

**Aglae v The Government of Seychelles  
(2000) SLR 135**

Franky Simeon for the plaintiff  
Lucy Pool for the defendant

**Judgment delivered on 12 October 2000 by:**

**JUDDOO J:** The plaintiff has filed a plaint against the defendant claiming damages, in the sum of R250,000 arising out of his unlawful arrest and illegal detention by members of the Defence Forces (S.P.D.F) acting in the course of their duties with the defendant and for which the defendant is vicariously liable. The claim is resisted by the defendant.

The plaintiff avers in his plaint that, on 12 October 1998, he was arrested by soldiers whose names were unknown. He was kept under detention until 23 October 1998, when he was released, it is averred that during his detention he was repeatedly assaulted and tortured by soldiers.

The plaintiff testified that after learning that police officers were searching for him, he voluntarily called to Mont Fleuri Police Station on 12 October 1998. He was handcuffed and brought to Bel Eau Military Base and was thereafter taken to 'Grand Police'. Reaching there he was questioned by an officer about his alleged possession of a firearm which he denied. As a result he was subjected to assault and torture and kept under detention without being brought before the Magistrates' Court.

The plaintiff added that on the 8<sup>th</sup> day of his detention he was brought to his residence where a search was carried out without success. Thereafter he was further kept under detention until 23 October 1998 when he was released. He has not been charged with any offence. The plaintiff testified that during his detention he had been tied to a tree and beaten with a hose. He suffered various injuries to his chest and arms, had lacerations to his feet and cigarette bums on his thighs. He was medically examined at Les Mamelles Clinic at the time of his release. The plaintiff claims to have suffered physically and emotionally as a result. He was thoroughly cross-examined and maintained his version in court.

A second witness, Justin Aglae, was called on behalf of the plaintiff. He testified that he was arrested in October 1998 and was detained at 'Grand Police' where he spent five days. During his period of detention, he met with the plaintiff whom he knew. He saw the latter being tied up and beaten with a hose. However, under cross-examination, he explained that he had only known the plaintiff after they travelled together in the same vehicle when they were released but maintained having seen him being beaten through the metal bars of his detention cell.

The plaintiff's mother, Anna Aglae, testified in court. It is clear she did not retain a good memory of the events. The most that can be extracted from her testimony is that the

plaintiff, her son, was living in a small hut near her house. Sometime in October 1998 she realised that her son was missing from her residence. She searched for him everywhere but did not find him. She eventually, made an application to court for the release of his son from the authorities.

Lastly, Dr. Hassanali, gave evidence in his capacity as a medical officer attached to the Les Mamelles Clinic. On 23 October 1997 he examined the Plaintiff and he found the following injuries:

Abrasion around right wrist 1 cm wide and 9cm long, abrasion around left wrist 1cm to 1.5cm wide and 10cm long, circular burn injuries of 1cm each on front of right thigh, abrasion 1.5cm to 2cm wide and 14cm around right leg above ankle and abrasion 21.5cm wide and 16cm round left leg above ankle.

The witness found the injuries to be consistent with tightening of ropes around the legs and wrists and cigarette burns. Under cross-examination, the witness added that the injuries were 'not grievous'. He had prescribed and given medicine to the plaintiff and requested the latter to call back if there was any complication. The witness added that the plaintiff did not call back upon him at the material time.

Defence witness Sonny Leggaie gave evidence that he is a sub-inspector in the Seychelles Police Force and was involved in 1998 in a joint operation conducted by the police force and some army members. He was in charge of a group of police officers working alongside army officers. The witness admitted that the plaintiff was arrested on 12 October 1998 at Mont Fleuri Police Station and brought to 'Grand Police' suspected to be in possession of arms and ammunitions. He is not aware of any assault committed on the plaintiff. Under cross-examination, the witness did not recall for how long the plaintiff had been detained, whether he was brought before a court or when the plaintiff was released from detention at 'Grand Police'. He added that the point of the police-army operation was to apprehend suspects involved in illegal drugs or illegal possession of firearms or ammunitions. He admitted that to his knowledge the plaintiff had not been charged with any such offence.

A second defence witness, Gerald Marie, gave evidence that he was an army officer at the material time and took part in the joint army-police operations. The plaintiff was suspected for possession of firearms. On 11 October 1997 a search was carried out to find the plaintiff at his residence without success. The next day, he was informed by Mont Fleuri Police Station that the plaintiff had called at the said station. The plaintiff was brought to 'Grand Police', questioned and released. The witness testified that the plaintiff was never assaulted. Under cross-examination, the witness added that he does not recall the date when the plaintiff was released from 'Grand Police'.

There is admission by the defence witness Sonny Legaie, in court, that the plaintiff was arrested on 12 October 1998. Although both defence witnesses seem to have obliterated from their mind the date to release of the plaintiff there is the unchallenged version of Dr. Hassanali who examined the Plaintiff on 23 October 1998 at the time the

latter was released by the authorities. There is also evidence that the reason for the initial arrest of the plaintiff was because he was suspected to be involved in the offence of possession of firearms. No such firearm was found at his residence after a search no resulting charges were brought against the plaintiff.

Article 18(1) of the Constitution of the Republic of Seychelles enshrines the right to liberty and security of the person. This right is, however, subject to the derogations under article 18(2)(b) whereby the law may provide for:

The arrest or detention on reasonable suspicion of having committed or of being about to commit an offence for the purpose of investigation or preventing the commission of the offence and of producing, if necessary, the offender before a competent court.

subject to fulfilling the requirement under section 18(3):

A person who is arrested or detained has a right to be informed at the time of arrest or detention or as soon as is reasonably practicable thereafter in, as far as is practicable, a language that the person understands of the reason of the arrest or detention...

Accordingly, under section 18(1) (a) of the Criminal Procedure Code ("Cap 54) the law provides that:

any police officer may without an order from a judicial officer arrest any person whom he suspects on reasonable grounds of having committed cognizable offence.

and under section 100(l)(a) of the Criminal Procedure code the law provides that:

a person who has been arrested without a warrant shall be released within 24 hours of the detention or arrest unless the suspect is brought before a court and the court has ordered the suspect be remanded...

An arrest by a police officer on the ground of reasonable suspicion will be lawful even if in fact no offence has been committed. Reasonable suspicion is less than prima facie proof of guilt, vide: *Hussein v Chong Fook Kam* (1970) A.C. 942. However, where as in the instant case, the lawfulness of an arrest depends upon "reasonable cause for suspicion"; it is for the defendant to prove the existence of such reasonable cause and for the court to decide whether he has discharged this burden of proof. Vide: *Dallison v Caffrey* (1965) 1QB 348 per Lord Denning MR at page 365:"The burden was on Detective Constable Caffrey to prove that he had reasonable cause for suspecting that Dallison coninnleil had committed the crime..." The test as expressed by Diplock L.j. in the same case, is "whether a reasonable man assumed to know the law and possessed of the information which was in fact possessed by the defendant would believe that there was reasonable and probable cause" for the arrest. This test expressed against the background of the common law in UK was equally applicable to the 'reasonable

cause for suspicion' under the Criminal Law Act 1967. Vide: Winfeild & Jolowicz, Tort 11<sup>th</sup> Edn, Page 61 and is equally applicable, mutatis mutandis, to the local provisions of the law.

In the present case, the plaintiff had voluntarily called at the police station upon being informed that searches were being made by the police authorities for his person. As testified by the plaintiff he was brought before Major Ernesta and the latter informed him, at an earlier opportunity, that he was being arrested on suspicion of having a gun in his possession with which he had threatened people. Accordingly, it cannot be said that the suspicion was unreasonable and that the plaintiff was not informed, as soon as was reasonably practicable, of the reason for his arrest so as to make the said arrest unlawful.

As far as the detention of the plaintiff is concerned, his version that he had been detained from 12 October to 23 October 1998 has remained unchallenged. This version is supported by Dr. Hassanali who testified that the plaintiff was examined on 23 October 1998 at the time of his release. The plaintiff was arrested at Mont Fleuri police station and brought to Bel Eau where he was kept in a cell for about one hour before being taken to 'Grand Police' where he was detained until his release on 23 October 1998. During his period of detention, he was not brought before any Court of law. He was kept in a cell for the first eight days before being allowed to 'clean the garden' for the remaining three days. The detention of the plaintiff had been in complete disregard to section 18(l)(b) of the Constitution and section 100 of the Criminal Procedure Code and was unlawful.

As far as the injuries sustained are concerned, the testimony of Dr. Hassanali has remained unchallenged. The plaintiff has testified as to the various acts of assault upon him which is supported by the evidence of the injuries sustained. The testimony of Dr. Hassanali also establishes that the injuries suffered by the plaintiff were not of a grievous nature. In *Ireland v United Kingdom* (judgment of 18 January 1978) the European Court had the occasion to examine the ambit of the word 'torture' under article 3 of the European Convention of Human Rights and reached the conclusion that the English techniques of interrogation used by the police did involve inhuman treatment but not torture. The court mentioned as the distinctive element between 'inhuman treatment' and 'torture', that 'torture' is concerned with 'deliberate treatment causing very serious and cruel suffering' and held that the particular acts complained of "did not occasion suffering of the particular intensity and cruelty implied by the word 'torture'". (Vide: Theory and Practice of the European Convention Human Rights, Dijk & Van Hoof, 2<sup>nd</sup> Edition page 227). In that respect, the plaintiffs claim under the head 'torture' is unwarranted.

In the end result and taking into account all the circumstances of the case and taking into account similar cases, including *Derjacques v R* (unreported) Civil appeal 17 of 1995 and *Canaya v Government of Seychelles* (unreported) Civil side 42 of 1999, I will allow the plaintiff the following claims:

- a sum of SR10,000 for pain and suffering as a result of assault;
- a sum of SR10,000 for moral damages for depression, stress, humiliation and fear; and
- a sum of SR15,000 for illegal detention for a period of 11 days from 12 October until 23 October.

Judgment is accordingly entered in favour of the plaintiff in the sum of SR35,000 with interest at the legal rate from date of plaint and costs.

**Record: Civil Side No 49 of 1999**