

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

Civil  
Case No. 15/72 CIVIL

BETWEEN: Aruel Pierre  
Claimant

AND: Reggie Jonah  
Bong Jonah  
Jack Jonah  
Donald Jonah  
Sairus Jonah  
Defendants

Date: 6 February 2020  
Before: Justice G.A. Andrée Wiltens  
Counsel: Mr R. Tevi for the Claimant

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**JUDGMENT**

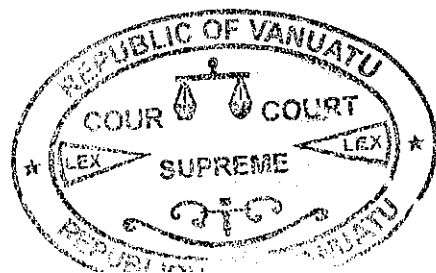
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A. Introduction

1. This is an application for judgment by default due to no steps being taken by the defendants. Further the Court is asked to assess appropriate damages.

B. Background

2. In 2013, Mr Pierre was 68 years of age, and described himself as vulnerable and unable to defend himself. He resided in Brisbane Village, Epi. In October a group of 5 young men assaulted him causing considerable injuries, and left him for dead on the ground, unconscious. The attack was ostensibly as a result of a belief that Mr Pierre practised black magic.



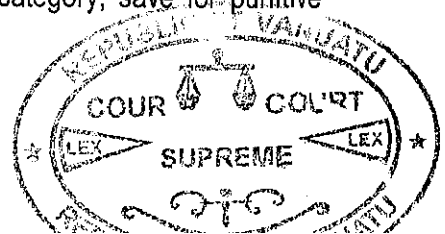
3. Mr Pierre was initially taken to Vaimali Hospital. Later he flown to Port Vila and admitted to Vila Central Hospital. He was operated on to remove a ruptured spleen and remained in hospital for 6 days.
4. The young men in question were dealt with in the Supreme Court for the assault, all pleading guilty and each being sentenced to 2 years imprisonment suspended for 2 years as well as being directed to complete 200 hours of Community Work.
5. The sentencing notes of Justice Sey record Mr Pierre's injuries were quite significant and permanent; and further that he had been covered in blood during the incident.
6. Mr Pierre's Claim records he is a simple farmer, who earns his living by gardening. The Claim alleges that this incident "...had really affected his simple living".

#### C. The Claim

7. The Claim was filed on 21 April 2015. Due to lack of service it had to be enlarged, but the Claim was finally served on the Defendants on 26 March 2016.
8. No steps have been taken by the defendants.
9. As a result, on 25 July 2017 there was an Application for Judgement by Default.
10. For reasons I cannot explain [I received the file in my docket today!] no further progress has been made with the Claim despite numerous letters from Mr Tevi asking for the Court to advance the matter.

#### D. Discussion

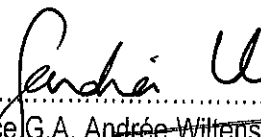
11. Judgment by default is appropriate. Not only have the defendants taken no steps to dispute the Claim, but in reality they cannot defend the Claim given their admissions in the criminal case.
12. The only outstanding issue to be determined is that of the quantum of damages to be awarded.
13. The Claim seeks punitive and general damages to be assessed by the Court; damages for pain and suffering also to be assessed by the Court, and damages in torts to be assessed.
14. In support, submissions have been filed addressing the quantum of the Claim. The cases of *Lansonneur v Barge* [1984] VUSC 12, *Alphonse v Tasso* [2007] VUSC 54 and *Kenie v Arvol* [2013] VUSC 141 are cited to assist the Court in the assessment of the damages to be awarded.
15. General damages relate to all the consequences occasioned as a result of Mr Pierre's injuries. That could include physical pain and suffering, actual injury or impairment, mental pain or anguish, lower quality of life, loss of career and difficulty in finding other work. I consider that all the various heads of damages sought come within this one category, save for punitive damages.



16. I first note that there is no actual evidence presented of any these items. I cannot conceive of the loss of career or inability to find alternative work.
17. However, clearly Mr Pierre must have suffered significant pain and suffering throughout his ordeal, and even after the operation while recuperating. There is no evidence as to his current physical condition following recuperation after the operation – whether or not there are any permanent disabilities. I note the Claim refers to a reduced quality of life following this incident, but there is no detail as to what is involved.
18. The case of *Solzer v Garae* [1992] VULRp 3 was referred to by Justice Tuohy in *Alphonse v Tasso* as being of use in making an assessment of general damages. In the *Solzer* case the then Chief justice used UK 2006 Guidelines to set a start point for the assessment, to which he then applied a multiplier of 0.5 to reflect the different economic circumstances in Vanuatu. The more recent 2020 Guidelines indicate that for a spleen removal the appropriate current range is between GBP16,500 and GBP 21,000.
19. If I were to follow that means of calculation, for general damages in relation to Mr Pierre's injury I would take the higher figure from the UK Guidelines, given the circumstances by which Mr Pierre was injured. To convert that sum to VT at today's exchange rate gets to a figure of VT 3,174,425. That needs to be multiplied by 0.5, which would leave a figure of VT 1,587,212.50.
20. Given the statements at sentencing about Mr Pierre being "covered in blood" and "significant and permanent injuries", as well as the fact that this was a quite cowardly but vicious unprovoked attack on an elderly, frail male by five, fit young men. They seemingly did not hold much back. In the circumstances, I consider it appropriate to raise the figure for general damages to VT 2,500,000.
21. I do not consider it fair to also impose punitive damages. The Defendants have been dealt with by the criminal Courts – that is sufficient.
22. Result
23. Mr Pierre is entitled to judgment by default in the sum of VT 2,500,000.
24. Mr Pierre is entitled to interest on that sum, at the usual Supreme Court rate of 5% p.a. as from 20 July 2017, the date of his application for judgment.
25. Mr Pierre is additionally entitled to the costs of his action, which I set at VT50,000 (inclusive of his filing fees).
26. The defendants are jointly and severally liable to Mr Pierre.

Dated at Port Vila this 6th day of February 2020

BY THE COURT

  
Justice G.A. Andrée-Wiltens

