

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

**Civil**  
**Case No. 20/1816 SC/CIVL**

**BETWEEN:** **Yvette Bulememe as Executrices of the  
Estate of late Maccoe Annie "Karina"**  
Claimant

**AND:** **Republic of Vanuatu**  
Defendant

*Date:* 4 November 2021  
*Before:* Justice V.M. Trief  
*Counsel:* Claimant – Mr E. Molbaleh & Mr J. Vohor  
Defendant – Mr S. Aron

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**DECISION AS TO STRIKE-OUT APPLICATION**

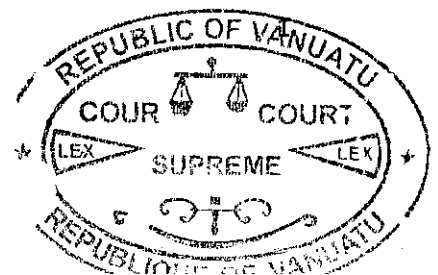
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1. The Amended Claim filed on 11 December 2020 is brought under s. 1 of the *Fatal Accidents Act 1976* (UK) in relation to the death of the Claimant Yvette Bulememe's child Annie Karinah Maccoe allegedly caused by the negligent act of the Defendant State.
2. It is pleaded as follows in paras 6-8 of the Amended Claim:

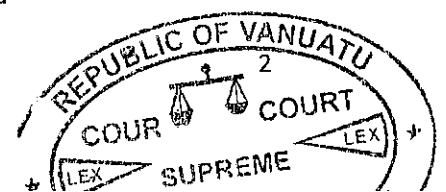
6. *The Claimant contend that prior to the death of her daughter the [Defendant] negligently failed in his duty of care in:*

**PARTICULARS OF THE NEGLIGENCE ON THE PART OF THE [DEFENDANT]**

- (a) *Failing to have known or foreseen that the First Defendant will pose a due risk to the community, in particular girls as same age group as the Claimant's daughter;*
    - (b) *Failing to supervise diligently the whereabouts of the First Defendant when released on parole as to prevent the Claimant's daughter from being murdered; and*
    - (c) *Failing to instigate proper look-out as to prevent the killing of the Claimant's daughter.*

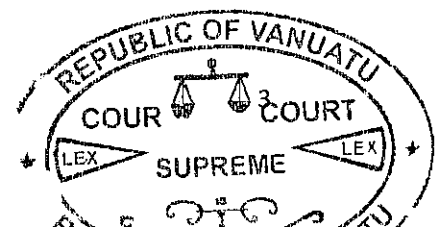


7. *The Claimant alleges that the killing took place due to negligence on the part of the [Defendant] and therefore they breach section 47(a), (b), (c), (d), (f), (g) and (h) of the Correctional Services Act.*
8. *As consequence of the [Defendant] negligence of the particulars pleaded in paragraph 6(a)-(c), the Claimant has suffered personal loss and damage.*
3. John Etienne Samuel, who killed Karinah, was initially named as First Defendant but the case was struck out against him after the Amended Claim was filed which did not contain any pleadings against him. In addition, counsel was unable to state what cause of action the Claimant had against him.
4. The Claimant's claim is opposed. The Defendant filed a Defence and Application to Strike out the claim (the 'Application'). The Claimant filed submissions in response.
5. The grounds of the Application are that the claim failed to set out facts that establish a duty of care owed by the Defendant to the Claimant, and alternatively, if there is a duty of care, the claim failed to set out facts showing that the breach of the duty caused the death of the Claimant's daughter.
6. The question therefore is whether or not the Defendant owed a duty of care to the Claimant as alleged.
7. I agree with the Defendant's submission that the Amended Claim does not set out facts that establish a duty of care owed by the Defendant to the Claimant. The pleading in para. 6 of the Amended Claim alleges breach of a duty of care, without firstly setting out the duty owed.
8. If I have misconstrued the way that the Amended Claim is pleaded, it would appear then that the Defendant is alleged to owe a duty of care to the Claimant as:
  - a. It should have known or foreseen [Mr Samuel] would pose a risk to the community, particularly girls in the same age group as the Claimant's daughter;
  - b. It failed to diligently supervise the whereabouts of [Mr Samuel] while on parole so as to prevent the killing of the Claimant's daughter; and
  - c. Failing to instigate a proper look-out so as to prevent the killing of the Claimant's daughter.
9. The alleged failures to diligently supervise Mr Samuel's whereabouts while on parole and to keep a proper look-out so as to prevent the killing of the Claimant's daughter appear to arise from s. 47 of the *Correctional Services Act* No. 10 of 2006. That section provides as follows:
  47. *A probation officer has the following functions:*
    - (a) *to supervise persons placed under his or her supervision; and*
    - (b) *to ensure that any condition placed on a person under a sentence of supervision or conditional release on parole are complied with; and*



- (c) *to administer sentences of supervision and community work referred to the probation officer and to ensure that such sentences are carried out; and*
- (d) *to arrange and supervise the activities of community justice supervisors; and*
- (e) *to coordinate and arrange community involvement in the administration of any community based sentence or any particular release by the Community Parole Board as required and in accordance with any instructions issued by a probation manager; and*
- (f) *to arrange, provide and monitor rehabilitative and reintegrative programmes or related services for offenders as required or when directed to do so by a probation manager; and*
- (g) *to provide reports and information that a Court, the Community Parole Board, the Director, the correctional centre manager or the Public Prosecutor is entitled to receive; and*
- (h) *to comply with the direction of the Director or a probation manager, and to perform any other function or duty conferred on him or her under this Act or any other Act.*

10. However, this is not a judicial review claim seeking review of a probation officer's alleged failure to comply with s. 47 of the *Correctional Services Act*. In addition, there is nothing in s. 47 or in the construction of the Act as a whole that establishes a private right of action for failure to comply with that section. Accordingly, even though s. 47 of the *Correctional Services Act* was pleaded, there is no issue arising for the Court to determine whether or not the Defendant breached s. 47 of the *Correctional Services Act* including by failing to diligently supervise Mr Samuel's whereabouts while on parole and to keep a proper look-out so as to prevent him killing a person.
11. Mr Samuel killed the Claimant's daughter. He did so of his own free will. Any act by which Mr Samuel harmed another was his own act of his own volition and it cannot be foreseeable that he would do so. Even if it were accepted that it was reasonably foreseeable that Mr Samuel would harm girls of a certain age group, the members of that age group and their parents are so many that the Defendant cannot know who they all are who would be directly affected by an act of Mr Samuel. Accordingly, there is no proximity of relationship which must exist for a duty of care to be imposed on the Defendant.
12. This seems to be an argument that Mr Samuel should not have been released on parole. However, again, this is not a claim for judicial review of the parole decision.
13. Finally, there is no cause of action in law by which Mr Samuel can be sued for the killing that he committed. It is not just and reasonable therefore to impose a duty of care on the Defendant when Mr Samuel himself cannot be sued.
14. For the reasons given, I agree that the claim failed to set out facts that establish a duty of care owed by the Defendant to the Claimant and the Defendant does not owe a duty of care as alleged.
15. The Defendant's Application to Strike out the Claim is **granted**.



16. The Amended Claim is **struck out**.
17. The Claimant is to pay the Defendant's costs of this proceeding summarily fixed at VT75,000 within 28 days.

**DATED at Port Vila this 4<sup>th</sup> day of November 2021  
BY THE COURT**

