

IN THE SEYCHELLES COURT OF APPEAL

B. FANCHETTE

APPELLANT

vs

THE ATTORNEY GENERAL

RESPONDENT

SCA 15/2011

=====

*(Before: MacGregor, PCA, Fernando & Msoffe, JJA)*

Counsel: Mr B. Hoareau for the Appellant

Mr D. Esparon for the Respondent

JUDGMENT

MACGREGOR, P.,

The Appellant below complained of being unlawful detained in February 2006 by the police for some 47 hours, including denied access to a lawyer, not being informed of the charge against him, and having to endure harsh conditions in the police prison cells.

The Court found his such Constitutional rights were violated and awarded him Thirty thousand (RS.30,000) damages, although no specific figure was pleaded for, nor damages specifically sought, save for a general prayer referred in paragraph 12(iv) of his petition below dated 28<sup>th</sup> April 2006 as follows;

“granting such other orders or writ as may be appropriate to enforce the provision of the Constitution in relation to the parties” This is repeated in the affidavit of the Petitioner at page B7 of the records;

Further in the Notice of Appeal, dated 10<sup>th</sup> May 2011, the Appellant in his sole ground of appeal refers to Rs.30,000/- damages as manifestly low. In the relief there sought it prays for the Court of Appeal to increase the damages by awarding the appropriate damages.

It is only in the Heads of Argument of the Appellant's Counsel dated 14<sup>th</sup> August 2012 six years later, that we see actual figures prayed for totaling Rs.160,000.

## ISSUES

- (1) Can the Court be blamed when no figure when no figure was pleaded or canvassed before it and can counsel now raise this issue before the Court of Appeal.
  
- (2) Is the award was manifestly low.

In the absence of averring specific damages in general and/or its quantification, we have taken note of the following ;

Article(46) 5 of the Constitution state:

“Upon hearing of an application under clause (1) the Constitutional Court may:”

- (a) declare any act or omission which is the subject of the application to be a contravention of the Charter.
  
- (b) declare any law or the provision of any law which contravenes the Charter void;
  
- (c) make such declaration or order, issue such writ and give such directions as it may consider appropriate for the purpose of

enforcing or securing the enforcement of the Charter and disposing of all the issues relating to the applications;

- (d) award any damages for the purpose of compensating the person concerned for any damages suffered;
- (e) make such additional order under this Constitution or as may be prescribed by law.

#### FINDING

We find that as no figure was pursued either in the pleadings or submissions before the Constitutional Court below and since opposing Counsel was not given the opportunity to respond to this issue it cannot now be faulted for the figure arrived at. On the quantum of damages we have taken note of the cases of Derjacques VS. Commissioner of Police (1995) SCAR and Cesar Marie vs. Attorney General (1998) CS 429/1998, where all the awards were well below that awarded in the present case.

In Willy Charles Vs. Attorney General, SCA 11/2001 the human rights violations were much worse, but the award was only Rs.10,000/-. Given the range of the awards in those authorities we do not find the award of the Constitutional Court manifestly low.

Accordingly we do not find it justifiable to disturb their finding. We so rule. No order as to costs.

.....  
F. MACGREGOR  
PRESIDENT

I concur:

.....  
A. FERNANDO  
JUSTICE OF APPEAL

I concur:

.....  
J MSOFFE  
JUSTICE OF APPEAL

*Dated this 31<sup>st</sup> August 20120, Victoria, Seychelles*