

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CA 34/2016

Appeal from Magistrates Court Decision 74/2014

[2018] SCSC 829

DANIEL JOUBERT

Appellant

versus

1. COMMISSIONER OF POLICE

2. ATTORNEY GENERAL

Respondents

Heard:

Counsel: Mr. Julie for appellant

Mr. Thatchett for respondent

Delivered: 12th September 2018

RULING

Nunkoo J

[1] The Appellant entered a claim for damages before the Magistrate Court in the sum of SCR 250,000.00. He alleged that he was violently attacked by the police constable Clarisse, whilst the latter was in the course of his employment at Victoria. He was handcuffed and dragged to the Central Police Station. He was also beaten and later he was released; he was not charged of any offence. He contended that his constitutional rights were not respected in that he was informed of the reason of his arrest. He wrote to

the Commissioner of Police, to the President and investigations were carried out and nothing came out.

- [2] The incident occurred in September 2007.
- [3] The Appellant entered the case for damages in March 2007.
- [4] The Magistrate dismissed the action.
- [5] The grounds of appeal are the following:

The Appellant submitted 7 grounds of Appeal namely:-

1. The Learned Magistrate erred in not taking into consideration the fact that the Applicant's counsel withdrew his appearance before making his final submission.
 2. The Applicant was not granted enough time to solicit the services of a new Counsel.
 3. The Learned Magistrate failed to hear the Plea in Limine.
 4. The Magistrate ruled on the Plea in Limine without any evidence being adduced.
 5. The Learned Magistrate failed to consider all the evidence in the case adequately or at all.
 6. The Learned Judge erred in her determination that the matter was time barred without hearing all the evidence.
 7. The Learned Magistrate erred in law when she failed the testimony of the Plaintiff.
- [6] The defendants took a preliminary objection in law in that the action was against section 3 of the Public Officers Protection Act. Section 3 reads as follows:

No action to enforce any claim in respect of
(a) Any act done or omitted to be done by a public officer in the execution of his office ;
(b) Any act done or omitted to be done by any person in the lawful performance of a public duty.... Shall be entertained by a court unless the action is commenced not later than six months after the claim arose.

- [7] The Learned Magistrate found that the action was in breach of the above provision and noted that the incident took place on 7 September 2007 and the action was entered on 25 March 2014.

[8] I will deal with grounds One and Two of the appeal first. I have checked the proceedings and upon withdrawal of appellant's counsel for lack of instructions I note the following at page 12 :

Mr Frank Elizabeth: I wish to withdraw from representing the plaintiff for lack of instruction:

Plaintiff: I will proceed by myself because I don't have money to pay a lawyer.

Thereafter the appellant conducted his case by calling his witnesses and cross examining defence witnesses. These grounds have no merit and the contention of the appellant that he was not given time to consult another solicitor is unfounded.

I consider the other remaining grounds to be frivolous and cannot be given any credence. This appeal is set aside with costs.

I have gone through the judgment and the Learned magistrate cannot be faulted.

Signed, dated and delivered at Ile du Port on 12th September 2018.

S Nunkoo
Judge of the Supreme Court