

THE REPUBLIC OF SEYCHELLES

IN THE SUPREME COURT OF SEYCHELLES AT VICTORIA

Civil Side No 118 of 2009

Patricia Jacques

Plaintiff

Versus

National Drug Enforcement Agency
The Commissioner of Police
The Attorney General

Defendant No.1
Defendant No. 2
Defendant No.3

Bernard Georges for the Plaintiff

David Esparon for the Defendants

JUDGMENT

Egonda-Ntende CJ

1. The plaintiff in this action is seeking to recover from the defendants damages for pain and suffering, shock, distress and inconvenience that she suffered at the hands of the officers of defendants no.1 and no.2. It is the contention of the plaintiff that on the 23 November 2008 the officers of the first or second defendants or both of them came to the premises of the plaintiff at Les Mamelles. A police dog handled by one of the said officers, jumped on the plaintiff and bit her on her on the side.
2. The plaintiff further contends that the action of taking the said dog to the premises of the plaintiff and being unable to restrain it there amounted to a fault for which the defendants are liable. By reason of the said bites the plaintiff suffered pain, inconvenience, shock and distress for which the

first and second Defendants are liable and the third defendant vicariously liable for which she claims a sum of R 50,000.00 only.

3. The defendants, all represented by the Attorney General, denied the plaintiff's claim. The defendants admit that the officers of the defendant no. 1 and no.2 came to the plaintiff's premises in view of a drug search operation. They arrested one son of the plaintiff. The defendants aver that the alleged incident occurred as a result of the sole fault of the plaintiff as she came out of the house in aggressive manner and charged on one of the NDA agents and the dog who is trained to counter this kind of situation charged on the plaintiff in the defence of the said NDEA agent of which the plaintiff sustained injuries.
4. The defendants put the plaintiff to strict proof with regard to the claim for damages while at the same time claiming that the amount claimed is manifestly excessive and exorbitant in the circumstances of this case. The defendants prayed that this suit be dismissed with costs.
5. During the hearing, Mr. Esparon, learned counsel for the defendant objected to the plaintiff producing a medical certificate she had been given at Victoria Hospital on the grounds that the contents would be hearsay and it should be produced by the Doctor who issued it. I overruled his objection and admitted the certificate as exhibit P1. I stated that I would give my reasons in the judgment. I proceed to do so.
6. It is no doubt correct to say that the contents as regards the substance of the Doctor's findings and opinion would be hearsay if the certificate was produced by the plaintiff to whom it was issued and the medical officer who had issued was not called. Nevertheless in my view the witness was

still competent to produce this document as an exhibit as it was issued to her at the hospital. It could prove or corroborate her story to the extent of having gone to the hospital even if no regard is given to the findings and opinion of the medical officer who issued.

7. According to the plaintiff's testimony she was at home. The day in question was a Sunday. Her family had gathered for lunch as they normally do on Sundays. One of her sons was cooking lunch outside the house in the back. He heard him screaming and she rushed out to see what was happening. He found that Agent Naiken had arrested his son and tied him with hand cuffs.
8. She was angry. She asked Agent Naiken why he had arrested his son. Other officers came to the scene and attempted to seize her second son who had just come out of the house. He resisted and his girl friend pulled him back as the NDEA agents were attempting to arrest him. The plaintiff started arguing with them, asking why they were doing all that. She told them her second son, Mervin, was sickly.
9. The plaintiff then saw an agent/dog handler who was at scene, with a dog, talk to his dog and the dog jumped on her and bit her. She screamed and lost control. A lady agent or officer came and offered her medical aid. She declined, preferring to go to hospital on her own. She had to attend the hospital for dressing for over a week. She stated that even to this day she at times feels pain and hotness inside her body which she puts down to be the result of the dog bite.
10. The plaintiff's testimony was followed by that of her daughter, Junitha James, who was present on that day at the plaintiff's home. She came out

of the house and saw her mother arguing with the police officers and then suddenly the dog launched into her mother. The mother had not provoked the dog in anyway.

11. The defence version of events varies in some respects as to what happened at the scene of the incident. It is not in dispute that on the day in question the officers of defendants no 1 and no 2 were in the Les Mamelles searching for drugs in a house in the neighbourhood of the plaintiff. As they were doing so they saw a man that had been sitting on the fence outside the plaintiff's house suddenly enter the plaintiff's house. An agent of defendant no.1 went down to the compound.
12. According to the defendant's witness Mr. Estrale (DW2), who was the dog handler, a man came out of the house charging towards Agent Naiken. DW2 moved to the compound to give support to Agent Naiken. When the man charging aggressively towards Agent Naiken saw DW2 with the dog he backed away and Agent Naiken backed away too. The dog did not charge towards the man. The dog remained sited beside the witness.
13. Soon thereafter the plaintiff came out of the house and aggressively moved towards Agent Neil and Agent Naiken. The plaintiff passed within the dog's range and it attacked her to protect the Agents under attack. DW2 did not restrain the dog. After the attack he moved the dog away and Agent Neil offered first aid to the plaintiff who refused it.
14. DW2 stated that the dog was trained to track presence of drugs, and for self defence in case any of the agents were under attack, it would come to their rescue or protection. That is the defence version of what happened

on the day in question at the plaintiff's home.

15. Even if one accepted the defence version of events, as propounded by DW2, it is clear to me that the dog handler was under a duty to restrain the dog he was handling from harming persons who he came into contact with. He testified that the dog was on a one metre leash and the plaintiff was within its reach of one metre when she was bitten. A topless woman attacking two trained officers with no weapon was no threat to the officers. The officers would have been able to restrain her fairly easily. DW2 was under a duty not to allow an animal under his control to inflict injury on the plaintiff who was on her property, however agitated she may have been by the events unfolding thereon.

16. The said two officers, allegedly under attack by the plaintiff, were not called to testify. DW1, who was one of the agents on the scene testified that he was only 10 metres away from the plaintiff's residence. He had her shouts after the dog had bitten her. He did not see or hear anything prior to the attack. The only evidence available put forth by the defence is the evidence of DW2 who, it appears to me, was intent on down playing, or denying, his own fault in the matter.

17. On the evidence of DW2 he did not do anything to avert the attack by the dog on to the plaintiff. In examination in chief when asked why he could not avoid the attack he replied, 'No, I could not avoid it because there were lots of people.' It is clear therefore that he made no effort at all, in spite of the presence of many people, to hold the dog, closer to himself, if need be, by shortening the length of his grip, to substantially less than a metre, to avoid the dog harming people.

18. Article 1385 of the Civil Code of Seychelles provides,

‘The owner of an animal, or the person who uses it, while he has use of it, is liable for the damage that the animal has caused, whether the animal was under his care or lost or escaped.’

19. DW2 was having use of the dog in question and it was under his care. He had an obligation that the dog does not inflict damage on anyone within its reach.

20. I agree with Mr. Georges, learned counsel for the plaintiff, that Agent Estrale, DW2, was at fault, and as a result the dog in question bit the plaintiff, inflicting injury, pain and suffering upon the plaintiff for which the defendant no. 1 and 3 are vicariously liable under Article 1384 of the Civil Code.

21. The plaintiff definitely suffered pain and anguish. She had to seek medical treatment. She had to suffer the inconvenience of seeking medical treatment, and travelling and to and from the medical centre. The bite marks have left residual discolouration of the plaintiff's skin at the spot she was bitten. Security of her person was violated. She is entitled to damages on account of all this.

22. She has claimed a sum of R 50,000.00. I think that this is somewhat on the higher side. No awards for similar injuries have been drawn to my attention by counsel. Doing the best I can in the circumstances of this case, I award the plaintiff R 25,000.00 with interest at the legal rate from today till payment in full and costs of this suit.

Signed, dated and delivered at Victoria this 14th day of October 2010

FMS Egonda-Ntende
Chief Justice