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Seniloli v Voliti [2000] FJLawRp 21; [2000] 2 FLR 6 (22 February 2000)

[\[2000\] 2 FLR 6](#)

IN THE HIGH COURT OF FIJI

EPELI SENILOLI
&
ATTORNEY-GENERAL

v

SEMI VOLITI,
on behalf of Poasa Ravea Qawaqawa Voliti

High Court Civil Appellate Jurisdiction
Shameem, J
22 February, 2000
HBC 0033/99

Quantum of damages - appeal against - false imprisonment - trauma and distress to victim - aggravated damages of \$10K and punitive damages of \$5K awarded by Magistrates' Court - consideration of local, social and economic conditions in quantum - breach of Constitution s27; [Juveniles Act](#), the Judges Rules

A 14 year old boy was detained by police for 4 hours on an allegation of stealing tinned fish. He was handcuffed to a post inside the police post at Nadera. Police denied false imprisonment. The magistrate found the detention traumatic, a breach of his rights and awarded \$10,000 on aggravated damages and a further \$5,000 in punitive damages. The appellants appealed against quantum.

Held - (1) Detention breached the Convention on Rights of the Child Article 37 and Judges' Rules.

(2) The detention was not an honest error of judgment by police but a deliberate flouting of the law and a conscious act on a vulnerable and young member of public causing distress and humiliation.

(3) The outrageous and contumelious conduct of the appellants justified an additional award of punitive damages.

Award of aggravated damages reduced from \$10,000 to \$6,800 but punitive damages to remain the same.

Cases referred to in judgment
cons *Sivorosi Raikali v Attorney-General* HBC 95/99

cons *Nirmala Wati v A Hussain & Co Limited* 32 FLR 1
cons *Josaia Vakacoko v Commissioner of Police* HBC 145/98S
cons *Marika Lawanisavi v Kapieni* ABU 49/98

[note: cons in *PAFCO Employees Union v Pacific Fishing Company Limited* [2002] HBC543/00S Judgment of 25 January 2002]

Mereseini Rakuita for appellants
Sevuloni Walenitabua for respondent

22 February, 2000.

JUDGMENT

Shameem, J.

This is an appeal against quantum of damages awarded in the Suva Magistrates Court for the false imprisonment of a 14 year old boy, Poasa Ravea Voliti at the Nadera Police Post for four hours.

The Plaintiff filed a writ of summons claiming damages for false imprisonment in August 1998. After a trial, the learned trial magistrate delivered her judgment on 20th July 1999. She found that Poasa Voliti was taken into police custody at Nadera on 28th March 1998 for four hours. He was 14 years old and was arrested as he walked past the Police Post on Ratu Dovi Road. He was questioned and searched. A tin of fish and boiled cassava found on his pocket was taken from him and he was hand-cuffed to a post inside the police post until he was released some hours later. The learned trial magistrate found that the circumstances of the detention were traumatic given the evidence of his friends of Poasa Voliti weeping.

The learned trial magistrate found that the plaintiff's constitutional rights, his rights under the Convention on the Rights of the Child and his rights under the Judges Rules had been breached. She found that the deliberate abuse of power by the police, the flouting of the plaintiff's rights, the trauma and distress caused to him and the humiliation he suffered were sufficient to justify the award of punitive damages. She awarded \$10,000 as aggravated damages and a further \$5,000 in punitive damages on the ground of the gross misconduct of the police officers concerned.

This appeal is against the award of \$15,000 damages. The grounds of appeal are:

"(1) That the award is so high as to make it an entirely erroneous estimate of the damage to which the Respondent is entitled.

(2) That the learned trial magistrate when awarding punitive damages in this case, acted on a wrong principle of law.

(3) That the award is so unreasonable that it cannot be supported having regard to all the evidence and the principles of law as a whole."

The appeal was heard on 11th February 2000.

Ms M. Rakuita for the Appellant submitted that the learned magistrate should have considered local cases on false imprisonment, in awarding damages. She suggested that awards of \$500 to \$1,500 had been given in cases where the plaintiff had been detained unlawfully for several hours. She submitted that there was no evidence that the plaintiff had suffered pain or distress and that \$15,000 is in excess of comparable cases.

Mr S. Valenitabua for the Respondent submitted that given the gross misconduct of the police at the police station, and the age of the plaintiff, the circumstances were exceptional and justified the award.

In *Thompson v. Commissioner of Police for the Metropolis* (1977) 3 WLR 403, the Court of Appeal suggested the following principles as guidelines in wrongful arrest and imprisonment cases:

- (1) The total award should not exceed what is a fair compensation for the injury the Plaintiff has suffered.
- (2) Exemplary damages will only be awarded in exceptional cases.
- (3) The starting point for normal wrongful arrest and imprisonment cases is 500 for the first hour and 3000 for 24 hours on a progressively reducing scale for each day thereafter.
- (4) Awards of damages for false imprisonment should bear some relationship to awards for personal injuries.

In *Sivorosi Raikali -v- Attorney-General* Civil Action No. HBC 95 of 1999, Scott J awarded \$11,000 for a man who was imprisoned in jail for 11 months more than he should have been, the only aggravating features of the detention being the length of the wrongful detention. In that case, Scott J said:

"An award of damages arising from false imprisonment has as its primary purpose compensation for the loss of the Plaintiff's liberty and its consequences such as indignity, mental suffering, disgrace, humiliation and loss of reputation or social status. In addition, there may be recovery for any resultant physical injury, illness or discomfort as where the imprisonment has had deleterious effect on the Plaintiff's health

Awards of damages under these heads are termed compensatory and will be liable to aggravation or mitigation depending on the whole circumstances of the case. In addition to such awards there may in special circumstances be an award of exemplary damages, the purpose of which is to punish the Defendant for inflicting the harm on the Plaintiff."

I have read the local authorities on unlawful arrest and detention referred to me by counsel, and note that none relate to the unlawful detention of children. In *Nirmala Wati v. A. Hussain & Co. Ltd.* 32 FLR 1, the Court awarded \$500 for the unlawful arrest of a young married woman, and her detention at the police station for about an hour. In *Josaia Vakacoko v. The Commissioner of Police* Civil Action HBC 145 of 1998S, the court awarded \$4,000 to a plaintiff wrongfully detained by police for 6 days.

However these cases are not really comparable because the detainees were not children, and because the court did not find as the magistrate did in this case, that "the conduct of the police officers ... was outrageous, a gross abuse of powers and an absolute disregard to the fact that Poasa is a child. The plaintiff was compelled to institute these proceedings - the outcome of the police internal inquiry being entirely unsatisfactory and no wonder - the pertinent officers had all colluded to cover up the events of 20/3/98."

The evidence of the witness Poasa, at page 107 of the record, which the learned magistrate accepted, shows that he was stopped by the police officer Cakacaka, as he was walking along the road. He was asked what he had in his pocket. He told the officer that it was a tin of fish, and that he was taking it to his friends. The evidence during examination-in-chief then ran as follows:

"Q: He asked you further where you taking it to?

A: Epeli, another policeman came out of the police post and said to me: 'that's the way you supposed to talk to a policeman'. They called me into the police post and asked me questions.

Q: What happened in the police post?

A: They asked me again the question and asked me whether those two boys were fucking each others arses.

Q: Then?

A: I said no. I told them we were going to eat this food for lunch.

Q: Then?

A: The two policemen told me, brother and sister didn't own anything in the house and that was why he was stealing the Westpac Handycard

Q: Were your hands handcuffed?

A: Yes.

Q: Both hands.

A: Only my left hand ... they handcuffed my left hand to a cross-bar in the police post. I was sitting."

The evidence disclosed that the handcuffs were eventually removed. No attempt was made to explain to Poasa the reasons for arrest or detention.

Apenisa Drova (PW3) told the court that Poasa's left hand was cuffed to his foot and that he was crying. Kaveni Quni, a 16 year old boy (PW5) also gave evidence of the handcuffing and of Poasa's distress.

The entire incident was a shameful one. The evidence of the children who witnessed the plaintiff's detention, clearly showed the incident to be distressing and humiliating to the plaintiff and his friends.

Furthermore, the denials of the police witnesses that there was no arrest, no detention and there were no handcuffs, constituted an equally shameful attempt to disguise an outrageous breach of duty to the public.

The rights of juveniles are protected with adult suspects, by section 27 of the Constitution. Those rights include the right to be told of reasons for the arrest and detention, the right to prompt release if no charge is brought, the right to consult a legal practitioner, the right to communicate with next-of-kin, and the right "to be treated with humanity and with respect for his or her inherent dignity."

None of these rights were accorded to the plaintiff.

The [Juveniles Act](#) provides for special measures to be taken in the detention of juveniles, the emphasis being to avoid detention except in exceptional circumstances. The spirit of the [Juveniles Act](#) was not observed by the officers at the Nadera Police Post.

Furthermore, the evidence of the police officers shows that they were aware of the procedures which ought to have been followed under the Judges Rules and the [Juveniles Act](#).

The learned magistrate clearly found that this was not a case of an "error of judgment" as in *X v. Attorney-General* (1996) NZLR 623. It was a case of the deliberate flouting of the rights of a child in custody.

The UN Convention on the Rights of the Child, which Fiji ratified in 1993, provides by virtue of Article 37:

"(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period."

The Convention in relation to the custody of children, is in conformity with the [Juveniles Act](#) and the Constitution. It is intended to ensure that children in conflict with the law, and who are vulnerable because of age and powerlessness in relation to the administration of law enforcement agencies, are accorded special protective measures.

The facts of this case show that the police officers at the Nadera Police Post deliberately disregarded these protective measures and took advantage of the plaintiff's vulnerable position.

In the circumstances I can find no fault in the learned magistrate's finding that aggravated damages were called for.

In *X v. Attorney-General*, Williams J said at p.630:

"As to the law, in the pithy phrase employed by the learned authors of Hewston and Buckley: [Salmond and Hewston on the Law of Torts](#) 19th ed. (1987) p.594. "Aggravated damages are given for conduct which shocks the plaintiff: exemplary damages for conduct which shocks the jury"."

At page 631 of his judgment Williams J went on to say:

"As to punitive or exemplary damages, it is enough to note that such damages are only awarded to punish the defendants because of the outrageous or contumelious way in which they have conducted themselves in committing the tort for which they are sued (*Donselaar v. Donselaar* (1982) 1 NZLR 97 As *Auckland City Council v. Blundell* (1986) 1 NZLR 732 at p.739 makes clear, exemplary damages must be 'fairly and reasonable commensurate with the gravity of the conduct thus condemned'."

Having considered the evidence of the conduct of the police officers in this case, I am of the view that the breaches of the plaintiff's rights under the [Juveniles Act](#), the Judges Rules, the Constitution and the Convention on the Rights of the Child, justify an award for aggravated damages. Furthermore, I consider that this was not a case of an honest error of judgment by the police. This was a case of a deliberate flouting of the law, and of conscious acts on a vulnerable and young member of the public, which caused distress and humiliation to the plaintiff. I am therefore of the view that the outrageous and contumelious conduct of the defendant, justified an additional award of punitive or exemplary damages.

The question remaining is as to whether the amount awarded was unrealistically high. The Court of Appeal in *Marika Lawanisavi v. Kapieni* ABU 49/98 emphasised the need to consider local, social and economic conditions when approaching quantum of damages. Scott J in *Sivorosi Raikali v. A-G* (supra) considered \$1,700 per hour, to be a generous award for false imprisonment in Fiji. However, he was considering an award for an adult who had lawfully served 12 years imprisonment, but who had been unlawfully detained for 11 months longer than he should have. Nor was that award one for aggravated damages.

I consider an award of \$1,700 per hour for a child whose arrest and detention were unlawful and who should never have been arrested at all, entirely appropriate. The award of \$10,000 by the learned magistrate seems to be higher than is appropriate given Fiji's social and economic conditions. I therefore allow the appeal against the award for aggravated damages to the extent that I reduce the award to \$6,800.

However, I consider the amount of \$5,000 as punitive damages entirely appropriate in the circumstances of the case. It adequately reflects the outrageous conduct of the defendant, and is not an unrealistic amount in Fiji's conditions.

The appeal is successful to the extent that total damages awarded are reduced to \$11,800. The Respondent must pay the Appellant's costs which I set at \$200.

Appeal allowed to the extent of reduction in total damages.

Marie Chan

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