer and has served in the Vanuatu Police Force ('VPF') for almost 28 years. He is currently serving on Tanna island. He deposed that at around 8.30am on 22 May 2017, Police officers Alwin Sogovlea and Terry Malapa



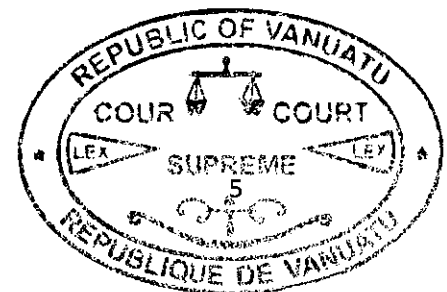
- told him when he arrived at the Isangel Police Station on Tanna that he was under arrest then they forced him to board a flight to Port Vila. During the arrest, he tried to explain to the arresting officers the complainant's motives but they told him that they were just following orders and that his lawyer was ready to take his instructions in Vila. They told him that his lawyer would meet him on arrival at Bauerfield airport in Vila, to coerce him into accepting the unlawful arrest, but this was not true.
13. He deposed that the Police did not conduct a full investigation before arresting him because the complainant's complaint was taken on 21 May 2017 and he was arrested the next day. He was charged and then remanded in the high risk correctional facility for 2 weeks but at trial, the Court held that he had no case to answer. He deposed that the unlawful arrest caused him great embarrassment and humiliation, and that he suffered greatly mentally and emotionally.
 14. Mr Tau deposed in his Further Sworn statement filed on 29 January 2024 [Exhibit C2] that any official complaint against a Police officer should be made to the VPF Professional Standards Unit ('PSU'). He deposed that the form made was contrary to section 33 of the PSU Rules. He deposed that the complaint was in relation to events 11 years before that, and the case was all about a land dispute, as can be seen from the complainant Tom Otil's first complaint dated 20 May 2018 [**Exhibit C2 – Annexure "PRT1"**]. He deposed that as a senior police officer, he understands the formal process of arrest, that is, once a complainant has lodged a complaint, "with witnesses the arrest should be done and detained waiting for the investigation to complete". However, this was not done therefore his arrest was unlawful.
 15. It is alleged in the Claim that Mr Tau's arrest was unlawful because the Police had not yet conducted a full investigation, however in his evidence, Mr Tau deposed that he understands the formal process of arrest is that arrest is done then the accused is detained waiting for the investigation to be completed. His evidence is inconsistent with the allegations in the Claim. Further, it is alleged in the Claim and he deposed that he was arrested on 21 May 2017 however all the documentary evidence adduced by the Defendant's witnesses shows that he was arrested on 21 May 2018. Accordingly, I consider that Mr Tau's evidence is unreliable therefore I can only rely on it where it is supported by the account of another witness or by the documentary evidence.

The Defendant's Evidence

16. **Nos Wilfred** deposed in his Sworn statement filed on 23 August 2022 [Exhibit D1] that on 26 March 2018, he received a complaint by Mrs Kowia Iotil alleging threatening, incest and unlawful sexual intercourse by Mr Tau [**Attachment "NW1"**]. On 28 March 2018, he scanned and emailed the complaint to the Commissioner of Police Albert Nalpini [**Attachment "NW2"**].



17. **Terry Malapa** in his Sworn statement filed on 31 August 2022 [Exhibit D2], **Alwin Sogovlea** in his Sworn statement filed on 31 August 2022 [Exhibit D3] and **Lily Joel** in her Sworn statement filed on 31 August 2022 [Exhibit D4] deposed as follows:
- a. That he or she was one of the Police officers instructed by Nicholson Glen Mahina, Director of the PSU, to travel to Tanna [instructions attached as “**NGM6**” to Mr Mahina’s sworn statement];
 - b. On 21 May 2018, at around 9am, they arrested Mr Tau at the Isangel Police Station on Tanna. Then they drove with him to the airport and accompanied him on the flight to Vila;
 - c. They travelled in a Police vehicle to the Police Station where they searched Mr Tau, recorded his belongings in the Watch House Register Book then detained him overnight in Cell No. 6.
18. **Nicholson Glen Mahina** deposed in his Sworn statement filed on 31 August 2022 [Exhibit D5] that at the time, he was the Director of the PSU. On 31 March 2018, the Commissioner of Police forwarded to him Nos Wilfred’s email dated 28 March 2018 attaching a copy of the complaint against Mr Tau [**Attachment “NGM1”**]. On 16 May 2018, he requested the Commissioner’s approval for a Police tour to Tanna to effect Mr Tau’s arrest [**Annexure “NGM4”**], which the Commissioner approved the same day [**Annexure “NGM5”**]. On 18 May 2019, he conducted a departure briefing for the officers deploying to Tanna [**Attachment “NGM6”**]. On 21 May 2018, he picked up Officers Malapa and Sogovlea and Mr Tau at the airport and drove them to the Police station where Mr Tau was detained overnight in Cell No. 6. The next day, the Magistrates’ Court remanded Mr Tau in custody then Mr Mahina drove him to the Correctional Centre remand facility at Independence Park.
19. **Micheline Tasso** deposed in her Sworn statement filed on 31 August 2022 [Exhibit D6] that Mr Tau was charged with sexual intercourse without consent in *Public Prosecutor v Tau*, Criminal Case No. 1429 of 2018. On 22 May 2018, the Magistrates’ Court remanded Mr Tau in custody [**Annexure “MT1”**]. He was released on bail on 4 June 2018. He was committed to stand trial in the Supreme Court and did so. On 14 June 2019, the Supreme Court issued its reasons for its oral acquittal verdict in respect of Mr Tau [**Annexure “MT11”**].
20. The Defendant’s witnesses’ evidence was consistent with the documentary evidence. I accepted their evidence except the labelling by some of them of the complainant Mrs Iotil as ‘Victim’. There is a victim only if a crime has been committed, and it is for the Court to determine if a crime was committed. The Court found Mr Tau not guilty and acquitted him. There was no crime therefore it was presumptive in this matter to refer to Mrs Iotil as the victim. She should have simply been referred to as the ‘complainant’.



E. Consideration

21. I find on the evidence that Mr Tau was arrested on 21 May 2018. Was his arrest unlawful?

22. To arrest a suspect, the Police must have reasonable grounds to suspect that an offence has been committed: *Republic of Vanuatu v Emil* [2015] VUCA 16 at [14]. Whether or not that is correct is for the Court to determine and the test is an objective one, per the Court of Appeal in *Republic of Vanuatu v Togagi* [2016] VUCA 45 at [8]:

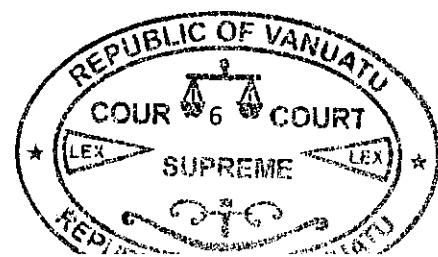
8. ... the determination of whether or not a reasonable ground to suspect an offence exists is ultimately for the Court. In short, the test is an objective one. It is not the subjective opinion of the arresting police officer that is determinative, but the objective assessment of all the facts of the particular case by the Court. Thus, it was said in *Hyder v. Commonwealth of Australia* at [15.7] and [15.8].

(7) What constitutes reasonable grounds for forming a suspicion or a belief must be judged against "what was known or reasonably capable of being known at the relevant time": *Ruddock v Taylor* [2005] HCA 48; (2005) 222 CLR 612 (at [40] per Gleeson CJ, Gummow, Hayne and Heydon JJ; whether the relevant person had reasonable grounds for forming a suspicion or a belief must be determined not according to the subjective beliefs of the police at the time but according to an objective criterion: *Anderson v Judges of the District Court of New South Wales* (1992) 27 NSWLR 701 (at 714) per Kirby P (Meager and Sheller JJA agreeing); see also *O'Hara v Chief Constable of Royal Ulster Constabulary* (at 298) per Lord Hope;

(8) The information acted on by the arresting officer need not be based on his own observations; he or she is entitled to form a belief based on what have been told. The reasonable belief may be based on information which has given anonymously or on information which turns out to be wrong. The question whether information considered by the arresting officer provided reasonable grounds for the belief depends on the source of the information and its context, seen in the light of the whole of the surrounding circumstances and, having regard to the source of that information, drawing inferences as to what a reasonable person in the position of the independent observer would make of it: *O'Hara v Chief Constable of Royal Ulster Constabulary* (at 298, 301, 303) per Lord Hope.

9. The complaint to the Police against Mr Tau dated 26 March 2018 was by his adoptive mother Mrs Kowia Iotil alleging that in 2002, he forced her to suck his penis until he ejaculated. She also alleged that in 2011, he asked her for sex but she cried and threatened to report him to the Police then he left. She alleged also that Mr Tau had had sex with his biological daughter who after that was sent back to Santo. Finally, she alleged that the delay in her reporting Mr Tau was that he had threatened to cut her and her husband Iotil with a bush knife [Exhibit D5 – Attachment "NGM1"].

10. The Police had received a complaint alleging very serious offences, and the complaint was very specific in its terms. Accordingly, I consider and find that the

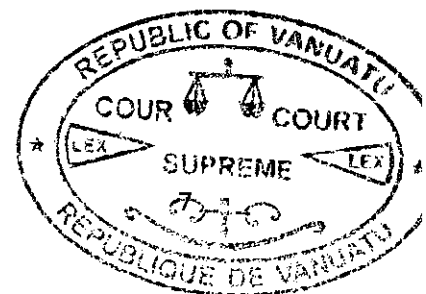


complaint was sufficient in itself to give rise to a suspicion on reasonable grounds that several cognisable offences had occurred: sexual intercourse without consent (contrary to s. 91 of the *Penal Code* [CAP. 135]), incest (contrary to subs. 95(2) of the *Penal Code*) and threats to kill a person (contrary to s. 115 of the *Penal Code*) (s. 1 and the Schedule of the CPC).

11. In those circumstances, the Police had the power to arrest Mr Tau without a warrant of arrest pursuant to subs. 12(1) of the CPC. I find therefore that Mr Tau was lawfully arrested.
12. It was alleged in the Claim that Mr Tau's arrest was unlawful because the Police had not completed a full investigation as required by the CPC. On the contrary, there is no such provision in the CPC. There is no merit in that aspect of the Claim.
13. Mr Tau's allegations of being refused a shower or being induced by a representation that his lawyer would meet him on arrival in Vila do not make his arrest unlawful. His allegation that the Police refused to listen to his explanations for the ulterior motives underlying the arrest also does not make his arrest unlawful. The Police suspected upon reasonable grounds, which were set out in the complaint against Mr Tau, that he had committed several cognisable offences hence lawfully arrested him.
14. The complainant Mrs Iotil also stated in her complaint that, "*sappose yufala I tekem quick action from sappose hemi harem or information leakaut bae isave killem ded wan long mitufala bifo yufala ijust tekem action, from I leakaut ia nao*" and, "*sappose iharem bae iusem knife blong killem ded wan long mitufala*" ('could you take swift action because if he hears of our report to you, he could kill one of us before you take action' and, 'if hears of our report, he will use a knife to kill one of us'). In the circumstances, the Police are to be commended for taking the swift action that they did of deploying officers from Vila to Tanna, arresting Mr Tau and bringing him to Vila where he was ultimately charged and stood trial.
15. Given the lawful arrest of Mr Tau, it follows that Mr Tau was lawfully detained overnight at the Cell No. 6. In addition, from the moment that Mr Tau appeared before the Magistrates' Court on 22 May 2018, any restrictions on his liberty and freedom of movement were imposed by the Court, not by the Police. Accordingly, there can be no claim for false imprisonment against the State in respect of the period after the appearance before the Magistrates' Court. Accordingly, there was also no false imprisonment and Mr Tau is not entitled to damages as claimed.

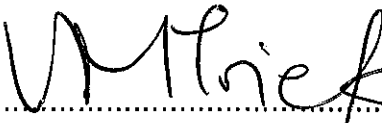
F. Result and Decision

16. For the reasons given, the Claimant has failed to prove the Claim on the balance of probabilities hence the Claim is **dismissed**.



17. Costs must follow the event. The Claimant is to pay the Defendant's costs fixed summarily at VT150,000 by 4pm on 17 July 2024.

**DATED at Port Vila this 17th day of June 2024
BY THE COURT**


.....
Justice Viran Molisa Trief

