

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. 28 OF 2003



Between:

ALAN ROBERT SMITH

Plaintiff

and

1. THE PERMANENT SECRETARY,  
MINISTRY OF HOME AFFAIRS

2. THE ATTORNEY- GENERAL OF FIJI

Defendants

Mr. G. O'Driscoll for the Plaintiff  
Ms. D. Buresova for the Defendants

Date of Judgment: 14 March 2006

### JUDGMENT

This is Alan Robert Smith's (the plaintiff's) action for damages for wrongful imprisonment.

He filed a Writ of Summons against the defendants the Permanent Secretary, Ministry of Home Affairs (the 'first defendant') and the Attorney-General of Fiji (the 'second defendant').

#### *Outline of the plaintiff's case*

The plaintiff is an Australian national living at Corrie King Island, Tasmania and was on a visit as a tourist to Rotuma at the time of his alleged

detention. He stayed with his 'de facto partner' Tuavamaria of Rotuma who testified in this case.

The plaintiff alleges that on or about 4 March 2000, an agent of the first defendant namely, a Police Officer known as **Sergeant Pene** at Rotuma Police Station unlawfully detained him for **three hours** in a "locked cell".

The plaintiff was served with a letter dated 1 March 2000 from the Director of Immigration instructing him to leave the country within 24 hours from the time of receiving this letter. Sgt. Pene was instructed to serve this letter on the defendant.

Because of the ailing heart condition of the plaintiff the captain of the aeroplane was not prepared to fly him. Hence the plaintiff remained in Rotuma and saw a doctor on 9 March 2000 who recommended that he be reviewed by a specialist (cardiologist) in Suva in regard to his medical condition. Sgt. Pene forced the plaintiff off the plane on 4 March 2000 unlawfully. The plaintiff was required to take a medical test before flying which he did not have the opportunity to do at that time. Knowing his condition Sgt Pene demanded that the plaintiff get on the plane. Upon complaint to the pilot he was not allowed to fly. But because the plaintiff did not get on the plane he was unlawfully detained and was taken back to the police station on the back of an open truck in the rain. He was detained there for three hours without any legal reason.

The plaintiff said that he was not informed of the reason for his detainment and the arresting officer did not seem to have any reasonable grounds for lawfully detaining him. He said that he is a heart patient and he told that to Sergeant. He complains that he should not have been treated in the manner that he was by being driven in an open truck in the rain.

Upon his release he was taken to the house where he stayed with his de facto to enable him to make a 'phone call' at his request. He was told not to leave the house otherwise he would be arrested again.

### Consideration of issues

As ordered both counsel made useful written submissions for Court's consideration.

It is the plaintiff's submission through his counsel Mr. O'Driscoll that he was wrongfully detained as borne out by the defendants' own witness.

This has been conceded by counsel for the defendants but she does not agree with the full period of detention as alleged. This is what the defendant's counsel said in her submission:

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*We concede that the station entries for Rotuma Police Station confirm that the plaintiff was detained for a period of three hours on 4 March 2000.*

*However we refute the plaintiff's contention that he was under house arrest for a period of one week as it is contrary to the evidence tendered by our witness Sergeant Pene during the course of the hearing on 5 July 2005. Sergeant Pene noted that he had seen the plaintiff walking outside his partner's residential home in Motusa, Rotuma.*

On the evidence before me, on a balance of probabilities, I agree with the defendant's counsel and find as fact that the detention was for **three hours** only on 4 March 2000.

The plaintiff is entitled to damages and as to the quantum both counsel have made submissions supported by authorities.

### Legal principles applicable and quantum of damages

Assessment of damages is always difficult. What is a fair compensation is what one has to consider in any given situation. What amount is reasonable has to be assessed.

A comprehensive discussion of the principles involved in assessing damages in false imprisonment cases has been very well dealt with by Pulea J in *Eseroma Ledua v Fiji Police Force, Commissioner of Police, Minister for Home Affairs and Attorney-General of Fiji* (Civil Action No. 307/04).

For a consideration of the Fiji cases on the subject, I refer to their discussion in *Eseroma* (supra) suffice it for me to cite a few authorities on the principles involved.

The approach to assessment has been stated as follows in *McGregor on Damages* 16<sup>th</sup> Ed. p1198 para 1850.

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*“The details on how damages are worked out in false imprisonment are few: generally it is not pecuniary loss but a loss of dignity and the like, and is left much to the jury’s or judge’s discretion. The principal head of damage would appear to be injury to liberty i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings i.e. the indignity, mental suffering, disgrace and humiliation with any attendant loss of social status. This will all be included in general damages which are usually awarded in these cases...”*

The guiding principles on assessment of damages which have been given to juries by Court of Appeal in *Thompson v Commissioner of Police of the Metropolis, HSU v SAME* [1997] 3 WLR 403 have been borne in mind. They are as follows (in so far as they are relevant to this case) *ibid* at p 415 – 418 if it is found in the plaintiff’s favour: the ‘only remedy which they have power to grant is an award of damages. Save in exceptional situations such damages are only awarded as compensation and are intended to compensate the plaintiff for any injury or damages which he has suffered. They are not intended to punish the defendant’.

It is further stated that:

*"In a straightforward case of wrongful arrest and imprisonment or malicious prosecution the jury should be informed of the approximate figure to be taken as the correct starting point for basic damages for the actual loss of liberty or for the wrongful prosecution, and also given an approximate ceiling figure. It should be explained that these are no more than guideline figures based on the judge's experience and on the awards in other cases and the actual figure is one on which they must decide.*

*In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000.00. For subsequent days the daily rate will be on a progressively reducing scale. (emphasis added).*

In assessing damages one of the principles is that the total amount should not exceed what is fair and reasonable.

Some Fiji authorities on unlawful detention or imprisonment have been cited by both sides.

In the case of the plaintiff reference to cases were made by counsel in the following words:

*"In Sivarosi Raikali v Attorney General & Commissioner of Prisons [1999] 45 FLR 313 a prisoner mistakenly reincarcerated for 11 months was awarded only \$11,000.00 damages. The circumstances were vastly different from those under consideration.*

*In Epeli Seniloli v Semi Voliti (unreported Judgment of 22<sup>nd</sup> February 2000 in Civil Appeal No. HBA 33 of 1999) a young boy falsely imprisoned for 4 hours was, after appeal to this Court, awarded a sum of \$11,800.00. This is closer to the situation under consideration and would translate to a rate of \$2,950.00 per hour. If this were allowed for the three hours and five minutes the Plaintiff spent at the Police Station he*

would then expect to receive a sum of \$9,000.00 for the initial detention at the Police Station. It is submitted that the Plaintiff should receive much more than this because of his status as a tourist.

Recently in *Eseroma Ledua v Fiji Police Force & Ors.* (unreported Judgment of 16<sup>th</sup> June 2005 in Civil Action No. 307 of 2004) a man wrongfully detained for 26 hours was awarded a total of \$8,431.50, the damages for false imprisonment aspect of which was \$4,000.00. This is with respect rather low and did not truly reflect the gravity of the situation."

Although the plaintiff says that Voliti case is closer to this case, I agree with the defendants that this is not so.

In this case all that has happened which is of any moment, is his unlawful detention for three hours. There was no injury to his person or that he has suffered in any way. I place no importance to him being driven in an open truck, there was nothing wrong with that. Because he was on the Island as a tourist visiting his de facto he should not expect to be driven in a limousine.

I reject the plaintiff's testimony that he was detained for a week under 'house arrest' living with his 'de facto' or 'girl friend'.

The plaintiff is claiming \$25,000.00 damages for three hours' arrest.

### **Conclusion**

To conclude, I find that the plaintiff was unlawfully detained for three hours only and this is conceded by counsel for the defendants. I do not find that he was under house arrest as he lived with his de facto until he left Rotuma.

The plaintiff was not ill-treated at all and I reject his allegation that he was not handled properly and was driven in the open truck in the rain as a result whereof he suffered from flu. There is no evidence that his health was adversely affected as a result of any treatment accorded him by Police.

In this case in assessing damages I have carefully considered the principles stated in *McGregor on Damages* (supra).

I accept the argument put forward by counsel for the defendants in her approach to the issue of damages. She says that \$5000-\$10,000 is 'an appropriate sum of damages for false imprisonment of three hours at the Rotuma Police Station, the cost of his plane ticket and accommodation.'

### **Order**

For the above reasons the plaintiff partially succeeds in his claim and is entitled to **general damages** in the sum of \$8000.00, special damages for air fare, accommodation and meals \$2500.00 together with interest on \$8000.00 at 4% per annum which comes to \$1080.00 from the date of issue of writ making a total sum of **\$11,580.00** with costs the sum of **\$1000.00** payable by the defendants to the plaintiff's solicitors.



**D. Pathik**

**Judge**

**At Suva**

**14 March 2006**