

**BETWEEN:** **Yosino Tariuvu**  
Claimant

**AND:** **Lawrence Hinge Leo, Johnny Rau and Mark  
Iauma**  
First Defendants

**AND:** **Dr. Trevor Cullwick**  
Second Defendant

**AND:** **Vila Central Hospital**  
Third Defendant

**Before:** Hon. Justice EP Goldsbrough  
**In Attendance:** Malcolm, J for the Claimant  
Aron, S for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants  
**Dates of Hearing:** 13<sup>th</sup> March 2025 and 24<sup>th</sup> March 2025  
**Date of Judgment:** 26<sup>th</sup> June 2025

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**JUDGMENT**

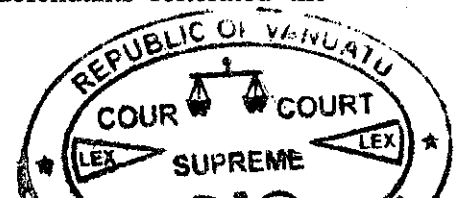
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**Introduction**

1. On 26 May 2021, Yosino Tariuvu, the claimant, was attacked by Lawrence Hinge, Johnny Rau and Mark Iauma, the first defendants. They attacked him with their fists, booted feet and a piece of wood, causing bruises, a broken radius and a broken cubitus bone. The claimant was treated and underwent surgery at Vila Central Hospital. Dr Trevor Cullwick, the second defendant, performed the surgery. The third defendant in this matter is Vila Central Hospital, which is administered on behalf of the Republic of Vanuatu by the Ministry of Health.

**Scope of decision**

2. On 8 October 2024, judgment was entered against the 1<sup>st</sup> defendants for VT 892,600. At the same hearing, counsel for the second and third defendants reiterated the

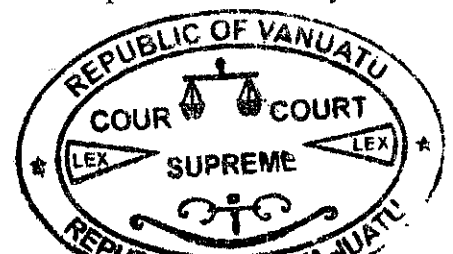


admission of liability for damages as stated in a memorandum filed on July 9, 2024. Counsel confirmed that special damages were agreed, but that the quantum of general damages was not agreed. There is an agreement that the unpaid salary, or loss of earnings, of VT 2,300,000 is payable together with special damages reflecting the cost of medical care received in New Caledonia and Vanuatu privately, amounting to VT 2,212,000, and legal fees of VT 650,000. The only head of damages not agreed upon between the parties is pain and suffering. In that regard, the extent of the divergence is confined to whether the injury should be categorised, within the applicable guidelines concerning orthopaedic injuries, as an injury resulting in permanent and substantial disablement (Category B) or as a less severe injury (Category C). The applicable guidelines, as agreed upon between the parties, are those applied in this jurisdiction in other cases heard by the Supreme Court and endorsed by the Court of Appeal, as outlined in the Judicial College of England and Wales' Guidelines for the Assessment of General Damages in Personal Injury Cases. At the time of this injury, those guidelines were in their 16th edition, but at the time of this decision, they were in their 17<sup>th</sup> edition.

3. Evidence was received on that question of quantum of damages for pain and suffering, and this decision is about that alone. The evidence is that of the claimant, as contained in his sworn statements supporting the claim, of Dr Benito Marchiori and of Dr. Trely Samuel Patunvanu, both supporting the claim and of Dr. Richard Walsh Leona for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. Dr. Benito Marchiori's evidence was concerned with liability alone and so was not the subject of cross-examination. Its use is to describe the nature of the injuries, not quantum. Both Dr. Patunvanu and Dr. Walsh were cross-examined on their sworn evidence.

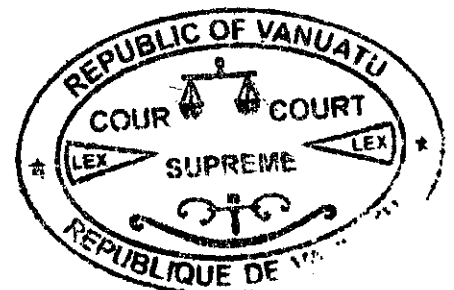
### **The Evidence**

4. The evidence in chief of Dr. Patunvanu is contained in his sworn statements filed on 17 April 2024 and 25 July 2024. The first statement records the claimant's attendance and referral to New Caledonia, thereby describing the injury before remedial surgery. The second statement outlines findings from a post-remedial surgery examination conducted in July 2024. The witness noted permanent angulation of the radius at 30 degrees and of the ulna at 20 degrees, and that, given the patient was already an adult, there was unlikely to be any future change. It further noted normal pronation but only



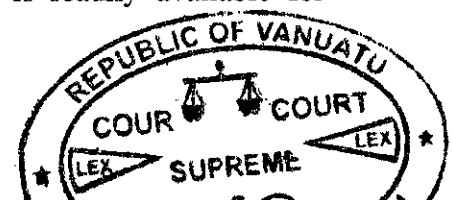
80% supination, with intermittent and ongoing pain. He assessed disability of the left forearm at 30%.

5. In cross-examination, he answered that he assessed the injury as permanent substantial disablement, which in his view fell within (B) of the Judicial College Guidelines, with which he said he was familiar. From post-surgery X-rays, he noted the 30-degree angulation and concluded that, as further remodelling was no longer an option, this would affect the patient's future earning ability. He also referred to the pain level that the patient would have experienced post-injury until the reconstructive surgery, which he described as not insignificant. He spoke about the reason why pain would be ongoing because the angulation would leave stretched nerves. He suggested that, having read Dr. Leona's assessment, the same should be read in conjunction with current X-rays, and that he disagreed with the doctor's suggestion of the injury being categorised as (C). He was not asked in cross-examination about his qualifications or experience in assessing this type of injury.
6. Dr Richard Walsh Leona, Head of Surgery at Vila Central Hospital, gave evidence in chief from his statement, sworn and filed on 19 September 2024. He categorized the original injury sustained as a category (D) injury. He suggested that, following medical negligence and subsequent medical intervention in New Caledonia, the injury should be categorised as (C). He suggested that the original injury would result in severe pain until fixed by stabilisation and then pain killers, which would allow the situation to improve. In cross-examination, he referred to missed clinic appointments, which he had not spoken of in his evidence in chief. He agreed that there is a permanent bend in the patient's arm, and that the patient cannot straighten their flat palm. He also noted that the pronation teres is from a destroyed muscle. However, the critical aspect of assessment was the percentage loss of function, rather than pain or suffering, focusing on the patient's ability to function. He agreed that the injury was permanent and not simply cosmetic. He referred to the purpose of treatment as the restoration of function, and that functionality determines disability.
7. He suggested that Dr Patunvanu was not qualified to make any assessment. He further suggested that if he had performed the remedial surgery, he would have corrected the deformity that the patient now has.



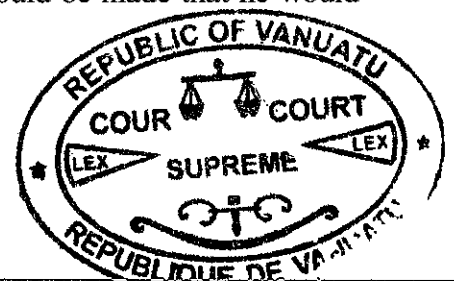
## Discussion

8. Given the agreement between counsel on several heads of damage which the Court was informed of after the evidence of Dr Patunvanu but before Dr Leona's evidence, it was not necessary to consider submissions on those agreed matters. The variation between the parties here is confined to the categorisation of the residual permanent injury as category (B) or (C).
9. The parties agree on the application of the Judicial College guidelines to Vanuatu and how they may be used as a guide, with some modifications. In particular, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant referred to *Vanuatu Copra & Cocoa Exporters Ltd v Agwaiasi* [2024] VUCA 15.
10. In submissions and based on the application of the guidelines to this jurisdiction as outlined in VCC above, the defendants suggested that the award should be of VT 3,039.061 for this particular Category (C) injury. Counsel for the claimant, applying the same principles, submits that the award should be VT 4.2 million based on the classification of the injury in Category (B). All of this is based on the application of the guidelines as set out in the 16<sup>th</sup> Edition of the Judicial College guidelines.
11. As mentioned above, the Guidelines are now in their 17<sup>th</sup> iteration as of April 2024, although prepared in November 2023. Since the 16<sup>th</sup> Edition, as noted in the Notes on Inflation in the preface to the 17<sup>th</sup> Edition, inflation has affected awards significantly between editions. A practical example given was that of a figure of £39,170 in the 16<sup>th</sup> Ed., which would be £47,776 in the 17<sup>th</sup> Ed.
12. That helpful illustration highlights the need, as set out in *Telecom Vanuatu Ltd v Tari* [2018] VUCA 37, to use the Guidelines as guidance only. The Court of Appeal said, at 25 :-  
  
‘The guidance found in the UK Judicial Board of Studies publication can only be that, guidance. It is necessary to look at the particular circumstances of the injured party to arrive at appropriate award of general damages rather than just the injuries suffered.’
13. Whilst a Retail Price Index figure, applied by the Judicial College (the successor to the Judicial Studies Board) in adjusting figures for inflation, is readily available for



England and Wales, such an RPI may not be the same in Vanuatu, even if it existed or were accessible. Thus, direct importation of exact figures becomes problematic.

14. At the time of his injury, the claimant was involved in running the family nakamal. He had been approved as a fit and proper person for employment under the RSE scheme in New Zealand. He had hoped to spend three to five years working within that scheme, allowing him to save and eventually set up a similar business of his own.
15. Since the injury, he had been prevented from working in that nakamal as he had difficulty mixing kava with one arm, nor could he serve kava with a single arm.
16. He used to love to play football. Nor is he able to play that or any other sport. He feels pain even when doing nothing. He said that he did not seek anything that he was not entitled to; he just wanted fair compensation.
17. He has managed to finance the remedial surgery without any assistance from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. He has, in addition, faced significant legal costs in bringing this claim, which have only increased given the disagreement over a divergence of views on part of the total claim, roughly amounting to less than 10% of the total claim. Unnecessary costs can easily consume an amount like this.
18. I do not accept the evidence from the 2<sup>nd</sup> and 3<sup>rd</sup> defendants that Dr. Patunvanu is not qualified to assess the injury to his patient. He was not asked about his experience in making such an assessment when cross-examined, nor did the expert making the assertion give evidence about his own superior qualifications or experience to demonstrate the validity of the statement. The failure to cross-examine the witness for the claimant on his expertise when counsel knew his witness would subsequently cast doubt on it is significant in this finding.
19. The evidence from the doctor for the defendants, which suggested that he could have performed the remedial surgery in Vanuatu and would have done a better job, is equally unhelpful. Reasonably, what the point of that evidence, given in re-examination, was intended to be is unknown. Given that the head of damage covering the cost of the remedial surgery is not contested, it cannot go towards that. This witness did not perform the remedial surgery, and therefore, no finding could be made that he would



have been able to remedy the injury, leaving no trace. It is a fact in these proceedings that the injury remains permanent.

20. All of the above suggest that an award for pain and suffering should be at the higher end of the scale, between VT 3,039,061 and VT 4,200,000. Interest on the various amounts should be ordered as claimed, based on the principles set out by the Court of Appeal in *Kennedy v Taria* [2016] VUCA 33. The injury occurred on 26 May 2021, at which time the claimant was working in his family's nakamal but had hoped to travel on RSE. Part of the agreed loss of earnings (past) will have accrued from 26 May 2021, and part (future) will only attract interest from the date of judgment. As pointed out in *Kennedy*, any calculation will be complex if it is to be precise. Whilst nothing more than a broad-based assessment, interest should accrue from the date of the injury at 5% per annum on VT 400,000 of the VT 3,225,400 total. Most special damages agreed were incurred when the remedial treatment took place in mid-2023 (1,106,000), and interest thereon should be payable from that date in respect of that head of damage. That figure is taken from the ss. of Tariuvu 19/7/24 at 16.

### Decision

21. As against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in favour of the claimant, for pain and suffering, an award of VT 4,200,000 is made. In addition, in accordance with the agreement made between the parties, an additional award of VT 2,300,000 for loss of earnings, VT 2,212,000 as special damages, and VT 650,000 for legal costs, totalling VT 9,362,000. Interest on the total award is payable at 5% per annum from the date of judgment until payment and at the same rate for the past loss of earnings from the date of the accident (specified at VT 400,000) and on the special damages (1,106,000) since they were incurred in June 2023.

Dated at Port Vila this 26<sup>th</sup> June 2025

BY THE COURT

*E P Goldsbraun*

Hon. Justice E P Goldsbraun

