

## **Elisa v Government of Seychelles**

**(2010) SLR 409**

Antony DERJACQUES for the appellant  
Samantha AGLAE for the respondent

### **Judgment delivered on 10 December 2010**

#### **Before Hodoul, Domah, Burhan JJ**

This appeal is against an award of damages made to the appellant, a retired officer from the military, by the Judge of the Supreme Court in the sum of R 35,000 for prejudice caused to him as a result of an incident which occurred on 3 October 2004 in which the appellant was injured in a confrontation between the police authorities and certain protesters. The respondent had admitted liability and only quantum was in dispute in a joint claim of which the appellant was the 13th plaintiff in the court below involved in the same incident.

The appellant has advanced three grounds of appeal, as follows:

- (i) The Honourable Judge erred in law and principle in that the amount awarded is grossly disproportionate, extremely low and inadequate and does not correctly or adequately reflect the damages and injury suffered by the Appellant;
- (ii) The Honourable Judge erred in law in his award of quantum of damages in that the total sum of R 35,000 does not reflect the reasonable ambit within which a proper and reasonable award could have been made, the facts and circumstances, taking into account the age, illness, vulnerability of the Appellant and that the Appellant was an innocent passer-by brutally attacked, assaulted, and injured by the police, with batons, guns and teargas.
- (iii) The Honourable Judge erred in law in failing to properly take into account the extreme culpability of the Respondent more so the necessity to protect the citizen against abuse of power by the State.

The above may be conveniently summed up in one simple ground: namely, the sum awarded to the appellant fell short of the compensation that was actually due, considering the material and moral prejudice, in his conditions of age, illness and vulnerability, which the appellant suffered as a result of the unlawful acts and doings of the respondent's agents and préposés.

The appellant in an amended plaint has claimed R 370,000 made up as follows: R

170,000 for aggravation of his knee condition for which he needed to go to Singapore for a fresh visit following a prior surgery; R 25,000 for the haematoma and open wound on his right leg; R 20,000 for bruises over knee and small wound superior and medial left shin; R 55,000 for bruises over back and right forearm with permanent pain and loss of mobility; R 100,000 as moral damages which includes humiliation, stress, acute anxiety, fright, psychological pain.

We have had a look at the comparative awards made by the Judge to the twelve other claimants. We agree with counsel for the appellant that the award made in the case of the appellant barely reflects the prejudice he suffered. Counsel for the respondent agreed that she could not support the award made, on the general principles applicable in the law for the award of damages, even if she had made an elaborate submission on the matter vetted by her office. We need to commend her for the objective view she took on reflection of the matter and following remarks from the Court.

The Judge had awarded to the appellant R 35,000 which is the sum he had given to three others: namely, claimants 6, 8 and 10.

Claimant 6 had received injuries from three rubber bullets, one on the right arm and two on the thigh. The bleeding was mild. He complained of pain which lasted for 6 days. He discovered other minor injuries while he was in his shower. The medical report speaks of a circular peeled skin area on the left shoulder appose 1 cm diameter and of left gluteus appose 1.5 cm diameter. His injuries needed cleaning and suturing, daily dressing and he was given paracetamol 1 g. PRN.

Claimant 8 was also injured by rubber bullets. Aside being hit at the chest and legs, he suffered from teargas for which he had to be nebulized for about one hour at the hospital. He spoke of his pain and suffering lasting for 4 to 5 days. The pain to him was of such a nature that he kept talking about it.

Claimant 10 had also received injuries by rubber bullets, two in number: one on the left shoulder and one at the buttock. He stated that, on impact, it felt so hot that he jumped into the river to cool himself down. He spoke of his pain lasting for 11 days. He also spoke of his difficulty to manage the toilet seat for which he sought assistance from his wife. He mentioned that he had to continue dressing till mid-October.

In the case of claimants 6, 8 and 10, one could understand the award of R 35,000. But the case of the present appellant is different. He was first beaten and hit all over and on both his knees repeatedly with truncheons, made to stumble, pushed and assaulted. He spoke of being hit about 15 times, the brunt of the assault raining upon him because he could not run to safety like the others on account of the disability of his knee which had undergone previous surgery and was under treatment, the last being some 5 months before in Singapore. On arrival at hospital, he was stumbling and confused and had to be given oxygen.

He was further shot in both legs. He was picked up from a lying position and taken to hospital, with open wounds, below-knee big haematoma and bruises. On the day in question, he was treated in Casualty under local anaesthesia. His wounds were

sutured and dressed. He was given analgesic. Some months later, he had to proceed to Singapore for a reassessment of his medical condition including his knee condition. Considering his age and condition, full recovery of the movement of his left arm and of his shoulder is impaired.

The record reads that he stated that money is not his real problem. This is one of the reasons why, in the written submissions, the respondent argues that appellant does not need an increase in damages. The fact remains, however, that he amended his claim to increase it to R 370,000. We take the view that it was his dignity that was hurt for being hit repeatedly despite his protest to spare him on account of his disability.

In light of the evidence, including the documents which we find on record, we review the damages payable to him on the higher side. The two cases referred by counsel for the appellant: *Charles Ventigadoo v Government of Seychelles* (2007) SLR 242 and *Regar Publications v Maurice Lousteau-Lalanne* SCA 25 of 2006, LC 304 are not strictly relevant to the points under our present consideration.

We take the view that a sum of R 58,000 would adequately repair the prejudice caused to the appellant. We order the respondent to pay to the appellant the sum of R 58,000 with interest and costs.

**Record: Court of Appeal (Civil No 39 of 2009)**