

Savy v Attorney-General

(2010) SLR 1

Elvis CHETTY for the plaintiff
Kisnan LABONTE for the defendant

Judgment delivered on 19 March 2010 by

KARUNAKARAN J: This is a delict claim based on an alleged unlawful arrest and detention by police officers, who were acting in their capacity as preposes of the Government of Seychelles. The plaintiff claims a sum of R100,000 from the defendant for damages resulting from the said unlawful arrest and detention. Indeed, this action is pursued against the Government of Seychelles on the basis of its vicarious liability for the acts of its servants.

It is the case of the plaintiff that on Saturday 31 May 2008 at around 7 pm while he was driving his pickup truck on the public road in town, some members of the Seychelles Police Force stopped and arrested him. He was then taken to the Central Police Station where according to the plaintiff, he was illegally, unlawfully and unjustifiably detained in a cell for about 39 hours for no valid reason. After such detention, he was released only at 10 am on Monday 2 June 2008. The plaintiff avers that the members of the police force were, at the material time, acting within the scope of their employment with the Government of Seychelles which is therefore vicariously liable in damages for the fault committed by its servants, the police officers. The plaintiff further avers that the police officers did not take any statement from him nor did they commence any investigation against him before or during or after the said arrest and detention. Moreover, the police did not at anytime give any reason for the detention. They did not even mention to him any complaint made by anyone at the time of arrest or soon thereafter. The plaintiff also avers that after his release and until today, no charges have ever been filed against him. The plaintiff's father and mother also testified in support of the plaintiff's claim as to the unlawful detention on the alleged date, time, duration and place. Besides, one Ms Edwige Committant (PW3) who was a passenger in the plaintiff's pickup truck at the material time also testified corroborating the evidence of the plaintiff in all necessary particulars as to time, place and circumstances under which the police stopped and arrested the plaintiff while he was driving his pickup truck on the public road. In the circumstances, the plaintiff prayed this Court for a judgment in his favour awarding damages against the defendant in the sum of R100,000 with interest and costs.

After the close of the case for the plaintiff, State counsel Mr Labonte submitted that the defendant was not denying liability for the reason, though deplorable, that the police do not have any official record of the detention of the plaintiff, either in the Occurrence Book or in any other record or register of detainees maintained at the Central Police Station. Hence, Mr Labonte candidly admitted liability continuing the good tradition of the Attorney-General's chambers and invited the Court to determine only the issue as to quantum of damages payable to the plaintiff, in the light of the evidence adduced by the plaintiff in support of his claim in this matter.

I carefully analysed the entire evidence on record and the relevant circumstances surrounding the unlawful arrest and detention of the plaintiff by the police officers. On the strength of the unchallenged evidence on record, I find that the members of the Seychelles Police Force arrested the defendant at around 7 pm on 31 May 2008 and kept him under detention in a cell at the Central Police Station until 10 pm on 2 June 2008. Moreover, I find that there was no lawful justification for such arrest and detention of the plaintiff having regard to all the circumstances of the case. Besides, the police did not inform or give any reason, let alone a valid or plausible reason as to why he was arrested and detained, for such a relatively long period in solitary confinement. The most deplorable part of the entire episode, as I see it, is the dereliction of duty or, to say the least, the failure of the officer in charge of the Central Police Station to maintain a proper register or record of detainees, particularly, that of the defendant, who had been kept in police custody almost for two days without official record and having no regard for the rule of law. The State also impliedly concedes that this makes the arrest and detention not only unlawful but also condemnable for lack of official record.

I will now proceed to the assessment of damages.

(1) Nominal damages for fault

First I note the plaintiff has brought this action for fault in terms of article 1382 of the Civil Code of Seychelles. This article reads:

1. Every act whatever of man that causes damage to another obliges him by whose fault it occurs to repair it.
2. Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be the result of a positive act or an omission.
3. Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest.

On a careful analysis of this article, it is evident that the cause of action for fault in essence consists of two ingredients:

- (i) an act or omission that should have been committed by the alleged tortfeasor; and
- (ii) the particular act or omission should have caused damage pecuniary or otherwise, to the claimant.

Obviously, in the present case both ingredients namely: (i) the defendant's unlawful act of detention and (ii) the alleged damage are present and thus constitute the necessary cause of action for "faute" under article 1382. Hence, the defendant is liable in law to compensate the plaintiff for the consequential loss and damages.

Although unlawful detention amounts to a fault in law under the Civil Code, it is

indeed, a legal injury to the fundamental right (liberty) guaranteed by the Constitution. It is also pertinent to note that in the common law system unlawful detention or false imprisonment is a tort actionable per se. What matters most in a false imprisonment is the injury to the right to liberty of a person. Hence, such legal injury *ipso facto* attracts nominal damages, and special damages or loss if any, suffered by the claimant. Hence, I hold that a person who seeks damages for unlawful detention invoking article 1382 of the Civil Code alleging fault against the tort-feasor, is entitled to nominal damages for the legal injury, upon proof of such unlawful detention, irrespective of whether he could prove any special damage or loss suffered as a result thereof. Therefore, the proper approach in ascertaining and assessing the damages in matters of unlawful detention is to regard this "injuria" as actionable per se and award nominal damages to the claimant even without proof of any special damage.

(2) Compensatory damages for infringing the constitutional right

Secondly, I note 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 the State, on whose behalf or in the course of whose employment the unlawful arrest or detention was made or from both of them.

In this matter, undoubtedly the plaintiff's right to liberty, the fundamental right guaranteed by the Constitution of Seychelles, has been curtailed or affected by the unlawful act of the police for about 39 hours. Hence, I find that the plaintiff is entitled to receive compensation from the defendant for the curtailment of his liberty, and the quantum ought to be commensurate with the nature, duration and the degree of deprivation of his liberty including loss of consortium, amenities of life and the like, if any. In the present case however, there is no evidence that the plaintiff was in any state of fear or emotional stress during his detention. However I would accept that he suffered some loss of rights of personality as envisaged in article 1149 (2) of the Civil Code. Obviously, the plaintiff would have suffered loss of consortium and amenities during the period under detention.

(3) Exemplary damages for unconstitutional action by the servants of the government

Thirdly, the award of exemplary damages is a common law head of damages, the object of which is to punish the defendant for outrageous behaviour or condemnable acts and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or condemnable behaviour - vide the ground relied upon by the Court of Appeal of Bahamas and the Privy Council in *Atain Takitota v Attorney-General* [2009] UKPC 11. It serves, as Lord Devlin rightly stated in *Rookes v Barnard* [1964] AC 1129 at 1223, to retrain such improper use of executive power.

At the same time I warn myself that there is the need for moderation in assessing and awarding exemplary damages in cases of this nature. Indeed, Lord Devlin in

Rookes v Barnard and Lord Hailsham of St Marylebone LC in *Broome v Cassell & Co Ltd* [1972] AC 1027 at 1081 have emphasised such need for moderation in assessing and awarding exemplary damages.

Precedents for guidance

In the case of *Gerard Canaya v Government of Seychelles* (2000) SLR 143 the Court, inter alia, awarded R5000 for an unlawful arrest and detention for 18 hours. An award of R5000 was made by the Constitutional Court in *Noella Lajoie v Government of Seychelles* Const 1/1999 (unreported) in similar circumstances. In the case of *Paul Evenor v Government of Seychelles* (2001) SLR 147 the Court awarded R 20,000 as moral damages for fear and emotional stress while the plaintiff was detained at the Police Army Camp, and for loss of civil rights of personality. At the same time, I note, those awards were made 10 years ago, based inter alia, on the cost of living index which prevailed then in Seychelles.

In the final analysis, on a consideration of all relevant circumstances of this case, I award a global sum of R25,000 to the plaintiff covering damages under all three heads enumerated hereinbefore.

Judgment is accordingly entered in favour of the plaintiff in the sum of R25,000 together with interest and costs.

Record: Civil Side No 371 of 2008