

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ...
Arising in CS 8/2021

In the matter between:

DELCIANNE CUSHION
(rep. by Karen Domingue)

Plaintiff

and

THE COMMISSIONER OF POLICE

Defendant

Represented by the Attorney General
(rep. by Cythra Morel)

Neutral Citation: *Cushion v Commissioner of Police* (CS 8/2021) [2021] SCSC
(19th November 2021).

Before: Pillay J

Summary: Unlawful Detention

Heard: 26th July 2021 and 2nd August 2021

Delivered: 19th November 2021

ORDER

Judgment is entered in favour of the Plaintiff and she is awarded the sum of SCR 60,000.00 with costs.

JUDGMENT

PILLAY J

[1] The Plaintiff seeks a judgment from the Court finding that the Defendant unlawfully detained the Plaintiff from 27th January 2018 to 29th January 2018 and ordering the Defendant to pay the Plaintiff the sum of SCR 850, 000 for her unlawful detention.

[2] The Plaintiff claims as follows:

3. *On the 27th January 2018 at approximately 3.30pm the Plaintiff was arrested at her home in Roche Caiman and brought to the Central Police Station then to the Perseverance Police Station where she was detained until the 29th January 2018 up to 12:00 noon.*
4. *At the time of the Plaintiff's arrest and before giving a statement under caution the Defendant failed to inform the Plaintiff of her constitutional rights and/or to caution her.*
5. *The Plaintiff avers that at the time of her arrest, among the 3 police officers who came to arrest her, 2 male police officers who were outside the Plaintiff's home, made derogatory comments about her in the presence of her neighbours, namely by stating that the Plaintiff "pe fer en bann kouyon" insinuating that the Plaintiff was dabbling in a lot of illegal activities.*
6. *The Plaintiff is diabetic and as a result of her unlawful detention the Plaintiff's sugar level was de-stabilised for several months.*
7. *Upon her release from police custody the Plaintiff was issued with a bond to return to the police station on the 1st February 2018 which the Plaintiff complied with.*
8. *Upon the Plaintiff's attendance to the bond she was informed by the Defendant that no charge would be laid against her and to date the Plaintiff has not been charged with any criminal offence.*
9. *In addition to the above the Defendant seized the Plaintiff's mobile phone and only returned it to the Plaintiff on the 14th February 2018, after she had made several requests to the Defendant for its return.*
10. *Despite repeated requests to the Defendant to initiate an investigation in the Plaintiff's unlawful detention and compensation for such unlawful acts*

the Defendant had failed, refused and ignored to acknowledge the Plaintiff's requests.

11. *As a result of the matters aforesaid the Plaintiff has suffered loss and damages as outlined below:*

PARTICULARS OF LOSS AND DAMAGES

- | | |
|---|--------------------|
| <i>a. Unlawful detention for 2 days and nights</i> | <i>SR 500, 000</i> |
| <i>b. Moral damages for humiliation, embarrassment, stress and distress to the Plaintiff in society and her workplace</i> | <i>SR 250, 000</i> |
| <i>c. Distress causing the Plaintiff's medical condition to deteriorate and causing the Plaintiff and her family to incur unnecessary expenses.</i> | <i>SR 100, 000</i> |

[3] The Defendant denied that the Plaintiff's claims and in answer stated that the Plaintiff was arrested at 4pm on 27th January 2018 and released on 29th January 2018 at 905am. According to the Defendant the Plaintiff was made aware of her constitutional rights upon arrest in addition to being cautioned before giving her statement. The Defendant's position is that the detention of the Plaintiff was lawful.

[4] The Plaintiff testified that she is a 56 year old teacher by profession and lives at Roche Caiman. She was arrested at home on Saturday 27th January 2018 by Police Officers. She was taken to Central Police Station where she was eventually seen by officer Solin who asked her about someone bringing money to her or collecting money from her. She was then informed that she would be detained at Perseverance. They then took her back home to pick up somethings as well as a change of clothes to go to Court on the money before taking her to Perseverance. She could not sleep that night and cried a lot. At some point one of the officer called Mr. Gabriel in spite of telling her she had no right to call her family or a lawyer and he came to see her on the Sunday afternoon. She was traumatized and is frightened all the time. She went to see the Commissioner to explain what had

happened and told him she wanted to file a case. She went to see counsel who wrote a letter to the Defendant on 10th August 2020 followed by a reminder.

[5] Annicka Albert testified that she is the daughter of the Plaintiff. She found out her mother had been arrested from a neighbour when she called the neighbour to check on her mother as her mother had not answered her phone a number of times. The next day she took a flight from Praslin and went to the Perseverance Police Station but she was not allowed to see her mother. The Monday she started calling the Police Station from around 830am to 10130am.

[6] WPC Solin testified that she is a Corporal in the Police Force. She was working on 27th January 2018. A report was made by a woman that one Stephan Rosalie had taken money from her. An investigation started and Stephan Rosalie was arrested. From information gathered from Rosalie one Samuel Philoe was arrested who in turn informed Police that the money he collected he brought to one Wayne Albert, a convict, amongst others. Samuel Philoe also on being questioned informed Police that he had collected money from Wayne Albert's mother at Roche Caiman. When Police confirmed that Wayne Albert was a convict and his mother is Delcianne Cushion a team was sent to arrest Delcianne Cushion on a Saturday afternoon. Delcianne Cushion was brought down to the CID office. Corporal Magdaleine Volcere explained to Ms Cushion the reason why she had been brought down to the station. Ms. Cushion agreed to give a statement under caution. She was then placed in a cell at Perseverance. The following day a visit was effected to Montagne Posee prison to interview the main suspects in the case. The Police officers were informed they would not be granted access to the two main suspects whereupon they contacted the officer at the Attorney General's chambers and they were advised that they would not be able to bring the Plaintiff to Court without the two main suspects. The police officers then interviewed the other people involved in the matter and the next day all were released including the Plaintiff.

[7] The Defendant identified the issues before the Court as follows:

- (1) *Whether the Defendant has committed a fault in law?*
- (2) *Whether the fault has caused harm to the Plaintiff?*

(3) Whether the Defendant owe any damages to the Plaintiff?

- [8] On the first issue she identified, learned counsel for the Defendant submitted that the evidence clearly showed that it was explained to the Plaintiff that she was brought to the station because her name came up in an ongoing investigation. Learned counsel further submitted that the conflicting statements given to the Police raised a reasonable doubt in the minds of the police officers a result of which the Plaintiff was informed that she would be detained for further investigation.
- [9] Learned counsel for the Defendant relied on section 100 of the Criminal Procedure Code as well as Article 18 (2) (b) of the Constitution of Seychelles to support the defence's position that the Plaintiff was arrested because there was an ongoing investigation and her detention was lawful in view of the fact that it was the weekend and no court was available.
- [10] Learned counsel relied on the cases of **Madeleine v The National Drugs Agency (2017)**, **Pothin v Both (2015)**, **Nourrice v The Government of Seychelles and Ors(2013)**.
- [11] In terms of the second issue she identified Learned counsel for the Defendant submitted that the Plaintiff has failed to establish that a clear causal connection between the detention and the alleged destabilization of sugar level the Plaintiff having failed to bring any proof that since her detention her sugar level had destabilized.
- [12] On the issue of damages it was Learned counsel's submission that the Defendant is not liable for any sum and if liable the sum claimed is grossly exaggerated. Learned counsel referred to the recent case of **Madeleine v Land Marine Ltd (2021)** where the Court awarded SCR 100, 000 for moral damages as well as a number of other cases showing the Court's very conservative awards in cases of unlawful detention. She went on to distinguish the case of **Toure v Government of Seychelles (2020)** where in the Plaintiff was awarded the sum of SCR 425, 000.
- [13] In order to secure a judgment in her favour the Plaintiff has to prove on a balance of probabilities that she was detained unlawfully in the custody of the Defendant from 3pm on 27th January 2018 to noon on 29th January 2018. Furthermore in order for the detention

to be unlawful there must have been an arrest which was unlawful to start with or which was lawful at the time the arrest was made but became unlawful at some point after that.

[14] This position is supported by the case of **Canaya v Government of Seychelles (CS 42/1999) [2000] SCSC 8 (03 July 2000)** wherein the Court found that though

“The plaintiff was not, according to the evidence in the case, arrested without cause, on a speculative impulse. Hence although his detention for over 24 hours without being produced in court was unlawful, his initial arrest was lawful. Therefore he is entitled to damages under the head of illegal detention.”

[15] To the first issue then; was the detention lawful?

[16] The Plaintiff in evidence stated that she was told by the police officers who came to her house that she was needed at the station. She did not hesitate and accepted. She proceeded to the station with the officers where she waited another 2 hours before Corporal Solin came to speak to her. According to WPC Solin “another team went to arrest the mother Delcianne Cushion”. She met the Plaintiff at the Central Police Station. Her colleague Corporal Volcere explained to the Plaintiff that her name came up in a case of money. The Plaintiff was cautioned and a statement under caution was recorded. When the officers looked at what the Plaintiff had said they “noticed something was not right. And [she] was informed that she will be detained for [the Police] to continue ... investigation.” The Plaintiff was then detained as there was no available Court.

[17] Section 100 of the Criminal Procedure Code (CPC) provides in part that:

100. (1) *Subject to this section, a person who is arrested without a warrant or detained pursuant to a written law which does not provide otherwise (in this section referred to as the “suspect”) shall be released within 24 hours of the arrest or detention unless-*

- (a) *the suspect is produced before a court and the court has ordered that the suspect be remanded in custody;*
- or
- (b) *the police officer who is in charge of the police station at which the suspect is held or,*

where the
at a police
person holding the
believing that-

suspect is being held otherwise than
station, the police officer or other
suspect has reasonable ground for

suspect
relating to an
under arrest
evidence by

(i) it is necessary to continue holding the
to secure or preserve evidence
offence for which the suspect is
or detention or to obtain the
questioning the suspect; and

offence, and

(ii) an offence for which the suspect is under
arrest or detention is a serious

where
court, the
magistrate or
suspect before
the

it is not reasonably practicable, having
regard to the distance from the place
the suspect is held to the nearest
non-availability of a judge or
force majeure, to produce the
a court not later than 24 hours after
arrest or detention of the suspect.

(2) Where a suspect is held under subsection 1(b)-

suspect
station,
who is holding the
after the expiry
or detention of
more than 24 hours
the conditions specified
being satisfied for the
whether to continue holding

(a) the police officer in charge of the police station at
which the suspect is being held or, where the
is being held at a place other than a police
the police officer or other person
suspect shall not more than 24 hours
of the first 24 hours after the arrest
the suspect and thereafter not
after the last review review if
in the subsection are still
purpose of determining
the suspect; and

reasonably

(b) the suspect shall, unless released earlier, be
produced before a court as soon as is
practicable.

.....

- [18] In the case of **Aglae v Attorney General (278 of 2009) [2010] SCSC 94 (29 September 2010)** per N'tende CJ "The police must understand that there must be sufficient justification before a person can lose his liberty at their hands."
- [19] The arrest not being in issue I do not see the necessity to consider it.
- [20] The evidence shows that the Plaintiff was cautioned on Saturday at 1734 hours and thereafter police officers decided that she should be detained as they thought "something was not right" after she gave her statement and she was so informed which evidence I accept.
- [21] According to WPC Solin therefore, having been arrested on a Saturday and there being no Courts available during the weekend the Plaintiff had to be held up to Monday morning at 8am when the Courts reopened. In terms of section 100 of the CPC, this detention was however subject to review by the police officer in charge of the station where the suspect was being held or by the officer holding the suspect if the suspect was being held at any place which was not a police station.
- [22] The evidence shows that the Plaintiff was held at the Perseverance Police Station. That being so, the officer in charge of the station was obliged to review the detention of the suspect, the Plaintiff, every 24 hours in order to determine if the continued detention was warranted or not. The need for the officer in charge of the Police Station where the suspect is held or for the person holding the suspect to make a determination suggests at the very least that the basis for the detention should have been looked at again and ended with a conclusion that the continued detention was necessary or not pursuant to section 100 (1) (b). By way of the nature of the duties imposed on the officers this review could not have been done verbally without any written record. There should have been something in the station records to show that the said review was done of which there was no proof.
- [23] It is noted that, as per the evidence of WPC Solin, a visit was conducted by the Police to Montagne Posee prison to interview the main suspects in the case around 4pm on Sunday. According to her evidence the Police could not gain access to the Prison and the

decision was taken to terminate the investigation. Furthermore the statement under caution that was taken from the Plaintiff shows that she was interviewed at the Central Police Station on 27th January 20018 at 17:34 hours. That was the Saturday soon after the Plaintiff's arrest. Having already interviewed the Plaintiff and by Sunday afternoon having failed to secure an interview with the main suspects at the Montagne Posee prison there was no necessity to hold the Plaintiff any longer. Had the provisions of section 100 (1) (b) above been followed and the review done at 17:34 hours, at the very least, the Plaintiff would have been released and bonded which was exactly the course of action followed the next day.

[24] It is further noted that in cross examination WPC Solin accepted that the diary at Perseverance showed that the Plaintiff had been released at 0905 hours though she then explained that the release had been done at the Central Police Station. The Plaintiff's daughter estimated the time of release to be after 1030am as she had been calling the Police station at Perseverance since between 8.30am to 10.30am. With the evidence that the Plaintiff's phone had been taken for the purposes of extraction of information I accept the evidence of WPC Solin that the time of release was indeed around 9am. The Plaintiff then attempted to retrieve her phone which took time but she was not in custody during that time.

[25] In view of section 100 of the Criminal Procedure Code, I find that the detention was lawful from Saturday 27th January at 1734 hours to Sunday 28th at 1734 hours. However from Sunday 1734 hours when that review should have been done in accordance with section 100 (1) (b) and wasn't done, the detention became unlawful.

[26] What damages are appropriate in the circumstances? I agree with Learned counsel for the Defendant that there is no evidence that the stress of her detention caused the Plaintiff's medical condition to deteriorate as it was the Plaintiff's own evidence that throughout her illness, way before this incident happened, she was being counselled on how to handle her illness by the nurse at the Ministry of Health. Furthermore her explanation for her sugar level going up came from google rather than her nurse or doctor. Nor is there any

evidence on record of any new medication, hospitalisations or procedures being done or having to be done as a result of her detention.

[27] I accept that she was distressed and embarrassed however her actions of sending money and accepting calls from her son, on different numbers, whom she knew was a convict and should not be having access to a mobile phone while in prison, by her own admission resulted in the situation she found herself in.

[28] In the case of **Savy v Attorney-General (CS 371/2008) [2010] SCSC 73 (19 March 2010)** the Court accepted that the Plaintiff had been unlawfully detained and awarded the sum of SCR 25, 000 as damages globally. In coming to that conclusion the Court considered the decisions in the cases of **Gerard Canaya v Government of Seychelles (2000) SLR 143** where the Court, awarded R5000 for an unlawful arrest and detention for 18 hours. The Court also considered the Constitutional Court case of **Noella Lajoie v Government of Seychelles Constitutional 1/1999 (unreported)** where an award of R5000 was made in similar circumstances. In the case of **Paul Evenor v Government of Seychelles (2001) SLR 147** the Court awarded R 20,000 as moral damages for fear and emotional stress while the plaintiff was detained at the Police Army Camp, and for loss of civil rights of personality. In awarding SCR 25, 000 in **Savy** the Court noted that those awards were made 10 years before and considered the cost of living index which prevailed then in Seychelles.

[29] On consideration of the above I find that the continued detention of the Plaintiff from 28th January 2018 17:34 hours to Monday 29th January 2018 at 0905 hours was unlawful and find the sum of SCR 60, 000.00 appropriate.

[30] In the circumstances I enter judgment in favour of the Plaintiff and award her the sum of SCR 60, 000.00 with costs.

[31] Before I take leave of this matter I would like to address the misconception by Police as came up in this case that a person can be held more than 24 hours when “it [is] a weekend, [as] there is no Court House...”

- [32] I have to say that I agree with Twomey CJ in the case of **Pothin v Both and Anor [2016] SCSC 899 (17th November 2016)**, “... it [is not] illegal for police to arrest persons in the course of investigation...”
- [33] However in as much as it is not illegal for the Police to arrests persons in the course of their investigations it is my view that the habit of investigating officers to detain suspects over a weekend or rush to court to seek a remand order under section 101 of the Criminal Procedure Code needs to be reviewed. Detaining the Plaintiff over the weekend for the purpose of bringing her to court on the Monday on a 101 application for an alleged offence of obtaining money by false pretences when the main suspects are already convicts and imprisoned, an offence for which accused persons are very rarely if at all detained pending trial was the equivalent of using a sledgehammer to crack a nut. Detention is a measure of last resort to be used in the most exceptional circumstances should other measures such as Police bail not be satisfactory.
- [34] Indeed sections 100 and 101 of the Criminal Procedure Code was enacted in order to assist the Police in their investigations. By their very nature, in view of the conditions that the Police/Applicant has to satisfy in order to keep a suspect in custody or be granted a detention order by the Court, they speak to the idea that these measures should be used in the most needed/urgent circumstances. They were not meant to supersede good and thorough investigations. There is no basis for the Police not to use its powers to bail a suspect for later appearance **unless** the offence is a serious one meriting detention as per the law. Detention is always a measure of last resort reserved for the most serious and heinous of offences.

Signed, dated and delivered at Ile du Port on ...

Pillay J