

**Alphonse v The Government of the Republic of Seychelles
(2001) SLR 278**

Antony DERJACQUES for the Plaintiff
Gustave DODIN for the Defendant

Judgment delivered on 27 September 2001 by:

KARUNAKARAN J: This is an action in delict arising from unlawful arrest, detention, and assault. The Plaintiff in this action claims a sum of R350,000 from the Defendant towards loss and damage, which the Plaintiff suffered as a result of the said unlawful acts committed by the Defendant through its servants, the Seychelles Peoples Defence Forces. The Defendant during the course of the proceedings admitted liability and agreed to compensate the Plaintiff for the consequential loss and damage. However, the parties could not reach any agreement on the issue as to quantum of damages payable by the Defendant to the Plaintiff. Hence, that is the only issue before this Court, which now requires determination in this matter.

The facts of the case are briefly as follows.

At all material times, the Plaintiff, a self-employed pickup driver was resident of Le Rocher, Mahe. On 24 October 1998 at around 0130 hours, he was arrested by several soldiers of the Seychelles Peoples Defence Forces. After the arrest, he was transported to Grand Police and was detained in prison at the Army Camp. While the Plaintiff was in detention, the soldiers therein physically assaulted him repeatedly using a polystyrene pipe. They continued the assault for several hours resulting bodily injuries to the Plaintiff. The soldiers involved in the entire episode were persons unknown to the Plaintiff nevertheless they were admittedly acting in the course of their employment with the Defendant. Following the said detention, the Plaintiff applied to the Supreme Court for a Writ of Habeas Corpus. The Plaintiff was consequently released from detention on 29 October 1998. Again on 3 November the Plaintiff was rearrested at 2350 hours and was again released from detention on 4 November 1998 at around 1400 hours. In view of all the above, the Plaintiff now claims damages from the Defendant under the following heads:

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| a) | Moral damages for pain, suffering
as a result of assault and torture | R150, 000 |
| b) | Moral damages for depression,
emotional stress, humiliation
and fear | ... R100,000 |
| c) | Unlawful arrest and illegal
detention | <u>R100,000</u> |
| | Total | <u>R350,000</u> |

Dr. Anne Gabriel (PW2), a senior medical officer at the Ministry of Health testified that on 29 October 1998 whilst on duty at Les Mamelles Health Centre she medically treated the Plaintiff for the said injuries. The relevant part of her testimony reads as follows:

I went on to examine the patient (Plaintiff). When I saw him, he looked unwell, he was ill. He was pale and slightly jaundiced. His blood pressure was 140/90. Generally looking at the patient he was bruised and had multiple blood laceration on certain parts of the body. To start with the head, the right temple and the right side of the eye was bruised. The back of the neck the chest, the buttocks, the back of the thighs, legs, feet and both wrists were bruised In particular, both feet were very much swollen, red and tender and painful to touch. The injuries were bruises blunt injury to muscles.

Mr. Clint Alexander (PW1), a photographic technician testified that on 29 October 1998, at the request of the Plaintiff he took eight photographs of the Plaintiff showing the injuries on different parts of his body. All the eight photographs were produced in evidence. They were marked as exhibits P1 to P8.

I meticulously perused the evidence on record. On the question of arrest and unlawful detention, it is not in dispute that the Plaintiff had been unlawfully detained for a period of 7 days. It is equally not in dispute that the Plaintiff was physically assaulted and subjected to bodily injuries, pain, and suffering. Hence, the Plaintiff is obviously, entitled to damages for the said unlawful detention as well as for the bodily injuries. It is pertinent to note here that Article 18(10) of the Constitution provides that:

A person who has been unlawfully arrested or detained has a right to receive compensation from the person who unlawfully arrested or detained that person or from any other person or authority including State, on whose behalf or in the course of whose employment the unlawful arrest or detention was made or from both of them.

As regards the bodily injuries, I carefully perused the medical evidence and also observed the photographs in Exhibit P2 to P8. The picture that emerges from the agreed photographs is that the injuries the Plaintiff had sustained were mostly bruises and abrasions on the skin. Further, it appears that the bruises except the ones on the buttocks were not deep lacerations. As regards the posttraumatic consequences of those injuries, there is no evidence to show that the Plaintiff is suffering any permanent incapacity. In the circumstances, I find that the quantum of damages claimed by the Plaintiff for the said superficial bodily injuries is highly exaggerated, unreasonable, and disproportionate to the extent and nature of injuries.

In the case of *Gerard Canaya v The Government of Seychelles* CS 42 of 1999 the Court inter alia awarded R5000 for an unlawful arrest and 18 hours of detention. In the case of *Noella Lajoie v The Government of Seychelles* Constitutional Case No 1 of 1999, the

Court awarded R5000 for an unlawful detention of approximately 38 hours. In the case of *Paul Evenor v The Government of Seychelles* CS 357 of 1998 the Court awarded a global sum of R20,000 for arrest, detention of 2 days and 7 hours, inclusive of moral damage for fear and emotional stress as well as for loss of personality. In the case of *Wilven Marie v The Government of Seychelles* CS No 356 of 1998 this Court yesterday awarded a total sum of R65,000 for an unlawful detention of 11 days including injuries of similar nature. Although the period of unlawful detention is a relevant factor that ought to be taken into account in the assessment of quantum, I believe, the Court cannot simply work out the rate of damages for detention on hourly or daily basis borrowing the figures from the precedents. In my view, as I have held in *Wilven Marie* (supra) the quantum in each case has to be assessed taking into account the entire circumstances that are peculiar to the particular case on hand. Having said that I note that Article 1149(2) of the Civil Code provides thus:

Damages shall be recoverable for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss may of the amenities of life.

Having regard to all the circumstances of this case and particularly, after taking into account the period of detention and the nature and extent of the injuries suffered, I award the Plaintiff the following sums:

For unlawful arrest and illegal detention R10,000

Moral damages for pain, suffering
as a result of assault R30 000

Moral damages for depression,
emotional stress, humiliation and fear R15,000

Total R55,000

Accordingly, I enter judgment for the Plaintiff in the total sum of R55,000with costs of this action.

Record: Civil Side No 394 of 1998