

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS19/2011

[2017] SCSC

First Plaintiff

JOSEPH CUPIDON

in his capacity as the administrator of the estate of the late Claudiana Cupidon

Second Plaintiff

JOSEPH CUPIDON

Third Plaintiff

JOSETTE CATHY FIONA CUPIDON

Fourth Plaintiff

PAULA CUPIDON

Fifth Plaintiff

ALAIN CUPIDON

Sixth Plaintiff

PAUL CUPIDON

versus

THE GOVERNMENT OF SEYCHELLES

Represented by the Attorney-General

Defendant

Heard: 3 Oct 2013, 21 Jan, 2 May 2014, 13 Mar 2015, 26 Jan, 4, 29 Mar, 17 June, 27 Oct, 13 Dec 2016, 8 Mar 2017.

Counsel: A. Derjacques for plaintiff
V. Benjamin for defendant

Delivered: 25 April 2017

JUDGMENT

Dodin J

[1] This action began with Claudiana Cupidon hereinafter referred to as “the deceased” as the 1st plaintiff but she passed away before the case could be concluded and her husband, Joseph Cupidon, the 2nd plaintiff was duly appointed to continue the action as administrator to her estate. The 3rd, 4th, 5th and 6th plaintiffs are the children of the deceased and Joseph Cupidon.

[2] The plaintiffs’ claim damages against the defendant as follows:

<i>PARTICULARS OF LOSS AND DAMAGE</i>	<i>R</i>	<i>Cts</i>
<i>1st Plaintiff, representing the estate, pain and suffering and knowledge of impending death by Mrs Claudiana Cupidon</i>	<i>300,000.00</i>	
<i>Exemplary damages for infringement of her human rights</i>	<i>300,000.00</i>	
<i>2nd Plaintiff, moral damages, distress, anguish, sorrow and depression</i>	<i>100,000.00</i>	
<i>3rd Plaintiff, moral damages, distress, anguish, sorrow and depression</i>	<i>80,000.00</i>	
<i>4th Plaintiff, moral damages, distress, anguish, sorrow and depression</i>	<i>80,000.00</i>	
<i>5th Plaintiff, moral damages, distress, anguish, sorrow and depression</i>	<i>80,000.00</i>	
<i>6th Plaintiff, moral damages, distress, anguish, sorrow and depression</i>	<i>80,000.00</i>	

2nd Plaintiff, economic loss. Loss of maintenance contributions at R1,000/- monthly for 5 years 60,000.00

Special damages, coffin, flowers, church service, clothing, the wake, transportation 50,000.00

TOTAL

1,130,000.00

- [3] The defendant oppose the claim maintaining that the police officers did not trespass into the house but were invited in and they never assaulted anyone in the house nor were they negligent towards the deceased who already had frail bone structure as per her medical record. Hence the defendant denied liability for any loss or damage and alternatively put the plaintiffs to strict proof thereof.
- [4] The facts not in dispute are that on the 9th October, 2010, a police patrol led by sergeant Tony Amesbury with the other officers being constables Ronniel Ryland, Egbert Camille and Francois Nourrice were involved in an operation to catch a man who had attempted to break into two shops in north Mahe. They followed the car driven by that suspect until Quincy Village where the man got out of the car carrying a machete. Constables Ryland, Camille and Nourrice followed the man but lost site of him. At around 5 am the 3 officers saw a woman standing in the veranda of a house and they decided to go to that house.
- [5] According to Josette Cupidon, she had heard commotion and dogs barking outside and she had come out onto the veranda to see what was happening. When she saw lights approaching the house she quickly got back inside and locked the door. Hence the 3 officers approached the house of the 1st and 2nd plaintiffs. The 3rd and 6th plaintiffs were also staying at the same house at the time. The police officers knocked on the door and identified themselves as the police after the 2nd Plaintiff had asked who they were. After knocking some more on the door asking to be let in, the 2nd Plaintiff at the encouragement of the 6th Plaintiff, opened the door. Police officers Ryland and Camille went inside and searched the house whilst officer Nourrice stayed near the door. What happened during the search is of great contention.

- [6] Learned counsel for the plaintiffs submitted that on the 9th day of October 2010, three police officers, acting within the course of their duties and in pursuit of a suspect, invaded the house of Mrs Claudiana Cupidon who was an innocent, sick, elderly old lady. She never expected the police force's three, young officers without a warrant, without sufficient cause, with authority and a measure of arrogance, would enter her sitting room, corridors and bedrooms early in the morning.
- [7] Learned counsel submitted that the plaintiffs have proved that the police officers acted as follows;
- a) Without a warrant and therefore unlawfully.
 - b) That the constitution affords privacy and the rule of law.
 - c) That police officers had entry and contact with the Plaintiffs.
 - d) That police and medical reports were made at the material time.
 - e) That Claudiana Cupidon was seriously injured, went to hospital and died of her injuries several months later, as a direct result of the injuries.
 - f) That the officers acted without prudence, respect and without due regard with the rights of Mrs Claudiana Cupidon.
 - g) That the husband, sons and daughters of Claudiana Cupidon suffered.
- [8] Learned counsel submitted that whilst the plaintiffs have proved their case on balance of probabilities, the Respondent sought to deny the incident, in vain. The witnesses only had an excuse that "he did not touch the woman." Learned counsel moved the Court to give judgment in favour of the plaintiffs as prayed.
- [9] Learned counsel for the defendant made a comprehensive rehearsal of the evidence adduced and the law with regards to burden of proof in civil matters. Learned counsel submitted that in the case of *ABSA Investment Management Services (Pty) Ltd v Crowhurst [2006] 2 BLLR 107 (LAC) the Labour Appeal Court* it was held that though courts have on many occasions cautioned against attaching undue weight to witnesses; demeanour, an assessment of credibility goes much further. It involves an assessment of how witnesses fared especially under cross-examination and in light of the probabilities pertaining to the particular opportunities he or she had to experience or observed the

event in question; and the quality, integrity and independence of his or her recall thereof. Finally, an analysis an evaluation of the probabilities and improbabilities of each party's version on each of the disputed issues are necessary components in coming to a conclusion.

[10] Learned counsel submitted that in this case the plaintiffs have failed to bring about a credible standard of proof and their evidence does not even meet the threshold of the balance of probabilities for a credible value and for the fact to be treated as having happened. Learned counsel moved the Court to dismiss the plaint with cost.

[11] The evidence of the witnesses for the plaintiffs and for the defendant can be summarised as follows:

[12] According to the plaintiffs, whilst the police were searching the house, the 1st plaintiff, now deceased came out of her bedroom using her walking stick, enquiring what was happening. As one of the officers was passing the deceased in the corridor, the tallest one, reached out his arm and pushed her. The deceased lost her balance and fell to the floor and started screaming in pain. The 2nd plaintiff went after the officers shouting to them about what they had done to his wife. Arriving near the door that same officer turned around and slapped him across the face and then left. The 3rd plaintiff called the ambulance and also called the police command centre to complain about the incidents.

[13] According to the defendant's witness, they went to the plaintiffs' house after they had seen a girl dashed into the house and heard the door being locked and they believed that their suspect might have gone into that house. They knocked several time before they were let in by the 2nd plaintiff. The 6th plaintiff was very co-operative whilst the 2nd plaintiff was aggressive and kept insulting them using various swear words. After they completed their search by which they searched all the rooms except one which they were told a woman was asleep therein. They then left and they never came across the deceased nor slapped the 2nd plaintiff despite his verbal insults. They were informed of the complaint by Sergeant Amesbury when they reached the car after searching the house.

- [14]** Considering the versions of the plaintiffs and the defendant's witnesses, I find the version of the defendant to be most improbable. Firstly, it does not make much sense for the police to search the house but exclude one room only because one of the occupants of the house told them his mother was inside asleep and that is extremely convenient because it would show that the police officers never came into contact with the deceased. Secondly, by the time the constables reached the vehicle, ASP Ronny Mousbe who was at the police command centre had already received the complaint and related the same to sergeant Amesbury who was in the car awaiting the return of the three constables. This shows that it was unlikely for there to have been any collusion between the plaintiffs to stage or fabricate the incident so as to blame the police but more likely that the plaintiffs were only reacting spontaneously to events as they happened.
- [15]** Thirdly, the plaintiffs knew the medical condition of the deceased and they had been taking care of her and her needs for quite a while before the incident and they were all aware that she should not be subjected to any sudden or violent movement, which was not known to the police officers searching the house at the time. Furthermore, the evidence from both sides established that there was a lot of noise by virtue of the banging on the door, the shouting of identification and requests to open the door and the remonstrance of the 2nd plaintiff who was not happy with his house being searched at that early morning. It is thus much more likely that the deceased would have come out of her room to see what was going on and most unlikely that she would have been the only one in the house who would have remained asleep in the only room that was not searched but that immediately after the police had left she would suffer serious injuries from a fall.
- [16]** I also observed the demeanour of the witnesses during their testimony and I am satisfied with the evidence of the plaintiffs and their witnesses. Their evidence was consistent and was not contradicted. I observed their demeanour and I am convinced that they told the truth as to what happened that Saturday morning. Their reaction to the incident is also most consistent and normal. On the other hand, the defendant witnesses have not been as consistent and logical in their testimony and I am not convinced with their version of events as to what happened in the plaintiffs' house.

[17] Learned counsel for the defendant made several references to the fact that the deceased already suffered from a medical condition multiple myeloma which caused her bones to be fragile due to the osteoporosis. However the evidence of Doctor Caridad Ramirez Hernandez went unchallenged on the fact that the deceased could have lived reasonably well for several years if she did not suffer any injury which would have incapacitate her or render her immobile.

[18] The case of Smith v Leech Brain & Co [1962] 2 QB 405 is the landmark English tort law case in negligence, concerning remoteness of damage or causation in law. It also marked the establishment of the eggshell skull rule which is the idea that tortfeasor is responsible for the full consequences of his negligence, regardless of extra or special damage caused to others. As per Lord Parker who stated:

“If a man is negligently run over... it is no answer to the sufferer’s claim for damages that he would have suffered less injury... if he had not had an unusually thin skull or an unusually weak hear”.

In other words a tortfeasor is liable for negligent damage, even when the claimant had a predisposition that made that damage more severe than it otherwise would have been.

[19] Having considered all the aspects of the evidence adduced I make the following findings: I find that the plaintiffs have not proved to the satisfaction of the Court that there was unlawful trespass or unlawful search of the plaintiffs’ house as I consider the officers to have had good enough, although misconceived, reason to go to the house. However, I find that the conduct of the police officers inside the house was heavy-handed, unwarranted, and they were reckless and negligent in their approach to the occupants of the house particularly, to the deceased. I find that one of the officers did in fact come into unwarranted and unlawful contact with the deceased and caused her to fall resulting in the fracture of her right shoulder and her right hip. I therefore find the defendant liable to the plaintiffs for unlawful assault on the 1st plaintiff, the deceased.

[20] I now consider the damages as claimed by the plaintiffs. According to the uncontroverted evidence of Dr. Caridad Ramirez Hernandez, due to the deceased’s existing medical condition of having bone cancer, the fractures were excruciatingly painful and irreversible as bones with such cancerous condition would not heal but would instead

deteriorate the condition of the deceased faster leading to death within a shorter time than would otherwise have been the case. That is because the injuries caused the deceased to become bedridden and being no longer mobile and active causes more and faster complications. Furthermore, the deceased would be very much aware that death was inevitable and would come sooner than if she was still able to maintain a more active life.

[21] The Defendant only brought evidence to contest liability but did not bring any evidence on quantum of damages or contested the sums claimed. I have carefully weighed the amounts claimed taking into consideration the fact that the deceased already suffered from a terminal illness prior to the injury which considerably shortened her life. I also took into consideration that the deceased was a pensioner and therefore not in active employment and that the 2nd to 6th plaintiffs were not particularly dependant on the deceased as they all had their own gainful occupation.

- i.** The 1st Plaintiff, represented by the administrator of her estate, for pain and suffering and knowledge of her impending death, I award the sum of Seychelles rupees three hundred thousand (SCR 300,000) as claimed.
- ii.** For the claim of exemplary damages for infringement of the 1st plaintiff's rights, I award a sum of Seychelles rupees one hundred and fifty thousand (SCR 150,000).
- iii.** For the 2nd plaintiff, being the husband and long time companion of the deceased for moral damages, distress, anguish, sorrow and depression, I award a sum of Seychelles rupees one hundred thousand (SCR 100,000) as claimed.
- iv.** For the 3rd, 4th, 5th, and 6th plaintiffs, the children of the deceased for moral damages, distress, anguish, sorrow and depression I award the sum of Seychelles eighty thousand (SCR 80,000) each as claimed.
- v.** I find the plaintiffs' claim for economic loss to be on the high side as the evidence show that the deceased was a pensioner and there was no or very little chance of her engaging in other economic activities. Her

contribution to the family was therefore minimal. I therefore award a sum of Seychelles Rupees twenty-five thousand (SCR 25,000).

vi. I award the sum of Seychelles rupees fifty thousand (SCR 50,000) as special damages for the funeral expenses as claimed.

[22] I therefore award the total sum of Seychelles rupees nine hundred and forty-five thousand (SCR 945,000), to be distributed to the plaintiffs as per the determination in paragraph 21 above.

[23] I award costs to the plaintiffs.

Signed, dated and delivered at Ile du Port on 25 April 2017

G Dodin
Judge of the Supreme Court