

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS13/2015

[2017] SCSC

**DAVID DINE
CARE OF MASON'S TRAVEL, VICTORIA, MAHE
PLAINTIFF**

Versus

**COMMISSIONER OF POLICE
VICTORIA, MAHE**

DEFENDANT

Heard: 18 November 2016
Counsel: Mr. S. Rajasundaram for petitioner
Mr. George Thachett, Senior State Counsel for respondent
Delivered: 27 January 2017

JUDGMENT

McKee J

- [1]** The Plaintiff is an employee of the travel company, Mason's Travel of Seychelles.
- [2]** The Defendant is the Commissioner of Police of Seychelles. The Defendant derives his authority from Article 160 of The Constitution. The Commissioner, *inter alia*, is

responsible for determining the use, and controlling the operations, of the Police Force in accordance with the law.

- [3] The Plaintiff alleged that a member or members of the police force, acting in the course of his or their employment and as employees of the Defendant, failed to perform their duties in accordance with law. Consequently, as a result of this error in law, the Defendant was vicariously liable in damages to the Plaintiff.
- [4] I have considered the evidence. The Plaintiff gave evidence that on 14th August 2014 around 7.45pm he was standing at a bus-stop at La Louise. He was holding a bottle of beer in his hand which had been bought by a friend. He stated that he had not consumed beer from the bottle when police officers approached him and that the beer bottle was still full. He was arrested. It was the Plaintiff's evidence that he was appealing to the officers to reconsider his arrest since he had to work on the following morning. He was taken to Mt Fleuri Police Station and later transferred to Central Police Station. He asked officers at both police stations to be allowed to speak to family and with his supervisor at work but this request was denied. He was later released around noon on the following day and he then had the opportunity to speak to his family and work supervisor. Subsequently no charge was preferred against the Plaintiff. In cross-examination the Plaintiff remained firm in his denial that he had consumed any beer from the bottle. He stated that the bottle had been "opened" but the bottle cap remained on the bottle. He did not lose his job as a result of this incident but he had to give a full explanation to his employers.
- [5] The Defendant called three police officers to give evidence namely, Woman Corporal Labiche, Police Constable Andrew Alcindor and Corporal Robin Hollanda. Officers Labiche and Alcindor were based at Mt Fleuri Police Station and Corporal Hollanda was the arresting officer. Officers Labiche and Alcindor spoke of the Plaintiff being brought to the Mont Fleuri Police Station for normal processing after formal arrest. The Plaintiff remained silent in reply to caution. Both of these police officers denied that the Plaintiff had specifically requested the opportunity to speak to his family or a representative of his employer although Officer Alcindor recalled that a number of arrested persons were complaining about their arrests. Officer Labiche stated that the Plaintiff had been arrested

for consuming alcohol while driving. Officer Alcindor recalled that the Plaintiff had been arrested for consuming alcohol in a public place. Officer Alcindor *thought* a bottle of beer had also been brought to the police station. According to Officer Alcindor after particulars had been recorded the Plaintiff was then transferred to the Central Police Station.

[6] Corporal Hollanda was the arresting officer and the final witness. He stated that while on duty and travelling at La Louise he saw “ this gentleman with one bottle of alcoholic liquor and he had already drunk some in it”. This was the Plaintiff. He arrested him and brought him to Mont Fleuri Police Station, where he was handed over to the police officers there for normal processing. He stated that he did not hear the Plaintiff make any request or complaint at that time in Mont Fleuri Police Station, and, in particular, the Plaintiff did not ask to be allowed to speak with his family or employer. Officer Hollanda was asked as to his understanding of the procedure when an arrested person is brought to a police station. He answered that an arrested person is told his rights and ”I think you inform the family or a relative”. He was referred to the entry in the Occurrence Book in which it was recorded that the Plaintiff was found at the bus stop *consuming a pint of beer*. [my italics].

[7] In cross-examination he confirmed that he saw the Plaintiff at the bus stop at La Louise and it was dark at the time. He was arrested because he was standing with a bottle of beer, already open, in his hand. He could not recall the amount of beer remaining in the bottle. He could not recall the state of lighting at the bus stop at the time of the arrest. The witness was questioned about any conversation he had with the Plaintiff concerning his family or employer. Officer Hollanda stated that the Plaintiff did tell him that he worked at Mason’s Travel. Officer Hollanda went on to tell him that he can make a complaint at the police station and the officer on duty there will do the details so that he can call his employer and family.

[8] This testimony concluded the evidence in this matter. I considered the evidence and the closing submissions.

[9] FINDING.

- [10] I find that Corporal Hollanda purported to arrest the Plaintiff for a breach of section 173A of the Penal Code which reads as follows:
- [11] Prohibition of consumption of alcohol.
- [12] 173A Any person who consumes alcoholic liquor,
[i] on any road , or in a public place; or
[ii] in any vehicle on the road
- [13] Shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding Rs 1000 or to both such fine and imprisonment.
- [14] [2] In any proceedings under this section evidence that consumption of alcoholic liquor was about to take place shall be evidence of the consumption of alcoholic liquor without proof of actual consumption.
- [15] Section 173 [A] 2 is clear. Evidence of consumption of alcoholic liquor can be established if there is evidence from which an inference can be drawn that consumption is about to take place. In the present matter there is evidence that the Plaintiff was standing at a bus-stop at La Louise around 8pm during the hours of darkness. He was waiting for a bus to take him to Grand Anse, Mahe. He held a bottle of beer in his hand, which had been opened, although the cap was on the bottle. It had been bought by a friend. There was conflicting evidence as to the amount, if any, which was missing from the bottle. At the end of the day , whether there had been partial consumption or not is not of real importance since there is *prima facie* evidence before a Court from which an inference can be drawn that consumption was about to take place. This firmly places this case as falling within the provisions of section 173[A]2 of the Penal Code.
- [16] In my opinion there were sufficient grounds for Corporal Hollanda to effect arrest of the Plaintiff. Accordingly I find the arrest to had been lawful.

- [17] The Plaintiff stated that he mentioned to the police officers at Mont Fleuri Police Station and Central Police Station that he wished to speak with his employer to advise him of his detention and the probability that he would not be available for duty early the following morning. Officers Labiche and Alcindor deny that this request was made or heard by them. Corporal Hollanda stated that such a request was made to him immediately after arrest. I find that it is more likely than not that a further request was made at Mont Fleuri Police Station. I find on the balance of probabilities that the Plaintiff did make a similar request at the Central Police Station. However there is evidence that a number of other arrested persons were in the police stations at the same time and it may be that the Plaintiff's request was not heard or was unable to be dealt with in a somewhat rowdy situation. There is little detailed evidence concerning the sequence events after arrival at the Central Police Station.
- [18] The Plaintiff averred that the detention in custody at the Mont Fleuri Police Station and Central Police Station was unlawful. Since the original arrest was not unlawful it cannot be argued that his continued detention was unlawful and I look further into the matter. In his closing submission Counsel for the Plaintiff does not aver which specific provision in Seychelles law has been breached. In his Pleint he averred that the Plaintiff had been denied "the basic and constitutional rights..... to contact his family member and specially his employer".....I have considered the Articles of the Constitution and am of the view that the Plaintiff had Article 18[3] thereof in mind. This Article provides that *as soon as practicable* [my italics] after an arrest and detention the arrestee has a right to be informed of the reason for his arrest and detention, the right to remain silent and be represented by a legal practitioner, and in the case of a minor, a right to communicate with the parent or guardian.
- [19] It can be observed that the *right* of communication to a parent or guardian is restricted to that of a minor. The Plaintiff is not a minor but an adult and no reliance can be placed on this Article to further the claim of the Plaintiff. I look further. I am unaware of any right of communication in the Criminal Procedure Code, the Penal Code or the Police Force Act nor is any reference made to such by the Plaintiff.

- [20] I have also looked to section 56 [1] of the Police and Criminal Evidence Act of the United Kingdom and referred to in paragraph 1-184 of Archbold. It carries the heading “(6) Right to have someone informed when arrested”. It reads as follows;
- [21] “Where a person has been arrested and is being held in custody in a police station or other premises he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, *as soon as practicable* [again my italics], except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.”
- [22] Section 56[2] defines ‘delay’ and has no relevance in the present case. Section 56[3] is helpful and reads as follows “In any case the person in custody must be permitted to exercise the right conferred by sub-section [1] above within 36 hours from the relevant time as defined in section 41 [2] above”.
- [23] Hence in the United Kingdom the right of communication is to be granted *as soon as practicable* and, in any event, within 36 hours of arrest. It is interesting to note that the Constitution and the United Kingdom legislation each use the phrase “*as soon as practicable*” thus allowing police officers a margin of leeway depending on the exigencies of any given situation, with the UK legislation specifying a time limit. The UK legislation does not assist the Plaintiff especially as we know from the evidence in the present matter that there were a number of arrestees at Mont Fleuri Police Station and the police had to arrange the transfer of prisoners to Central Police Station for custody. Thus an opportunity to deal with the Plaintiff’s request would more than likely not have been possible.
- [24] The thrust of the submission by the Plaintiff must be that the detention of the Plaintiff was unlawful on the sole ground that his request to communicate with his employer was refused or ignored during his overnight detention. I find that there is no legal requirement for police officers to deal immediately with such a request. They can do so as soon as is practicable. There is evidence of a busy night at the police stations. Allowing for the normal exigencies I find that, in the circumstances, it is more probable than not that the police at the Central Police Station released the Plaintiff from custody as soon as was

practicable thus allowing him to telephone his family and employer. It transpired that the Plaintiff was not formally charged. I find that the police authorities did not fall into error in taking the steps that they did and accordingly I find that the overnight detention was not unlawful.

[25] I now look to the final factor raised in this matter. The Plaintiff averred that the Commissioner of Police is vicariously liable for the acts and omissions of a fellow police officer or officers.

[26] This element of vicarious liability has been before the courts on a number of occasions. Authorities have been produced. I prefer and follow the dicta in the case of *Ernesta v Commissioner of Police (2002)SLR 92* and find that the findings are relevant in the present matter. I refer in particular to paragraphs 3 and 5 on page 5 of this judgment. I set out the relevant sentences:

[27] “Therefore a delictual action based on Private Civil Law cannot be instituted against the Commissioner of Police in his vicarious capacity as an employer of his subordinate officers. All police officers are in the employment of the State and are not employees of the Commissioner, who is himself a state employee”

[28] And

[29] “On the basis of these authorities, and on a consideration of the provisions of the Constitution, and also of the Police Force Act of Seychelles, any civil action based on any act or omission of a police officer must be instituted against the Government of Seychelles and not the Commissioner of Police.”

[30] In the present matter I find that the arrest by Corporal Hollanda was lawful. I find that the overnight detention of the Plaintiff in police custody was lawful. I find that the Plaintiff fell into error by taking the Commissioner of Police as the sole Defendant. As a result the claim for redress and compensation has to fail.

[31] Accordingly, the Plaintiff is Dismissed.

[32] There will be no order for costs.

Signed, dated and delivered at Ile du Port on 27 January 2017

C McKee
Judge of the Supreme Court