THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA

Civil Side No. 278 of 2009

Philippe Aglae Plaintiff

Versus

Attorney General Respondent

Basil Hoareau for the plaintiff

Carmen Cesar for the defendant

JUDGMENT

Egonda-Ntende CJ

1. The plaintiff, a citizen of Seychelles, brings this action against the Attorney General, in his representative capacity as a representative of Government in terms of section 29 of the Seychelles Code of Civil Procedure, hereinafter referred to as SCCP. The plaintiff is seeking damages for unlawful arrest and detention by the Seychelles Police Force.

2. The plaintiff contends that he was arrested on the 23 July 2009 at around 9.30pm by officers of the Seychelles Police force and taken to Port Glaud Police Station. He was detained for the night and released the following day at around 7.30am, without being informed of the reason for his arrest.

3. The Plaintiff contends that this arrest and detention was illegal, unlawful and without justification and amounted to a faute in law for which he sets 4 particulars:

(a) the plaintiff did not commit any cognisable offence, nor were any circumstances mentioned in section 18 of the Criminal Procedure Code applicable;

(b) there were no valid grounds whatsoever for the arrest of the plaintiff;

(c) from the time of the arrest and until his release, the plaintiff was never informed of the reason for his arrest; and /or

(d) the detention of the plaintiff for 10 hours was unreasonable, and without justification whatsoever.

4. The plaintiff claims SR 30,000 for illegal deprivation of liberty and SR 20,000 for moral damage. And that the Government of Seychelles is vicariously liable for the acts of the Seychelles Police Officers as they were acting within the scope of their employment.

5. In his written statement of defence the defendant everything contained in the plaint, putting the plaintiff to strict proof, save for the fact that the police officers were acting within their scope of employment. He prayed that this suit be dismissed.

6. At the hearing of this case both sides called 2 witnesses each. The plaintiff testified as well as one witness from whose home he was arrested. The defence brought the arresting officer and the officer who had ordered the arrest. The facts of the case are not in dispute. The evidence of each side was 'hand' in 'glove'. It was a perfect match, strengthening the case for the plaintiff!

7. The plaintiff was on 23 July 2009 at the house of a friend, Daniella Pierre. In the evening of that day at about 9.30 pm, a police officer whom he knew

as Nichol Leggaie came with 2 other officers. They told him they had instructions to arrest him. He should accompany them to the Port Glaud Police Station. He accompanied them to the police station. He was detained until the morning of the following day at about 730 am when he was released. He was arrested and detained on the instructions of Assistant Superintendent Francis Songoire, Defence Witness No 2. The reason for the arrest and detention of the plaintiff was never communicated to the plaintiff at the time of his arrest or thereafter during and after his detention.

8. The liberty of an individual is one of the most fundamental rights in the Seychellois charter of fundamental rights and freedoms. Government and its officers are under a sacred duty to respect the rights set out in the charter both as to the letter and the spirit of those provisions. It is clear that in this case the police officers acted in total disregard of the plaintiff's rights and their own duties as police officers.

9. The Constitution permits in certain circumstances for a person to be deprived of his liberty and those circumstances are set out in Article 18 (2) (a) to (f) inclusive. The defendant did not aver in its written statement of defence to this action that any of these circumstances obtained with respect to the arrest and detention of the plaintiff. Neither was any evidence adduced, or could be adduced, given the nature of the defendant's answer to this claim being a bare denial, to suggest that any of those circumstances existed.

10. Article 18 (3) and (4) of the Constitution sets out the rights of a person who has been deprived of his liberty. I shall set them out in full.

> '(3) A person who is arrested or detained has a right to be informed at the time of his arrest or detention or as soon as is reasonably practical thereafter in, as far as is practicable,

> a language that the person understands of the reason for the arrest and detention a right to remain silent, a right to be defended by a legal practitioner of the person's choice and, in the case of a minor a right to communicate with the parent or guardian.
> (4) A person who is arrested or detained shall be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter of the rights under clause (3).'

11. I agree with Mr. Hoareau, learned counsel for the plaintiff, no circumstances existed or were put forward, upon which the plaintiff could have lawfully lost his liberty. The police must understand that there must be sufficient justification before a person can lose his liberty at their hands. That justification must be objectively verifiable and in accordance with the Constitution and our laws. The arrest of the plaintiff and his subsequent detention was clearly not only unlawful but also was equally unconstitutional.

12. To compound the absence of justification for his arrest and detention was the failure to comply with the rights of the plaintiff under Article 18(3) and (4) of the Constitution which no doubt must have been very troubling to the plaintiff. He was not informed of the reason for his arrest and any of the other rights he enjoyed in the circumstances that he found himself in.

13. The plaintiff is clearly entitled to compensation and or damages for the invasion of his rights. No comparative figures have been provided to me of awards in similar circumstances. I have not been able to come across any awards despite a search. This may be due to the 'yawning' gap between the last published law report (1990) and this year, 2010.

14. A person is entitled to moral damages as compensation for moral prejudice.

Moral prejudice has been defined in Quebec (Public Curator) v Syndicat National des employes de l'hopital St-Ferdinand, [1996] CanLII 172 paragraph 63, as

'including loss of enjoyment of life, esthetic prejudice, physical and psychological pain and suffering, inconvenience, loss of amnesties, and sexual prejudice.'

15. I have not found any justification for separate heads of claim for moral damages and damages for illegal deprivation of liberty as claimed by the plaintiff. Both heads of damage are none pecuniary or none material loss which ought to fall under one head of claim, moral prejudice, for which moral damages may be awarded. The plaintiff would be entitled to moral damages on account of the defendant's officers' unlawful invasion of his right to liberty being the 'faute' committed against him. An award under moral damages would be sufficient to compensate the plaintiff, especially as he has not adduced any evidence to show that he has suffered any material loss on account of the illegal deprivation of liberty. See Cable and Wireless Ltd v Michel [1996] SLR 11.

16. There are three approaches to calculating moral damages. These are the conceptual, personal and functional approach. These three approaches have been discussed in Quebec (Public Curator) v Syndicat National des employes de l'hopital St-Ferdinand, [1996] CanLII 172 paragraphs 72 to 80:

'(3) Method of Calculating Moral Damages

72. In calculating compensation, moral prejudice may be addressed in three different manners which, as we shall see, are much more often complementary than opposite: see A. I. Ogus, "Damages for Lost Amenities: for a Foot, a Feeling or a Function?" (1972), 35 *Modern L. Rev.* 1; and A. Wéry, "L'évaluation judiciaire des dommages non pécuniaires résultant de blessures corporelles: du pragmatisme de l'arbitraire?", [1986] R.R.A. 355. These

are the conceptual, personal and functional approaches, which we shall examine briefly in turn.

73. The so-called conceptual approach considers the components of a human being to have purely objective value, which is expressed in a specific monetary amount. The major disadvantage of this extremely simple method is that it fails to take into account the victim's specific situation. It has been criticized as being an "unsubtle" solution: *Andrews v. Grand & Toy Alberta Ltd.*, *supra*, at p. 261.

74. I would note, however, that in practice, French law has applied this method of evaluation for a very long time: see Y. Chartier, *La réparation du préjudice dans la responsabilité civile* (1983), at p. 683; G. Viney, *L'indemnisation des victimes d'accidents de la circulation* (1992), at pp. 120-21; and M. Le Roy, *L'évaluation du préjudice corporel* (12th ed. 1993), at p. 67. In Quebec, moreover, there are abundant examples in the case law where the courts have implicitly used the conceptual approach to calculate the amount of moral damages: see, *inter alia*, *Dugal v. Procureur général du Québec*, [1979] C.S. 617, rev'd in part J.E. 82-1169 (C.A.) (amount reduced owing to a change in circumstances); *Bouliane v. Commission scolaire de Charlesbourg*, [1984] C.S. 323, aff'd 1987 CanLII 705 (QC C.A.), [1987] R.J.Q. 1490 (C.A.) for moral damages; and *Canuel v. Sauvageau*, [1991] R.R.A. 18 (C.A.).

75. Secondly, at the opposite end of the spectrum from the conceptual approach, the personal approach to calculating moral damages makes it possible to determine the compensation that corresponds specifically to the loss suffered by the victim. As Wéry wrote, *supra*, at p. 357, this approach [TRANSLATION] "assigns no objective value to the organs of the human body but rather seeks to evaluate, from a subjective point of view, the pain and inconvenience resulting from the injuries suffered by the victim".

76. The personal approach, which thus declines to

standardize the calculation of moral prejudice, is not preferred in Quebec case law when the moral prejudice is serious and calls for payment of the largest possible amount of moral damages. It nonetheless seems to be relevant in the case of an average or low degree of prejudice: see *Gingras v. Robin*, J.E. 84-765 (Sup. Ct.); *Bolduc v. Lessard*, [1989] R.R.A. 350 (Sup. Ct.); and *Drolet v. Parenteau*, reflex, [1991] R.J.Q. 2956 (Sup. Ct.), aff'd 1994 CanLII 5444 (QC C.A.), [1994] R.J.Q. 689 (C.A.). There is then a separate evaluation of the various components of the moral prejudice, which is an indication that the personal approach is being applied.

77. Lastly, the third method of calculating moral damages, adopted as applicable in the factual circumstances of the trilogy *Andrews v. Grand & Toy Alberta Ltd.*, *supra*, *Arnold v. Teno*, *supra*, and *Thornton v. Board of School Trustees of School District No. 57 (Prince George)*, *supra*, and in *Lindal v. Lindal*, *supra*, refers to the functional approach. As Dickson J. explained in *Andrews*, this approach seeks to calculate the "physical arrangements which can make [the injured person's] life more endurable . . . accepting that what has been lost is incapable of being replaced in any direct way" (p. 262).

78. It should be noted that the Quebec courts have not generally applied the functional method. In fact, in most cases, the trier of fact will first determine the quantum of moral damages and then justify it on an annual basis, referring at that point to certain replacement values: see, for example, *Cortese v. Sept-Îles Hélicoptères Services Ltée*, [1983] R.L. 46 (Sup. Ct.); *Bouliane v. Commission scolaire de Charlesbourg*, *supra*; *Perron v. Société des établissements de plein air du Québec*, J.E. 90-721 (Sup. Ct.); and *Marchand v. Champagne*, J.E. 92-429 (Sup. Ct.).

79. This being said, it is apparent from the case law and literature in Quebec that, in terms of calculating compensation for moral prejudice, the three methods of evaluation described *supra* interact, leaving the courts considerable latitude so that they can reach a reasonable

> and equitable result. Professor Gardner, *supra*, stated, correctly in my view, the basic rule that applies in this field (at p. 173):
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> [TRANSLATION] **239** -- *Applicable legal rule.* In our view, evaluation of non-pecuniary losses must not be based on the prior and exclusive choice of a *method* to evaluation, since those methods (conceptual, personal and functional) are not legal *rules*. The only rule in this respect is the rule that the victim be compensated in a personalized manner for the loss suffered (article 1611 C.C.Q.). [Italics in original; underlining added.]
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> 80. I entirely concur in this view. Thus, in Quebec civil law the three approaches to calculating the amount necessary to compensate for moral prejudice -- that is, the conceptual, personal and functional approaches -- apply jointly, and thereby encourage a personalized evaluation of the moral prejudice. In fact, this appears to me to be the best solution in a field in which exact quantification of the prejudice suffered is extremely difficult because of the qualitative nature of that prejudice.'

17. I shall take the same view and apply the three approaches jointly in order to arrive at the compensation the plaintiff should be entitled to and the defendant liable to pay. I note that the damages that may be awarded are not intended to punish the defendant or provide a windfall profit to the plaintiff. He was detained for one night in police cells deprived of his sacred and fundamental right to liberty, and the opportunity to spend the night in a bed and company of his choice. He was greatly inconvenienced, and no doubt worried at his predicament, not having been the told the reason for his detention. Though no sum of money would restore what he has suffered, it may at least provide him with substitute pleasure.

18. In those circumstances, doing the best I can, I award to the plaintiff SR 10,000 for moral damages in respect of the illegal deprivation of liberty and costs of this action shall be payable by the defendant.

Signed, dated and delivered at Victoria this 30 day of September 2010

FMS Egonda-Ntende

Chief Justice