

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable / Redact
[2020] SCSC 115
CS 47/2018

In the matter between:

ABDOULAZIZE M TOURE
(rep. by Joel Camille)

Plaintiff

and

GOVERNMENT OF SEYCHELLES
(rep. by Ms Benoiton)

Defendant

Neutral Citation: *Toure Abdoulazize M v Government of Seychelles* (CS 47/2018) [2020] SCSC 115 (14th February 2020).

Before: Andre J

Summary: Faute – Claim for damages – Article 1382 (2) and (3) of the Civil Code (Cap 33)

Heard: 27 November 2020

Delivered: 14 February 2020

ORDER

The following Order is made:

The Plaintiff is granted and damages awarded with cost to be paid by the defendant.

JUDGMENT

ANDRE J

Introduction

[1] This Judgment arises out of a Plaintiff filed by Abdoulazize M. Toure (“Plaintiff”) on the 11 April 2018, wherein he claims for damages against the Seychelles Police through the Government of Seychelles (“defendant”). The Plaintiff seeks damages resulting from an alleged unlawful assault and detention by police and damages resulting from the failure

of the police to take necessary action to protect the Plaintiff from harassment by his wife from whom he is separated.

- [2] The defendant has admitted that the Plaintiff was assaulted by the police, but challenges the quantum of damages arising. The defendant further denies that the police committed a *faute* by failing to act in relation to the Plaintiff's complaint of harassment, and hence denies the Plaintiff's request for damages in relation to that claim.

Plaint

- [3] The Plaintiff alleges in a gist the particulars in relation to the claim as follows.
- [4] Regarding the assault, which occurred on 30 October 2017, for the most part, the facts, which are set out below are uncontested.
- [5] The Plaintiff also refers to the numerous complaints made by the Plaintiff to the police regarding harassment by his wife. Despite obtaining court orders (dated 26 May 2017 and 11 October 2017), it is averred that the police failed to act on the orders of the Family Tribunal, or to assist the Plaintiff otherwise. As a result of persistent harassment by his wife and the failure of the police to take necessary action, his contract of employment was terminated in 2017 and the Plaintiff remains unemployed.
- [6] The Plaintiff further thus seeks damages for pain and suffering and loss and damage suffered as a result of the *faute* of the defendant. In particular, unlawful assault by the police Seychelles Rupees One Hundred Thousand (S.R.100,000/-), pain and suffering Seychelles Rupees Fifty Thousand (S.R. 50,000/-); deprivation of liberty Seychelles Rupees Fifty Thousand (S.R. 50,000/-); loss of job on a two years contract (monthly salary (S.R. 10,000 x 24 months) Seychelles Rupees Two Hundred and Forty Thousand (S.R.240,000/-); and moral damages for inconvenience, anxiety and distress at Seychelles Rupees Fifty Thousand (S.R.50,000/-).
- [7] The total claim is of Seychelles Rupees Four Hundred and Ninety Thousand (S.R. 490,000/-), albeit the Court noting that the total in the Plaintiff is incorrectly calculated.

Defence

- [8] The defendant admits that the Plaintiff was assaulted by the police and notes that the police officer involved was disciplined under the Police Force Act. However, the defendant denies that the Plaintiff lost his job as a result of the police's inaction in respect of the harassment. The defence avers that the order of the Family Court of 23 October

2017 was not a directive for the police to take action, but rather an order directed at the Plaintiff's wife.

- [9] Accordingly, the defence admits that the Plaintiff has suffered as a result of the unlawful assault by the police and that he is entitled to damages for this, though it submits that the amount of damages sought is too high. The defence denies the remaining request for damages.

Evidence

Plaintiff's case

- [10] The Plaintiff testified that he was originally from Mali, but had lived in Seychelles for close to six (6) years arriving in April 2013. He is married to a Seychellois, but they have since separated.
- [11] The Plaintiff's version of the events, was that, regarding the events of 30 October 2017 on the day of the assault, he had been in the Family Court in Victoria regarding the custody of his daughter. When he was finished, he received a call from the Police to report to the Central Police Station. He went to the Police Station, where he was told that his wife had filed a complaint of harassment against him. He was told he was to be put in the cell. When he asked what she said about him, the police said that he had threatened her. He tried to explain to the police that he had not threatened his wife and that she was in fact threatening him, and to show them the paperwork he had in his hands from the Court to support. The police then called his wife to come to the station. When she arrived, she spoke only in Creole to the police, after which the police handcuffed him and started beating him until he passed out briefly. He woke up in the police cell and had trouble standing up. He was detained until the following day, so for around twenty-four (24) hours. After being released, he went home. After, he went back to the police station to report the matter, where he was directed to Internal Affairs and, where he was told to get a doctor's report. At the hospital, he was admitted for about seven (7) days and was discharged with a collar to wear around his neck. The Plaintiff noted that he was charged for the hospital care received. The bill remains outstanding, at Seychelles Rupees Eleven Thousand (S.R. 11,000/-) plus.
- [12] The Plaintiff also explained what happened after the incident and his hospitalization. Internal Affairs eventually carried out an investigation, for which the Plaintiff was a witness as per the report (Exhibit P1). The Plaintiff later, through his lawyer, filed a complaint with the police commissioner and requested damages for the assault. The claim he made to the police has not been settled. The letter of demand is admitted as (Exhibit P4).

- [13] In relation to the alleged harassment, the Plaintiff explained that the problems with his wife started after they separated in 2017. He moved to Praslin 'for safety' where he gained employment at the Oasis Hotel. The child of the marriage, a daughter, lived with him while they were awaiting the decision of the Family Tribunal as to custody. He testified that his wife then started threatening him every day, calling the hotel daily. The problem was reported to the police. After making several complaints to the Police on Praslin, the Plaintiff was told by the Police to file a criminal case against his wife. He filed a case for breach of the peace. The application was admitted as (Exhibit P3). However, the Court returned the case and told him to proceed to the Police for action. The Plaintiff eventually obtained an order against his wife from the Family Tribunal, (Exhibit P2).
- [14] Upon cross-examination, the Plaintiff confirmed that he lost his job on 10 October 2017. The letter from his employer apparently gave him one month from 14 September 2017 to sort out the issue with the Authorities. He testified that the contract was terminated because of the continued harassment by his wife. His employer wrote him a letter saying that if the police cannot sort out the problem of his wife's harassment, he would have to go. He brought this letter to the police, however they provided no assistance. When he went the second time, his wife came to the station and he explained that: 'she swears [at] them that she will continue, nothing will stop her, and then she walked out from the meeting in presence of top officers'. He noted that he has not applied for another job because he was on a gainful occupation permit (GOP).
- [15] The Plaintiff explained that he considers that the police failed in their duties, because he 'reported the same issue severally by phone, by going in Police in person, writing statement upon statements. They didn't, not even one day call this lady and ... give a warning' [sic]. He says that even after he went to court in May 2017, the police did not act. He said that he pleaded with them that they must do something to prevent him from losing his job so that he can continue looking after his child. The police at that point called the wife. He says that she swore at the officer and said that she will continue doing it. He said that the CCTV footage at the police station would attest to this. He said that the police laughed at him.
- [16] Counsel for the defence referred to the order from the Family Tribunal. The Plaintiff explained that he got a Court order first in May 2017. The application stated on the back to take it to the police for action. He took it to the police in Mahe and on Praslin several times. They did not do anything. The second-Order, issued by the Mahe Family Tribunal, stated that she should not harass him or his family members. He took this order too to the police, but they did not do anything. When he went back to the Family Tribunal to raise this problem, they printed him a new copy of the order to bring to the police.
- [17] Counsel for the Defence noted that the order was not directed at the police but directed towards the wife not to use any violence, verbal or otherwise against the Plaintiff. He went to the Tribunal in person to raise the fact that his wife was not complying with the order 'severally', but he says that they said to go the police.

- [18] Counsel asked about his injuries. The Plaintiff said that the main problem was dizziness after the assault. He waited a couple of days before going back to the police station to complain about the assault as he thought it would go away.
- [19] The second witness called for the Plaintiff was Dr. Joshua Gopal. The doctor explained the findings in the report he prepared regarding the Plaintiff's injuries (Exhibit P5). The report confirms that the Plaintiff reported to the hospital on 3 November 2017 complaining of persistent dizziness and shock-like sensation at the occipital area down to the neck area associated with minimal pain when moving the neck arising from a head injury on 30 October 2017. The doctor undertook various tests, which returned positive results. The Plaintiff was admitted to the D'Offay ward for continuous observation and for a CT scan. The scan showed mild cervical spondylitis and C4 and C5 disc protrusions though no nerve root impingement. He was seen by a physio that advised physiotherapy and to wear a collar. An x-ray confirmed the cervical spondylitis and bifida occulta of C7. The report confirms that the Plaintiff was discharged on 10 November 2017. Dr. Gopal confirmed that the dizziness could have been caused by the injuries he sustained. Cervical spondylitis is however a degenerative condition affecting the spine which occurs over time that is to say that he may already have had the condition prior to the assault. Dr. Gopal confirmed however that 'it can definitely be aggravated by injuries'. He noted that the C4 and C5 protrusions, also degenerative, could also be aggravated by the incident.
- [20] Under cross-examination, the doctor confirmed that while you might expect to see bruising from an assault, he sees many cases where there are no external injuries. He confirmed that he could not be certain that it was the incident that aggravated the problems experienced by the Plaintiff. The doctor said the injuries were not grievous.

Defendant's case

- [21] The defence did not call any witnesses.

Legal issues and findings

- [22] The issues that arise from this case are the following: (1) have the Defendants in their acts committed a delict by (a) assaulting the Plaintiff and (b) failing to protect the Plaintiff from continued harassment; and, (2) if they did commit a *faute*, did this cause harm to the Plaintiff; and (3), if the *faute* caused harm, are damages payable to the Plaintiff and if so what is the quantum of such damage.

Has the defendant committed a delict (a *faute*)?

- [23] Article 1382 (2) of the Civil Code describes fault as"

"...an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused..."

[24] Article 1382 (3) provides that:

“Fault may also consist of an act or an omission the dominant purpose of which is to cause harm to another even if it appears to have been done in the exercise of a legitimate interest”.

[25] In relation to the assault, the defence did not contest that the police assaulted the Plaintiff. The report of the investigation undertaken: *Commissioner of Police v CPL Judhar Hasman*, (Exhibit P1), was presented as evidence to the Court. The report is unfortunately missing at least one page (the pages are not paginated). Nevertheless, the report indicates that the CCTV footage shows that Mr Toure was handcuffed and assaulted four or so times on his body and detained in the cell. He was released the next day. The report concludes that the prosecution proved beyond a reasonable doubt that the police (count 1) ‘used unnecessary violence on Mr. Abdulazize Toure by whom he brought into contact with him whilst in the execution of his duty that is to say assaulted the same’. records that the officer pleaded not guilty and said that he used ‘minimum force’ to calm down the Plaintiff who he said became violent when police attempted to arrest him. The Plaintiff denied this, and said that they never informed him properly as to why he was being arrested.

[26] Having carefully reviewed the testimonial and documentary evidence presented, the Court finds that the Plaintiff was assaulted by a police officer inside the police station. This was the finding of the investigation undertaken by Internal Affairs. The Court finds that the Plaintiff was handcuffed and hit around the neck area four times. He lost consciousness briefly, and regained consciousness in a police cell. The Court thus finds that the defendant has committed a *faute* in relation to the assault of the Plaintiff.

[27] The Court also finds that the police failed to take appropriate action, being action they ought to have taken in the circumstances, in respect of the Plaintiff’s harassment by his wife. The Court makes the following findings on the basis of the evidence presented to the Court:

- (a) The Plaintiff complained about the harassment to the police by phone and in-person several times, in response to which the police took no action.
- (b) The Plaintiff made a comPlaint dated 11 May 2017 seeking a summons to be served on the defendant (his wife) under section 31 of the Criminal Procedure Code to show cause why she should not enter a bond to keep the peace. By letter dated 11 October 2017, the Assistant Registrar informed the Plaintiff that the comPlaint was unfit for breach of the peace and to take the matter up with the police.
- (c) The Plaintiff obtained an Order from the Family Tribunal on 23 October 2017 that the wife is prohibited from using ‘any violence verbal or otherwise’ against the Plaintiff or any member of the household. The Plaintiff presented this order to the police and requested assistance, which was never provided.

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- (d) The Plaintiff returned to the Family Tribunal in person to request assistance with respect to enforcing the order. The Tribunal staff printed further copies of order and told the Plaintiff to seek the assistance of the police by showing order to the police.
 - (e) The Plaintiff received a letter from his employer stipulating that he would lose his job if the harassment did not stop within one month. The Plaintiff informed the police of this and requested assistance. The police did not assist the Plaintiff.

[28] The above findings are primarily based on the testimonial and documentary evidence provided by the Plaintiff. However, the defence did not expressly dispute the submissions by the Plaintiff regarding his efforts to obtain the assistance of the police. The defence puts the Plaintiff to strict proof regarding the Plaintiff's allegation that he lost his job as a result of the police's inaction. The gist of the defence's argument in this respect, however, was that the Plaintiff's loss of employment was not due to the inaction of the police. The defence did not therefore expressly dispute the fact that the police did not in fact take any action in respect of the complaints and the tribunal order. Consistent with this, the defence has presented no evidence to show that the police took any action to prevent the wife from harassing the Plaintiff. It appears that when the police called the wife into the station, the police did not issue her a warning or caution. No records were presented to the Court to show that the police ever issued the wife with a warning or a caution, or undertook any other action to enforce the order of the Tribunal.

[29] The Court accordingly finds that the defendant has committed a *faute* by omission. This finding is consistent with international human rights jurisprudence that the police have positive obligations in certain circumstances to take action to protect members of the public. This is not a human rights case, but it highlights an increasing recognition that the police have obligations that they must discharge. The police in this case have not discharged their obligations and have committed a *faute* as a result. In coming to this conclusion, the Court wishes to note that – while it is less common for the Court to be confronted with a case of harassment in which the perpetrator is the female partner – the principles are the same regardless of gender. Those who are victims of harassment are entitled to assistance from the police, though what this requires of the police will greatly depend on the circumstances of the case.

Did the *faute* cause harm to the Plaintiff?

[30] It is clear that the *faute* has caused harm to the Plaintiff.

[31] Firstly, in relation to the assault, while Dr. Gopal could not confirm that the injuries to the Plaintiff's spine (mild cervical spondylitis, C4 and C5 disc protrusions, and bifida occulta of C7) were caused by the assault, he noted that such an assault could aggravate existing spinal problems and be the cause of the dizziness sensation experienced by the Plaintiff. The Court does not consider the lack of bruising or the delay in seeking medical

attention to indicate that the Plaintiff did not sustain injuries from the assault. The medical report records that the Plaintiff does not drink or smoke and it appears that he was otherwise perfectly healthy. The Court accordingly finds that, on the balance of probabilities, the dizziness experienced by the Plaintiff resulted from an injury to the Plaintiff's neck which was caused by the assault.

- [32] The assault was not of such a serious nature to be described as 'grievous' (as noted by Dr. Gopal). Furthermore, the week in the hospital was for observational purposes given the dizziness and shock-like sensation experienced by the Plaintiff – so out of caution. That being said, the harm caused by an assault carried out by a police officer is not the same as an assault carried out by a general member of the public. The police are in a position of authority and are charged with protecting the public. The harm caused by an assault by an officer thus extends beyond just the physical harm, and includes a loss of trust in the very institution that is charged with protecting the public. It also engenders a sense of fear that may prevent the Plaintiff from seeking assistance in the future.
- [33] Secondly, the failure to assist the Plaintiff in respect of the harassment has caused the Plaintiff harm. The Plaintiff explained in testimonial evidence the harm that the police's inaction has caused him. His daughter is 3 years old and is in his custody. When he lost his job, he had no way to provide for himself and his daughter. He was receiving a salary of Seychelles Rupees Ten Thousand (S.R. 10,000/-) as a security officer at the Hotel. His contract was for 2 years, of which he only worked 6 months. His right to work was tied to the contract, thus he was not able to find another job easily.
- [34] The Court has found that the Plaintiff lost his job as a result of the harassment by his wife. The Court thus finds that the fault of the police in not acting to address the harassment contributed to the Plaintiff losing his job. That is to say, the Court does not consider that the failure on the part of the police entirely caused the harm suffered by the Plaintiff in this regard. Any efforts certainly would have helped, for instance - the Plaintiff could have shown his employer that the police were taking action to remedy the situation, which the Court finds would likely have helped him to retain his job. The Court accordingly finds that the defendant contributed to his loss of employment, and are liable for 50 per cent of the harm that resulted.

Are damages payable to the Plaintiff and what is the quantum of damages to be awarded?

- [35] The Plaintiff seeks Seychelles Rupees One Hundred Thousand (S.R. 100,000/-) for the unlawful assault. The Plaintiff also seeks Seychelles Rupees Fifty Thousand (S.R. 50,000/-) for pain and suffering, Seychelles Rupees Fifty Thousand (S.R. 50,000/-) for deprivation of liberty; and Seychelles Rupees Fifty Thousand (S.R. 50,000/-) for inconvenience, anxiety and distress. In addition, he seeks damages of Seychelles Rupees Two Hundred and Forty Thousand (S.R. 240,000/-) for the loss of his job, which was on a 2 years contract (monthly salary S.R.10,000 x 24 months). The total sought is therefore Seychelles Rupees Four Hundred and Ninety Thousand (S.R. RS490,000/-).

- [36] Article 1149(2) stipulates that damages are recoverable ‘for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss of any of the amenities of life.’
- [37] Determining the appropriate quantum of damages in a case requires taking into account all of the circumstances. Damages, including moral damages, claimed under article 1149 of the Civil Code are compensatory (***Belize v Nicette (2001) SLR 264***). Whether the rights of an aggrieved party are infringed deliberately, negligently, inadvertently, or mistakenly is immaterial (citing ***Symphorien Lucas v Clement Delpech (1981) SLR 85***).
- [38] Regarding the assault, the Plaintiff has sought Seychelles Rupees One Hundred Thousand (S.R. 100,000/-). Given the separate request for moral damages for the assault, the Court understands that this is for the medical bill and other pecuniary expenses occasioned as a result of the assault. The Plaintiff gave evidence that he has received a bill from the hospital for Seychelles Rupees Eleven Thousand (‘S.R. SR11,000/- plus’). He was admitted to hospital for a week for observation, but he was out of work so he cannot claim for lost earnings. The Court is satisfied that he should be granted Seychelles Rupees Twelve Thousand and Five Hundred (S.R. 12,500/-) to cover his medical expenses incurred as a result of the assault.
- [39] The Plaintiff has also requested Seychelles Rupees Fifty Thousand (S.R. 50,000/-) for pain and suffering, and Seychelles Rupees Fifty Thousand (S.R. 50,000/-) for deprivation of liberty. He also seeks Seychelles Rupees Fifty Thousand (S.R. 50,000/-) in moral damages for inconvenience, anxiety and distress. This is taken together as a claim for Seychelles Rupees One Hundred and Fifty Thousand (S.R. 150,000/-) for moral damages.
- [40] In (***Denis v Ryland & Ors 2016 CS 135/2012 [2016] SCSC 10***), Twomey CJ noted that: ‘moral damages is a term used to cover damage that is neither material nor corporeal. It is something intangible as in the case of suffering’. In the case of (***Michel & Ors v Talma & Anor (2012) SLR 95***), the Court of Appeal held that:
- “The Court of Appeal in Cable and Wireless v Michel (SLR 1966 253) referring to Planiol and Ripert make the case that where a right has been violated, compensation can be awarded for moral damages even in the absence of a claim for material damages. These rights can be patrimonial or extra patrimonial as in this case. We agree that it is difficult to assess moral damages but the exercise must still be carried out and the Plaintiff is entitled to them. There has however never been a method established in Seychelles to assess moral damages. No method of assessment is set out either in the Constitution or in the Civil Procedure Code”.*
- [41] There are no clear guidelines for the award of moral damages. Each case must be assessed on its facts. This Court has surveyed recent jurisprudence, however, to assess what is appropriate in this case, including those referred to in the submissions of defence

counsel. Special attention has been paid to the case of *(Denis v Ryland & Ors)* cited above. In that case, which also concerned an assault by a police officer of a member of the public, CJ Twomey awarded Seychelles Rupees Ninety Five Thousand (SCR95,000/-) in total for moral damages, comprising moral damages for pain and suffering - Seychelles Rupees Thirty Thousand (SR30,000/-); humiliation, distress and mental anguish - Seychelles Rupees Twenty Thousand (SR20,000/-); loss of liberty for 24 hours Seychelles Rupees Thirty Thousand (SR30,000/-); and embarrassment and anxiety Seychelles Rupees Fifteen Thousand (SR15,000/-). This case is the most recent of the personal injury cases arising from a police assault referred to the Court by the defence. It is also particularly apposite on the facts. The assault in that case resulted in impaired sensation in the individual's thumb and index finger, and weakness in the movement of his fingers and in gripping objects. He had to undergo physiotherapy and made a good recovery but there was some residual numbness and mild pain when lifting heavy objects. The injury was thus roughly similar in terms of seriousness than the injury sustained in this case. The Court accordingly grants the Plaintiff Seychelles Rupees One Hundred and Ten Thousand SCR110,000 for moral damages. This takes into account that this case is later than *Rylands*, during which time the cost of living has increased.

[42] Finally, the Plaintiff has sought Seychelles Rupees Two Hundred and Forty Thousand (SR240,000/-) for the loss of his job, calculated at the rate of his salary for 24 months at Seychelles Rupees Ten Thousand (SR10,000/-) per month. This relates to the failure on the part of the police to take action to assist or protect the Plaintiff in respect to his wife's harassment. Having found that the police have committed a *faute* in this respect, it follows that the Plaintiff is entitled to damages for this. The Plaintiff gave evidence that he was 6 months into his contract therefore the amount claimed should be for 18 months of his salary, not 24 months as requested. This amounts to Seychelles Rupees One Hundred and Eighty Thousand (SR180,000/-). In light of the finding above regarding the extent to which the police are responsible for the harm suffered by the Plaintiff, the Court grants the Plaintiff Seychelles Rupees Ninety Thousand (SR90,000/-) in damages for loss of earnings.

Conclusion

[43] The Court accordingly grants:

- (a) Seychelles Rupees Twelve Thousand and Five Hundred (SR12,500/-) for unlawful assault (medical expenses);
- (b) Seychelles Rupees One Hundred and Ten Thousand (S.R.110,000/-) for moral damages (for pain and suffering, deprivation of liberty, and inconvenience, anxiety and distress); and

- (c) Seychelles Rupees Ninety Thousand (SR90,000/-) in damages for loss of earnings.
- (d) A total amount of Seychelles Rupees Two Hundred and Twelve Thousand and Five Hundred (S.R. 212,500/-) is thus awarded to the Plaintiff as damages. Seychelles Rupees
- (d) Costs of the suit to be paid by the Defendant.

Signed, dated and delivered at Ile du Port on the 14 February 2020.

ANDRE J