

IN THE SUPREME COURT OF SEYCHELLES

GIOVANNI MARIMBA

PLAINTIFF

VERSUS

1. **SUPERINTENDENT OF LONG ISLAND PRISON**
2. **THE GOVERNMENT OF SEYCHELLES DEFENDANT**

Civil

Side No 21 of 2004

Mrs Antao for the Plaintiff
Mr. J. Camille for the Defendant

JUDGMENT

Perera J

This is a delictual action in which the plaintiff claims damages for an alleged unlawful detention. Admittedly, the plaintiff was sentenced by the Family Tribunal to serve a term of imprisonment in case no FT 123/99. However the Tribunal. Subsequently on 24th October 2003, ordered his release. It is averred that the 1st defendant, the Superintendent of Prisons failed to release him until Monday 27th October 2003, and that consequently there has occasioned a deprivation of liberty for a period of three days.

The 1st defendant avers that he had cognizance of the order dated 24th October 2003 only on 27th October 2003, and that he released the plaintiff immediately thereafter. He therefore avers that he acted reasonably and lawfully in those circumstances.

24th October 2003 was a Friday, there is no evidence as to when the Family Tribunal conveyed the order to the 1st defendant. Apparently, the plaintiff was not present before the Tribunal when the release order was made. In such circumstances, it would have been prudent for the Secretary of the Tribunal to convey the order at least by a fax message due to the intervening weekend. However, Mr Camille, Learned Counsel representing the defendants, conceded liability, and hence

it remains for this Court to quantify the damages.

The plaintiff claims Rs7500 for loss of earnings for two and a half days, and moral damages in a sum of Rs75,000 for illegal detention for 75 hours.

Mr Camille relied on the Constitutional case of Willy Charles v. The Attorney General (S.C.A. no 11 of 2001 in which the Court of Appeal increased an award of Rs.10,000 made by the Constitutional Court for illegal detention for four days, to Rs20,000. Mrs Antao submitted that that award was low, as it was based on the principles of Public Law, and that hence, damages in a delictual claim should be compensatory. She also submitted that the award of Rs10,000 made in the delictual case of **Eric Derjacques v. Commissioner of Police (S.C.A. 17 of 1995)** was for two extra hours of detention beyond the 24 hours permitted in law. She relied on the case of **Cesar Marie v. The Attorney General (CS. No 424 of 1998)** in which the Court awarded Rs. 15,000 for one hour of illegal detention. She therefore submitted that, the plaintiff is claiming only Rs1000 per hour for illegal detention for 75 hours, and hence the full sum of Rs75,000 should be awarded.

It is settled law that delictual damages are compensatory and not punitive. In that respect, the Court does not act on any tabulated scale of compensation, but on facts and circumstances of each case.

It has been averred that the plaintiff is a self employed mason. There is no evidence that he suffered any loss of earnings for two and a half days, specially where the two days involved were Saturday and Sunday. Hence no award is made under that head of damages.

The claim for moral damages based on Rs1000 per hour for 75 hours, is contrary to delictual principles. The plaintiff did not establish that the Superintendent of Prisons received the release order on 24th October 2003, and that he committed a fault in delict by failing to release the plaintiff until 27th October 2003. Learned Counsel for the defendants in conceded liability stated that he was doing so in order "not to drag the matter further", (as he called it.) However, due to the intervening weekend, there had been some administrative omission due to which the plaintiff was incarcerated for a longer period than was legally permitted. He is therefore entitled to damages. On a consideration of all the facts and circumstances of this case, I find that a sum of Rs15,000 is adequate compensation to the plaintiff for the loss of his freedom of movement, and the

consequent inconvenience and discomfort.

The plaintiff has claimed damages together with interest on the commercial rate. The Court is unable to comprehend how the plaintiff, although a mason by profession, who was imprisoned by an order of the Family Tribunal for failing to pay maintenance, could claim interest on the commercial rate in a delictual claim against the Superintendent of Prisons.

Judgment is accordingly entered in favour of the plaintiff in a sum of Rs.15,000, together with interest on the legal rate, and costs on the Magistrates' Court scale of fees and costs.

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A. R. PERERA

JUDGE

Dated this 16th day of July

2007