IN THE SUPREME COURT OF SEYCHELLES

Mr Wavel Ramkalawan **1st Plaintiff Cs No. 459/06**

And

Mr Roger Mancienne **2nd Plaintiff CS No. 472/06**

And

Colin Dyer **3rd Plaintiff CS No. 21/07**

And

Gerald Edwin Julie **4th Plaintiff CS No. 19/07**

And

Mr Jean-Francois Ferrari **5th Plaintiff CS No. 1/07**

And

Kenneth Pillay **6th Plaintiff CS No. 20/07**

And

Laurina Antat **7th Plaintiff CS No. 473/06**

And

Patrick Naidoo **8th Plaintiff CS No. 13/07**

And

Ms Rebecca Pool **9th Plaintiff CS No. 63/07**

And

Bernard Henriette **10th Plaintiff CS No. 22/07**

And

Alph Samson Accouche **11th Plaintiff CS No. 474/06**

And

Miss Jane Carpin **12th Plaintiff** **CS No. 12/07**

And

Gilbert Elisa **13th Plaintiff** **CS No. 431/06**

Versus

Government of Seychelles

(Herein represented by the Attorney

General, National House, Victoria, Mahe)

Civil Side No 459 of 2006

Mr A. Derjacques for the Plaintiffs

Mr R. Govinden for the Defendants

JUDGMENT

B. Renaud J

When the above matters came up individually before the Supreme Court of Seychelles, the

defendants, accepted liability in each of the above stated case. The parties agreed that the only issue left for the Court to determine is the loss and damages suffered by each plaintiff and to determine the level of quantum for each plaintiff.

It was also agreed that the evidence of the 1st plaintiff as to the surrounding circumstances leading to the loss and damages will be applicable and read as part of the evidence in each of the other case. Each plaintiff thereafter testified as to their specific and particular loss and damages suffered and they were duly cross-examined.

When the above matters came up individually before the Supreme Court of Seychelles, the defendants accepted liability for the above acts in each case. The parties agreed that the only issue left for the Court to determine is the loss and damages suffered by each plaintiff and to determine the level of quantum for each plaintiff.

It was also agreed that the evidence of the 1st plaintiff as to the surrounding circumstances leading to the loss and damages will be applicable and read as part of the evidence in each of the other case. Each plaintiff thereafter testified as to their specific and particular loss and damages suffered and they were duly cross-examined.

In brief, it happened that on the 3rd day of October 2006, at approximately 10.15 hours, most of the plaintiffs had gathered at the steps, outside the National Assembly Building, at Francis Rachel Street, Victoria, to sign a petition addressed to the President of the Republic of Seychelles, Mr James Michel, with respect to the Broadcasting and Telecommunications (Amendment) Bill 2006, which was being debated in the National Assembly at 0900 hours on that day.

It was whilst Mr W. Ramkalawan, 1st plaintiff who is the Leader of the Opposition and Member of the National Assembly and a priest, was addressing the plaintiffs and public,

numbering approximately 50 in number, that the incident, occurred. Defendant's workers, agents and servants, utilizing batons, guns, tear gas, kicks and punches, invariably assaulted, harassed, arrested and detained plaintiffs.

The plaintiffs, suffered physical injury, false arrest and unlawful detention at the hands of the 2nd defendant, Seychelles Police Force, which amounted to a 'faute' in law on their part. As a result of the 'faute' of the 2nd defendant the plaintiffs suffered loss and damages. The 1st defendant, the Government of Seychelles, accepted that it is vicariously liable for the 'faute, of the 2nd defendant.

1st Plaintiff

The 1st plaintiff, **Mr. Wavel Ramkalawan** is the Leader of the Opposition in the National Assembly and a member thereof for the past 16 years. He is a Priest of the Church of England and Leader of the Seychelles National Party.

He was brutally assaulted with truncheons, kicks and punches to his head and body. He was attacked in public and dragged into the National Assembly building. It was his body-guard who saved him by dragging him into a vehicle and took him to hospital. His injuries could easily have been fatal. He was medically treated and admitted for 24 hours at Victoria Hospital. He was arrested and kept at hospital for the said 24 hours, and received Police bail to appear at the Central Police Station subsequently. He received 5 sutures to the wound on the head and suffered trauma, pain, anxiety, and humiliation.

He is now claiming SR100,000.00 as damages.

2nd Plaintiff

The 2nd plaintiff, Mr Roger Mancienne, is the Secretary General of the Seychelles National Party and the Publisher of the main Opposition newspaper "Regar".

He was falsely and unlawfully arrested and detained from 1045 hours on the 3rd of October 2006 to 1245 hours on the 4th of October 2006. He was kept in a cell at the Central Police Station. He suffered stress, anxiety, humiliation and fright.

He is now claiming SR100,000.00 as damages.

3rd Plaintiff

The 3rd plaintiff, Mr Colin Dyer, a Member of the National Assembly for the past seven years, was hit on the head, with a truncheon causing abrasion and heamatoma to the scalp and skull. He was medically treated and suffered pain, anxiety, humiliation and stress.

He is now claiming SR60,000.00 as damages.

4th Plaintiff

The 4th plaintiff, **Mr Gerard Julie**, was a Member of the National Assembly for the District of Mont Buxton.

He was severally injured by the Police using truncheon on the left elbow. There was pain and swelling. He suffered pain, humiliation, anxiety, psychological harm and stress.

He is now claiming SR65,000.00 as damages.

5th Plaintiff

The 5th plaintiff, Mr Jean Francois Ferrari, was a Member of the National Assembly for the District of Mont Fleuri for the past three years, and the Editor of the newspaper, “Regar”.

From the outside steps, he was seized and dragged into the National Assembly building, and repeatedly hit with the truncheons on the head and received kicks and punches. He was medically treated and received 21 sutures on the head, abrasions on the body and suffered extreme pain and suffering.

He is now claiming SR200,000.00 as damages.

6th Plaintiff

The 6th plaintiff, **Mr Kenneth Pillay**, was a mere passer-by going to Cable & Wireless to pay his telephone bills. He noticed the commotion and stood and watched. He received tear gas assaults and was fired upon and was hit three times with rubber bullets on the right arm, and at the back of the thighs, whilst running away. He was medically treated at English River Clinic.

He is now claiming SR80,000.00 as damages.

7th Plaintiff

The 7th plaintiff, **Miss Laurina Antat**, was mere passer-by, on her way from Victoria Hospital to Victoria. She was passing close to the National Assembly Building at that time. She is a middle aged woman and suffered from a weak heart and anxiety attacks. The SSU Police seized her and repeatedly attacked and hit her with truncheons, kicks and blows on the head and body. She received a haematoma at the occipital region of the head and multiple abrasions. She lost consciousness at the scene. She was medically treated at Victoria hospital and admitted for 24 hours. She was in severe pain and distressed and humiliated.

She is now claiming SR300,000.00 as damages.

8th Plaintiff

The 8th plaintiff, **Mr Patrick Naidoo**, was mere passer-by on his way to Cable & Wireless to pay his telephone bills. He was attacked by the SSU Police, with tear gas and fired upon and hit with rubber bullets on the thighs and chest. He suffered throat and eye irritation and choking. He was in severe pain and received medical attention.

9th Plaintiff

The 9th plaintiff, **Miss Rebecca Pool**, was traveling to Cable & Wireless also. She was going to pay her phone bill. When she turned to run with the crowd, an SSU Officer hit her at the back of her head with a truncheon. She was a young girl and frail. Two men, seeing her staggering after being injured, carried her away from the attacking police. She fell from her rescuers who fled. The police still came up to her and attacked her on the ground with a truncheon. She fell unconscious. She also felt the tear gas. She was choking when she awoke later on. She was medically treated.

She is now claiming SR100,000.00 as damages.

10th Plaintiff

The 10th plaintiff, **Mr Bernard Henriette,** was visiting Keven's shop to by a snack, opposite the National Assembly building. He was attacked with rubber bullet which was fired by the Police and hitting him on the backside and at this back whilst he was running away. He suffered burning sensations and extreme pain and suffering. He suffered humiliation, distress and shock.

He is now claiming SR60,000.00 as damages.

11th Plaintiff

The 11th plaintiff, **Mr Alph Accouche**, was going to work at St Anne Resorts and took a

short cut past Lesplanade close to the National Assembly building. He is a young man and brother to Mr David Pierre, a Member of the National Assembly. Whilst he was walking to catch a bus, 12 SSU Officers, saw him, whilst they were chasing the public, and attacked him. They handcuffed him, hit him with truncheons, kicks and punches. He fell semi-conscious and was dragged to the Police Station. Hours later, in extreme pain and after intervention from lawyers, he was taken to English River Clinic. He was returned by Police into a cell at the Central Police Station and the Police denied him medication until 1100 hours the next day. He spent the night in extreme pain and agony. Repeated requests for his medication were denied by defendant. He was subsequently released on the 4th of October and suffered pain, anxiety, humiliation and psychological pain. He immigrated to UK from fear of defendants and has not returned to date.

He is now claiming SR265,000.00 damages.

12th Plaintiff

The 12th plaintiff, **Ms Jane Carpin**, was a middle aged activist of the Seychelles National Party and presently is a Member of the National Assembly. At the scene of the incident she was deliberately hit, whilst on the pavement, with a jeep driven by the Seychelles Police. The incident was potentially fatal. She medically treated and now suffers from permanent pain in her sacral lumber region. She has tenderness at the left trapezius muscle and at the lower back and nibo area. She visited Mauritius for treatment and it was confirmed that she will suffer permanently from injury to her lumber vertebrae. Her movements are restricted and her sleep, as well as sex life is permanently affected. She cannot stand or sit for lengthy periods and cannot run or walk at length. Her occupation, as seamstress is affected.

On the 13th of June 2008, she amended her plaint and is claiming SR245,000.00 as damages.

13th Plaintiff

The 13th plaintiff, is **Mr. Gilbert Elisa**. He was a mere passer-by and talking with friends.

When he saw the commotion, being at the Lesplande near the stadium, he tried to walk away. He was already injured at the knees and had been operated upon for the said injury sustained years prior. He has plastic at the knees. T he crowds ran away and left him behind. He could not run but was walking in a hurried manner. The Police, caught up with him, and jumped on him. He told them that he could not run and pointed at his knee. The Police, brutally and deliberately, attacked him with truncheons on the said knees. They dealt repeated blows to both knees and limbs until he bled. He traveled both to hospital and overseas for treatment. He suffered severe pain, stress, anxiety and humiliation as an old and former soldier. He claims that his pain is still constant and the psychological harm permanent.

He is now claiming SR300,000.00 as damages.

It is not an easy matter for this Court to make an assessment in the present cases as local similar precedents are scanty. In the case of **Cable & Wireless Ltd v/s Michel (1966) No 11**, it was held that the difficulty of assessing damages was not a bar to making an award. It was the duty of the Court to award damages.

I bear in mind that moral damages must be assessed by me even though such assessment is bound to be arbitrary as stated in the case of **Fanchette vs Attorney General SLR (1968).**

A case which is somewhat similar to the one at hand is the unreported case of **Alex Joubert v/s A.G, C.S No 48/02. In** that case there was a shooting by the Police when dispersing an unlawfully gathered crowd. The plaintiff was injured by a bullet and hospitalized for 5 days. He was awarded Rs30,000. damages.

However, in the above-quoted case, the plaintiff was neither a constitutional appointee, nor an innocent passer-by or member of the National Assembly.

I take into account the socio-economic changes, devaluation of the Seychelles Rupee, and the political context of the present case which is different now than it was then.

I have considered other precedents in order to get a basis for my assessment of damages in respect of each plaintiff.

As regards the assessment of damages, I took into consideration that in a case of tort, damages are compensatory and not punitive as was held in the case of **Nageon de Lestang v/s Cadette (193 – 1955) No 42.**

In the case of **Rosalie v/s Souffe 1994 No 21**, it was determined that a claimant can obtain damages for loss of future earning capacity and future loss of earnings. The nature of the physical impairment must not be uncertain.

As a rule, when thee has been fluctuation in the cost of living which prejudiced the plaintiffs, the award is evaluated as at the date of judgment. But damages is assessed in such a manner that the plaintiff suffers no loss and at the same time makes no profit.

Moreover, it is pertinent to note, as in the case of **Sedgwick vs. Government of Seychelles SLR (1990)** that the fall in the value of money leads to a continuing reassessment of the awards set by precedents of our case law.

In the unreported case of **Ricky Govinden v/s Lt Co. Ernesta, CS 105/03,** the plaintiff was awarded Rs9,200.00 damages for an unlawful assault. He suffered haematoma on the right arm measuring 2.5-3 cm and multiple abrasions around the eye.

Some of the plaintiffs were constitutional appointees and national leaders, as such it renders the defendants more culpable for their faute. There is no evidence that any of the defendants when assembled on that day were in possession of or using any weapons or

were acting with force in their pursuit of what they believed to be their constitutional rights. However, their pursuit was in defiance of the law against unlawful assembly. In doing so they must have assessed the pros and cons of their action on that day. They must have been aware that they may be exposing themselves to lawful arrest and prosecution. However, I do not believe that the plaintiffs in their reasonable assessment of the consequence of their action on that day expected that they would be exposing themselves to physical danger and potential loss of life at the hands of a trained Police Force in a democratic society. It must be remembered that some of those plaintiffs who were then Members of the National Assembly, constitute part of the Legislature, and as such deserved otherwise, especially of the precinct of the "House".

I believe that the culpability of defendants was high and therefore an award of compensation should reflect the outrageous way the Police Officers acted on that day against unarmed civilians.

With guiding principles in mind, as drawn from precedents quoted above, this Court after critically examined the evidence, finds that there is an ambit within which it may make the necessary awards. Although the award may seem arbitrary, it is still the duty of the Court to make such awards taking into consideration the physical and mental pain of each plaintiff. This Court whilst retaining its wide discretion when awarding damages has, however, tried to ensure that the awards are not grossly exorbitant to be deemed punitive. In fact, the Court is not bound by the sums prayed for in Plaints, but makes awards that fit the justice of each claim.

With respect to precedents in or jurisdiction, admittedly no previous claimant has ever prayed for damages as a result of trauma from being shot with rubber bullets or attacks with tear gas by Police. It is also unprecedented that the Leader of the Opposition in the National Assembly as well as certain other Members of the National Assembly were ever attacked on the precinct of the Assembly by the very Force that was supposed to maintain law and order.

Further, even there were previous decisions of the English Courts and common law, these could be distinguished and may be inapplicable and inappropriate in the present cases, as these decisions were made in an entirely different socio-economic climate and living standards and set up. More-over, the political situation of Seychelles is unique and this is grounded in the fact that the President of the Republic established a Commission of Enquiry on the events of the 3rd of October, which was headed by an independent Judge.

In the present cases, the plaintiffs were injured by agents and servants of the State, namely, Police Officers whilst carrying on their duties and in response to orders from their Superiors.

It is my considered judgment that the claims of the plaintiffs as pleaded in their respective Plaint are somewhat on the high side. I believe that adequate and reasonable compensation should be awarded by this Court to the respective plaintiff with costs and interest as at the date of filing of the Plaint.

1st Plaintiff	**Mr Wavel Ramkalawan**	CS No. 459/06	**SR 70,000.00**
2nd Plaintiff	**Mr Roger Mancienne**	CS No. 472/06	**SR 70,000.00**
3rd Plaintiff	**Mr Colin Dyer**	CS No. 21/07	**SR 40,000.00**
4th Plaintiff	**Mr Gerald Edwin Julie**	CS No. 19/07	**SR 40,000.00**
5th Plaintiff	**Mr Jean-Francois Ferrari**	CS No. 1/07	**SR 75,000.00**
6th Plaintiff	**Mr Kenneth Pillay**	CS No. 20/07	**SR 35,000.00**
7th Plaintiff	**Ms Laurina Antat**	CS No.473/06	**SR 55,000.00**
8th Plaintiff	**Mr Patrick Naidoo**	CS No. 13/07	**SR 35,000.00**
9th Plaintiff	**Ms Rebecca Pool**	CS No. 63/07	**SR 40,000.00**

10th Plaintiff	**Mr Bernard Henriette**	CS No. 22/07	**SR 35,000.00**
11th Plaintiff	**Alph S. Accouche**	CS No.474/06	**SR 45,000.00**
12th Plaintiff	**Ms Jane Carpin**	CS No. 12/07	**SR 55,000.00**
13th Plaintiff	**Mr. Gilbert Elisa**	CS No. 431/06	**SR 35,000.00**

I accordingly enter judgment in favour of the plaintiffs as against the defendants jointly and severally in the amount indicated above in respect of each named plaintiff, and each with costs, and, interest as of the date of filing of the plaint.

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B. RENAUD

JUDGE

Dated this 20th day of November, 2009