

IN THE SUPREME COURT OF SEYCHELLES

1. TED BASTIENNE
2. MURVIN RIDEAU

Plaintiffs

VS

1. TONY AMESBURY
2. MR ERNEST QUATRE
3. GOVERNMENT OF SEYCHELLES
(rep by the Attorney General)

Defendants

Civil Side No. 93 of 2009

Mr. F. Bonte for the Plaintiffs

Mrs. S. Aglae State Counsel for the Defendants

JUDGMENT

Burhan J

[1] This is a delictual action where both plaintiffs' claim damages in a sum of SR 300,000.00 for assault and injuries sustained at the hands of the 1st defendant.

[2] The 1st plaintiff in his evidence stated that on the 12th of October 2008 he had attended a function which was a 1st communion with his brother the 2nd plaintiff and a fight had occurred between them and some persons who were present. He admitted he was involved in the fight. Thereafter the police had been called and witness stated he and his brother were going away when the police arrived beat them and sprayed tear gas on them. Thereafter he had been handcuffed and taken to the hospital.

- [3] Under cross examination he denied receiving any injuries in the fight at the function. He admitted he was a bit drunk at the time. He further admitted being a bit aggressive at the time the police came. He stated that the police had sprayed tear gas on him and then handcuffed him when he had fallen on the ground and beaten him with a baton. Even after they had control of him they had beaten him. He stated his medical certificate was lost and therefore was unable to produce same.
- [4] The 2nd plaintiff his brother corroborated his evidence in respect of the spraying of tear gas. He further stated that he too had been beaten by the police and his thumb broken. He admitted obtaining a cut injury in his hand during the fight prior to the arrival of the police. He further stated that it was police officer Tony Amesbury the 1st defendant who had first started to beat him up. Dr Reddy produced the medical certificate of the 2nd plaintiff Murvin Rideau. He stated under cross examination that at the time Murvin Rideau was brought to hospital he was behaving abnormally as he was intoxicated. He stated that he had cut injuries. Thereafter the plaintiffs closed their case.
- [5] The defendants called Mr. Alfred Quarte who stated that on the day in question there was a function at one of his family members place and he had been watching a football match on television when he had heard a noise of some persons speaking loudly and on looking out he noted it was the Rideau brothers Murvin, Ted and Roddy. He had continued to watch his football match and then he had heard a vehicle coming and looked outside and seen it was a police vehicle. He had subsequently gone out and seen Roddy Rideau with a little bit of blood on him and he was under the influence of

liquor. His brother was trying to assist him but couldn't, so he had been left on his lawn. He stated he never saw the police officers assaulting anybody but noted he saw a baton in the hand of a police officer.

[6] Police officer Eddy Racombo stated that on the 12th of October 2008 he had been called by Corporal Biscornet who had informed him there was a fight at Belau and that some persons were fighting and breaking things. Accompanied by Corporal Amesbury and WPC Radegonde they had proceeded to the scene and on arriving had seen one person fallen next to a rock. He had tried to wake him but he did not respond. They were informed by Mr. Quarte that the brothers of the person fallen in the lawn had gone into the house to make more trouble. They had seen two persons coming out of the house and they had said "good evening" and asked them what was going on but the two persons had begun to swear at them and begun to fight with them. He had pushed one who had fallen and another had grabbed him from behind and he had hit him on his feet as they had been trained to make him let go and used pepper spray. They had handcuffed the individual and taken him in an ambulance to the hospital as he was bleeding. When they removed the handcuffs at the hospital at the doctor's request he had become aggressive and wanted to fight Corporal Amesbury so they had to handcuff him again. He admitted Corporal Amesbury did hit the individual on the leg to stop him hitting witness officer Racombe.

[7] Mr. Amesbury corroborated Mr. Racombe's evidence and stated that two persons approached them at the scene and the one at the back had blood on him. When he tried to explain to the person he had blood on him as the person was intoxicated he had tried to fight them and they had to control

him. He said the other person was so violent they had to use pepper spray. He too stated to control them they had to hit them on the legs as they were trained to do. He stated that this was the first time he had seen a person under the influence of the liquor who he could not control. Witness stated even in hospital he had been violent.

[8] I have considered the evidence of the plaintiffs in this case. Both plaintiffs admit that at the function they were after alcohol and were involved in a fight for which the police were called in order to bring the situation under control. The 1st plaintiff admits he was after alcohol and aggressive even after the police arrived. I am therefore satisfied on the facts before court that on the arrival of the police at the scene both the plaintiffs who were after alcohol had been aggressive with the police and the police were compelled to use force for their own safety and to bring the situation under control.

[9] The 1st plaintiff states he received injuries at the hands of the police but there is no medical certificate to establish same. The 2nd plaintiff too states he was assaulted by the police. The medical certificate produced on his behalf P1 shows that he had cut lacerated injuries in his right hand, left forearm, forehead and a contusion on his left hand with swelling. The x ray report refers to an injury on the metacarpal bone of the left hand. However it is to be noted that there are no injuries to the feet. The 2nd plaintiff admits he was involved in a fight just before the police were called in to control the situation. He further admits his cut injuries were from the fight he was involved in prior to the arrival of the police. It is in evidence and admitted by the 1st plaintiff that they were intoxicated at the time the police arrived and were aggressive even with the police.

[10] When one considers the evidence and the admissions by the plaintiffs this court is satisfied that the 2nd plaintiff too was intoxicated and aggressive at the time the police arrived and had already obtained injuries as a result of the fight. The mere statement of the 2nd plaintiff that this particular injury was caused by the police does not suffice considering the intoxicated state he was in. In fact the evidence of Dr Reddy and his medical report P1 too shows that the 2nd plaintiff even on arrival in hospital was behaving abnormally due to alcohol abuse with intoxication. When one considers the evidence of the plaintiffs, the plaintiffs have failed to establish on a balance of probabilities that the injuries they sustained and seek to complain off were inflicted by the 1st defendant police officer concerned and were not from the fight they were involved in prior to the arrival of the police.

[11] Further court is satisfied that considering the fact that both plaintiffs were intoxicated and aggressive with the police, the police were compelled to use a certain degree of minimal force to bring them and the situation under control. It is to be noted it was the police who had immediately dispatched the 2nd plaintiff to hospital as he was bleeding after injuries sustained during the fight prior to the arrival of the police. There is no evidence to show that the police acted in gross disproportion to the aggression committed against them.

[12] For the aforementioned reasons as this court is satisfied that the plaintiffs have failed to establish on a balance of probabilities that the defendants have committed a *faute* the plaint is dismissed. No order is made in respect of costs.

M. BURHAN

JUDGE

Dated this 2nd day of March 2011