

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

Civil
Case No. 19/2752 SC/CIVIL

BETWEEN: Tom Noam Iouniwan
Applicant

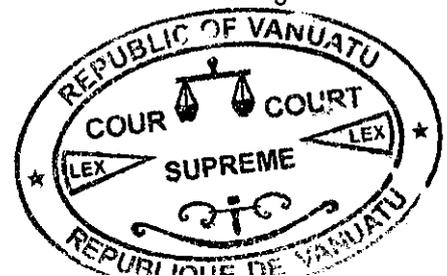
AND: Family Iamanik
First Defendant
Family Kwao
Second Defendant
Family Iokouba Tao
Third Defendant

Date: 30 June 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr A. Bal for the Applicant
Mr C. Leo for the First Defendant (absent)
Mr E. Molbaleh for the Second and Third Defendants

JUDGMENT

A. Introduction

1. This was a Claim for damages arising from the Claimant's established status as the Paramount Chief of Letekren area on Tanna Island. It was alleged that the Defendants did not accept his status and actively challenged the Claimant's status in Court on a number of occasions, thereby causing the Claimant to expend legal, travel and accommodation costs in defending the challenges. The Claimant sought to recover those costs as well as associated damages.



B. The Claim

2. The associated costs incurred were as follows:

- Legal costs – in Civil Case No.18/3475:	VT 2,000,000
- Air fares relating to that same case:	VT 150,000
- Accommodation in Tanna:	VT 30,000
- Legal costs in Civil Case No. 18/1780	<u>VT 750,000.</u>
Total:	<u>VT 2,930,000</u>

3. As well, general damages in the amount of VT 500,000 were sought; nominal damages in the amount of VT 1,000,000 were sought relying on the principle set out in *The Mediana* [1900] AC 113; and aggravated damages in the amount of VT 1,000,000 were sought relying on the principle set out in *Vorvis v Insurance Corp. of British Columbia* [1989] 1 SCR 1085.

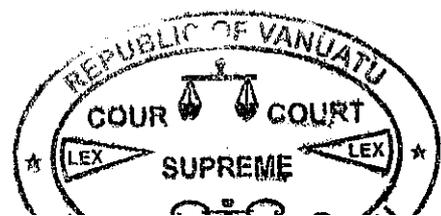
C. Discussion

4. Neither Mr Bal nor Mr Molbaleh had given adequate notice of wanting to cross-examine any witness. Accordingly, the only evidence before the Court was the various sworn statements that had been filed. To say that this made the Court's decision more difficult is an understatement. However, it also made counsel's tasks much more difficult. It is hard to understand why the Claim, and the defence to the Claim, was handled in this inept fashion.

5. In discussion with Mr Bal regarding the issue of the cause of action relating to the recovery of the associated costs of the previous litigation, Mr Bal eventually resorted to Lord Halsbury's statement in *The Mediana* as possibly justifying the Claim on the basis of the principle that:

"...where by the wrongful act of one man something belonging to another is either itself so injured as not to be capable of being used or is taken away so that it cannot be used at all, that of itself is a ground for damages..."

6. However, Mr Bal soon abandoned that part of the Claim during these discussions.
7. Mr Bal also corrected the Claims for nominal and aggravated damages – both should have been in the amount of VT 100,000 apparently and had been erroneously recorded in the Claim. His client was seeking the lesser sums.
8. Mr Bal maintained the claim for general damages – he submitted that the Defendants continuously called meetings without authority which his client attempted to countermand, but the meetings would proceed nevertheless, which caused his client to become "depressed". He relied on paragraphs 11 and 12 of his client's sworn statement as evidencing this.
9. However, paragraph 11 of the statement refers only to the unauthorised meetings disturbing Mr louniwan's "...enjoyment of his right as the paramount chief". Paragraph 12 refers to Mr

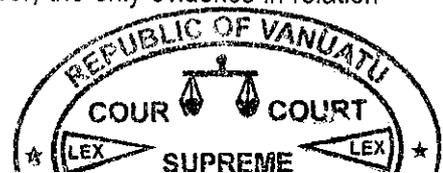


louniwan being ridiculed. Such ridiculing is said to have caused "...loss and damages" – but without any particulars.

10. General damages are damages ordinarily awarded in relation to pain and suffering, and the inability to enjoy life as previously prior to some actionable tort. That is not the situation claimed here.
11. In relation to nominal damages, Mr Bal submitted the loss of Paramount Chief's rights warranted such.
12. The claimed rights were not articulated. Nominal damages are ordinarily minimal amounts of money awarded to an individual in an action where the individual has not suffered any substantial injury or loss for which he must be compensated. It is hard to understand what exactly was claimed.
13. In relation to the Claim for aggravated damages, Mr Bal pointed to the humiliation his client suffered, as referred to in paragraph 12 of his statement.
14. Aggravated damages are ordinarily to provide compensation for mental distress or injury to feelings caused by the manner or motive with which a wrong was committed or by conduct subsequent to the wrong. They are usually awarded in addition to normal damages, due to the "...shockingly harsh, vindictive, reprehensible or malicious nature" of the conduct complained of as the issue was described in *Vorvis*. There is nothing of that sort in this case.
15. Mr Molbaleh did not accept that Mr louniwan was the Paramount Chief. He maintained there was still no authoritative declaration as to who the Paramount Chief actually is – his clients also lay claim to that status. Mr Molbaleh relied on the sworn statements he had filed.
16. He submitted that the fact that the position of paramount chief is being disputed necessarily dictates that no award can properly be made.

D. Result

17. It has not been established on the balance of probabilities that Mr louniwan is the Paramount Chief. In that circumstance, there is no justiciable tort evidenced here enabling general damages to be awarded. The Defendants are lawfully entitled to challenge Mr louniwan's claim to be the Paramount Chief.
18. Further, there cannot be any award for nominal damages as claimed.
19. In relation to the claim for aggravated damages, Mr Bal's Claim lists: "mental distress, pain, anguish, grief, anxiety, vexation, humiliation, indignation, outrage, fear of repetition, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters..." that his client is submitted to have suffered. However, the only evidence in relation



to this from his client is the suggestion of being ridiculed. This evidence is a long way short of what was claimed.

20. To achieve an award of aggravated damages, much more than mere ridicule needs to be established.
21. This claim is wholly misconceived. It fails on each of the heads claimed.
22. The Claim is dismissed in its entirety.
23. Mr Molbaleh's clients are entitled to the costs of this action, which I set at VT 150,000. They are to be paid within 28 days.
24. Mr Leo has been absent from this case on the last occasions it was called. Accordingly, there will a much lesser amount of costs awarded to the First Defendant. The filing of a defence and two sworn statements warrants a costs order of only VT 75,000. That is to be paid to Mr Leo's client within 28 days.

Dated at Port Vila this 30th day of June 2020

BY THE COURT


Justice G.A. Andree Wiltens

