

IN THE SUPREME COURT OF SEYCHELLES

WILHEM JEANNEVOL

Plaintiff

VERSUS

THE GOVERNMENT OF SEYCHELLES

Defendant

(Rep. by the Attorney General)

**Civil Side No. 285 of
2002**

Mr. Ally for the Plaintiff

Mr. Chinasammy for the Defendant

D. Karunakaran, J.

JUDGMENT

I believe there is no need to adjourn the case for a further consideration and reserve a date for delivering judgment in this case. The facts of the case are simple and clear on record. Above all, they are fresh in mind. The issues, which arise herein for determination, do not involve any point of law that requires research. Hence, the Court will now proceed to determine the issues and deliver an ***extempore judgment*** in this matter. This would considerably shorten the judicial delay.

This is an action in tort for damages. The plaintiff in this matter claims the sum of Rs.110, 000/- from the defendant towards loss and damage, which the plaintiff allegedly suffered as a result of a **fault** committed by the employees of the defendant. The defendant, in its statement of defence has completely denied liability.

It is not in dispute that the plaintiff is a self-employed farmer living at Amitie, Praslin. The defendant operates, maintains and administers the Seychelles Peoples Defence Forces, hereinafter called the "SPDF", whose powers and functions are set out in Article 163 of the Constitution of the Republic of Seychelles. The plaintiff, in essence testified that on Friday the 4th October 2002 at around 930 a.m. whilst he was selling vegetables at St. Joseph, Praslin, he was arrested by a group of soldiers of SPDF, whose names were unknown to him at the time of his arrest. According to the plaintiff, those soldiers were in SPDF uniform at the time of their operation; they all together travelled together in a pickup; they were performing their duties in the course of their employment with SPDF. After the arrest the soldiers took the plaintiff to Cote D'or Praslin, brutally assaulted and tortured him causing severe bodily injuries. As a result he sustained injuries all over his body.

The plaintiff further testified that one of the soldiers, whose name was subsequently known to him as one Lieutenant Pool,

kicked him on his abdomen, flattened him to the ground and hit him with a stick on his sole. Soon after the incident, the plaintiff obtained medical treatment from one Dr. Pozo at Baie Ste Anne Hospital, Praslin. Moreover, the plaintiff produced in evidence, a medical report dated the 15th may 2006, compiled by the Principal Medical Officer, one Dr. K. Ponmudi. From the contents of this medical report, it is evident that the plaintiff was examined by Dr. Pozo at Baie Ste Anne Hospital on the 4th October 2002 with a history of assault by police officers/soldiers. The patient/plaintiff also had complained to the doctor that he had pain all over his body and severely on his right foot. The plaintiff further testified that the soldiers arrested and asked him whether he knew some of the people involved in drug trafficking in that area. The plaintiff was not in a position to give any of the names of the drug dealers, who were operating in that area as he was not involved in any such illegal activities. After thus questioning the plaintiff, they took the plaintiff to a secluded area close to a beach, assaulted and tortured him unlawfully for no reason. As a result, the plaintiff claims damages in the sum of Rs.50, 000/- for pain and suffering and Rs.10, 000/- for unlawful arrest and another Rs.50, 000/- for moral damages.

The plaintiff in cross-examination categorically stated that he was not lying to court for any reason whatsoever. He confirmed in his evidence-in-chief that the alleged incident really took place and he did suffer loss and damage as a result of the fault/unlawful

act committed by the employees of the defendant. On the other side, the defendant did not adduce any evidence in defence. In fact, the defence counsel, at the eleventh hour of the hearing, sought an adjournment on the ground that he needed time to summon his witnesses for the defence. However, the court declined to grant an adjournment since the defendant, although had known the hearing-date in advance, failed to take reasonable steps in time to summon his witnesses, ignoring the fact that the case has been pending for hearing for the past nine years in this court. Be that as it may.

I meticulously considered the evidence adduced by the plaintiff in this matter. As I see it, the whole issue revolves around the credibility of the witness, namely the plaintiff, Wilhelm Jeannevol. From his demeanor and deportment, the plaintiff appeared to be very credible in his testimony. He is telling the truth to the court about the incident which really took place on the 4th October 2002 in which he was assaulted by the soldiers of SPDF and so I find. I am equally convinced that those soldiers were at the material time, acting in the course and by virtue of their employment with the defendant. Obviously, the soldiers have assaulted the plaintiff for no valid reason. Undoubtedly, it is an unlawful act. In the circumstances, I find that the defendant is vicariously liable to compensate the plaintiff for the actual loss and damage which he suffered as a result of the **fault** committed by the employees of the defendant. On a balance of probabilities,

I find that the defendant is liable in delict and hence bound in law to compensate the plaintiff for the loss and damage as particularized in paragraph 5 of the plaint. However, on the face of the figures, I find that the amount claimed under each head seems to be exorbitant and unreasonable.

Having regards to all the circumstances of the case, I award the sum of Rs.10, 000/- for pain and suffering; Rs.5, 000/- for unlawful arrest; and Rs.5, 000/- for moral damages.

In the final analysis, I accordingly, enter judgment for the plaintiff and against the defendant in the total sum of Rs.20, 000/- with interest and costs.

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D. Karunakaran

Acting Chief Justice

Dated this 20th day of January 2011