

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CIVIL JURISDICTION  
CIVIL ACTION NO. HBC 298 OF 2002L

NO. 26/2007

BETWEEN:

KRISHNA SAMI CHETTY

*Plaintiff*

A N D:

THE COMMISSIONER OF POLICE

*1<sup>st</sup> Defendant*

A N D:

SAMUELA MATAKIBAU

*2<sup>nd</sup> Defendant*

A N D:

AIRPORTS FIJI LIMITED

*3<sup>rd</sup> Defendant*

A N D:

THE ATTORNEY GENERAL OF FIJI

*4<sup>th</sup> Defendant*

Mr. A. Patel for the plaintiff

Mr. A. Tuilevuka for 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants

Mr. K. Qoro for the 3<sup>rd</sup> defendant

Date of Hearing: 13-15 June 2006 and 27 November 2006

Date of Judgment: 23 February 2007

## J U D G M E N T

- [1] The plaintiff in this matter pleads his cause of action by further amended statement of claim filed in the course of the proceedings on the 13<sup>th</sup> June 2006 with the leave of the Court.

- [2] The plaintiff claims damages against the defendants for his alleged wrongful arrest on the 15<sup>th</sup> October 2001.

### Facts

- [3] The plaintiff was until the 19<sup>th</sup> June 2001 employed by the 3<sup>rd</sup> defendant. His employment was terminated which resulted in proceedings before the High Court.
- [4] On the 15<sup>th</sup> October 2001 the plaintiff, as secretary of the Civil Aviation branch of the Fiji Public Service Association, attended upon the premises of the 3<sup>rd</sup> defendant to effect service of an order of the High Court upon the 2<sup>nd</sup> defendant and other persons in the employ of the 3<sup>rd</sup> defendant.
- [5] The plaintiff says and its not disputed that he travelled to the Nadi Airport with another person in his motor vehicle and that upon arrival at the terminal building, he attended upon the Airport Security Office on the ground floor of the terminal building near the cafeteria. After reporting to those officers, he was allowed to proceed to the upper level of the building, where he went to the office of the Airport Manager and effected service upon him of the documents.
- [6] The plaintiff then went to the second floor of the terminal building to effect service upon the 2<sup>nd</sup> defendant. He there enquired from the receptionist as to the location of the 2<sup>nd</sup> defendant's office and while waiting at the counter he was approached by Iliasa Patrick Henry who was known to him. Mr. Henry took him into the open plan office area. The 2<sup>nd</sup> defendant has a separate office and the plaintiff whilst with Mr. Henry noticed that the door to the 2<sup>nd</sup> defendant's office was half

open and he then knocked on the door, entered, and tendered the documents to the 2<sup>nd</sup> defendant who appeared to be having tea with others. The 2<sup>nd</sup> defendant refused to accept the documents being served and the plaintiff left them on the table and walked out. He then walked to the ground floor and proceeded to his motor vehicle and then left the airport premises. At the main gate he was stopped by police and told that the Chief Security Officer wanted to see him. The Airport Security Officer wanted to get in the plaintiff's motor vehicle but the plaintiff's left his friend park his car and he walked with the police officer towards the airport terminal building. He says he walked about 50 metres when the Chief Security Officer, the 2<sup>nd</sup> defendant, drove by and ordered the police officer to push the plaintiff into the motor vehicle. He was then driven by the 2<sup>nd</sup> defendant to the Airport Police Post where the 2<sup>nd</sup> defendant said to police officers to arrest him and gave no reason for so doing. He says he remained at the police post for just over 4 hours and despite requests to the police that his wife be informed of his whereabouts, he says this was not done.

- [7] At 4.00pm on the same day he says he was taken to the Namaka Police Station where he was subsequently interviewed and ultimately after a total period of about 9 ½ hours was released from police custody. In the meantime his motor vehicle was located, brought to the police station and searched. When interviewed by police officers, the allegation put to him was that he had stolen confidential files from Airports Fiji Limited and that he had trespassed into the office of the Chief of Security, that is the 2<sup>nd</sup> defendant. Following the search of his car and ultimately of his office and after being interviewed, he was not charged with any offence.

- [8] The facts as set forth by the plaintiff in his evidence are confirmed by Exhibit D-A7, being page 7 of the bundle of documents tendered on behalf of the defendants. That document is a summary of facts prepared by the investigating officer and forms part of the police docket.
- [9] The plaintiff at all times denied having removed any documents from the offices of Airports Fiji Limited but confirmed as did other person's interviewed, whose interviews form part of Exhibit D-A, that he carried a yellow folder into the Airports Fiji Limited and left with that same folder.
- [10] No other witnesses were called on behalf of the plaintiff.
- [11] The defendants sought to tender an affidavit of Jemesa Tuvuki sworn on the 14<sup>th</sup> June 2006 pursuant to Order 38 Rule 2(2) of the High Court Rules. An order was made that the affidavit be read and that the deponent, in the circumstances described in the accompanying medical certificate not be required for cross-examination. The deponent of the affidavit, Jemesa Tuvuki describes himself as a sergeant in Special Branch in Nadi Airport in 2001 and confirms that he made a police statement which forms part of Exhibit D-A and says that he recalled receiving a phone call on the 15<sup>th</sup> October 2001 from an unidentified male who said he had witnessed the passing of some documents between Mr. Henry and the plaintiff and he says he passed the information on to the Chief Security Officer. The evidence contained in the affidavit is of little weight. It merely contains a hearsay statement.

- [12] The 2<sup>nd</sup> defendant gave evidence and said that his position as Chief Security Officer at Nadi Airport in 2001 was in addition to his normal police duties and that he had held the position of Chief Security Officer for about 4 to 5 months prior to the incident involving the plaintiff. He further says that his responsibilities included the Airport Security and the officers in that security together with the Police Mobile Force which was a 40 member unit. *The Airport Security Officers, included employees of Airports of Fiji Limited and contractors.* He says that at the time of the incident on the 15<sup>th</sup> October 2001 there was a level four security, that is the highest level of security imposed at the Airport. He says this level had been imposed as a result of the events of the 11<sup>th</sup> September 2001.
- [13] He says that whilst he was having his tea inside his office with two officers, the door was opened inwards and the plaintiff dropped something on the right side of his desk. He says that the plaintiff did not speak to him. He could not locate him and he then received a telephone call from Jemesa Tuvuki informing him that Mr. Henry had handed confidential documents to the plaintiff. This hearsay statement appears to be the sole basis upon which the 2<sup>nd</sup> defendant acted to cause the plaintiff to be stopped at the exit gate of the airport and conveyed to the Airport Police Post. He says when he arrived at the gate, the plaintiff was being escorted by a police officer, who was not holding him and that his motor vehicle had disappeared. He said he spoke with the food vendors near the gate of the airport who said the vehicle had been driven towards Lautoka. The sole basis given by him for the arrest of the plaintiff was the telephone call from Mr. Tuvuki. In cross-examination, the 2<sup>nd</sup> defendant said that he was paid by the Fiji Police Force and was indeed a police officer at the relevant time but was responsible to Airports Fiji Limited as Chief of Security at the Nadi Airport.

- [14] The 2<sup>nd</sup> defendant made a complaint to the Namaka Police Station which was then investigated by DC 973 Karam Chand. Mr. Chand gave evidence of his investigation which included interviewing the plaintiff on the 15<sup>th</sup> October 2001. He confirmed that he commenced the interview at 1600 hours. By reference to the police docket, Exhibit D-A1-123, he confirmed that various other employees of Airports Fiji Limited were interviewed that no missing documents were ever identified and that ultimately on the 4<sup>th</sup> December 2001 the DCO/Western concurred with the Crime Officer, Namaka's recommendation that there was no evidence to substantiate any offence against the plaintiff and on the 21<sup>st</sup> February 2002 the docket notes that the complainant had been advised in writing of this fact.
- [15] The somewhat heavy handed dictatorial approach of the 2<sup>nd</sup> defendant is apparent by letters written by him being Exhibit D-A107.
- [16] The investigating officer and Exhibit D-A confirmed that the plaintiff was in custody for 9 ½ hours, during which time there is significant doubt as to whether he was given a meal. DC Karam Chand had no personal knowledge and could only rely on hearsay as to whether or not the plaintiff had been fed whilst in custody.
- [17] He confirmed that he went to the office of Airport Fiji Limited the following day and could not establish that anything was missing. He says that he accepted the complaint initially as being a valid complaint as it was made by a senior officer and confirmed that the plaintiff's motor vehicle had been searched as had his office, being the office of the Public Service Association.

## The Law

[18] Unfortunately in this matter the submissions on behalf of the plaintiff are somewhat unsatisfactory. It is even more regrettable that no submissions have been received in accordance with the Court's Order from the counsel for the defendants.

[19] The Fiji Court of Appeal in *Deo v State* [2003] FJCA 20 identified that the power to arrest on suspicion is contained in section 21(a) of the Criminal Procedure Code. That section provides:

*"(21) - Any police officer may without an order from a magistrate and without warrant, arrest -*

*(a) any person whom he suspects upon reasonable grounds of having committed cognizable offence."*

[20] The Court then said at page 4 of this judgment:

*"In that the law requires suspicion on reasonable grounds, and objective assessment by the arresting is required: see discussion of this power to arrest in *Blundell v Attorney General* [1968] NZLR 341 C.A."*

[21] In *Blundell* Turner J. with whom the Court agreed said at page 356:

*"If what the constable is shown to have done amounted to an arrest which is justifiable under the section that would dispose of the matter. If what he has done is short of formal arrest, but was in fact the first step in*

*an arrest which the constable intended to effect, I should think this also will be sufficient. If formal arrest would have been justified, surely all that is reasonably done in the course of making it is a fortiori, justified provided, however, (and this in my opinion is essential), that the intention to arrest has been actually formed in the mind of the constable whose acts are complained of. But in my opinion it will be insufficient for the police constable to say, "I had not made up my mind as yet whether I would or would not take this appellant into custody; without arresting him, or having made up my mind to arrest him, I merely detained him while making inquiries". "Detention while making inquiries" cannot in my opinion be justified under the law of this country."*

- [22] It would appear then necessary for the Court to consider the objective assessment made by the arresting officer.
- [23] The evidence is that the 2<sup>nd</sup> defendant caused the plaintiff to be arrested on the basis of the hearsay evidence of Jemesa Tuvuki, that is a statement from an unidentified male person. There is nothing in the evidence that suggests that the plaintiff left the airport premises with any documents, less alone with confidential documents. There is nothing in the evidence that the plaintiff had in his possession anything other than the yellow folder that he entered the premises with. No evidence was placed before the Court on behalf of the defendants that anybody saw any document being handed to the plaintiff or being taken



by the plaintiff. Mr. Henry who is referred to in the statement of Jemesa Tuvuki as being the person who allegedly handed documents to Chetty, the plaintiff, was not called to give evidence on behalf of the defendants. No explanation was offered on behalf of the defendants as to why Mr. Henry was not called. The rebuttable presumption created by the rule in *Jones v Dunkel*, not having been rebutted leads to the conclusion that any evidence that might have been given by Mr. Henry would not have been of assistance to the defendants.

- [24] I find therefore that the plaintiff was wrongfully detained and that the 2<sup>nd</sup> defendant had no reasonable grounds to suspect an offence or more particularly the alleged offence had been committed by him.

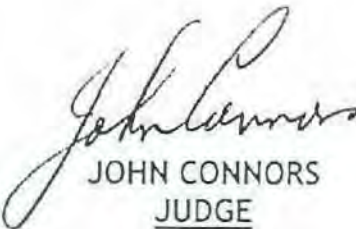
### Damages

- [25] The plaintiff in his statement of claims seeks “*general, exemplary and punitive damages*”. Exemplary damages and punitive damages are not different heads of damage and therefore the plaintiff’s claim is assessed on the basis that he seeks general damages and exemplary damages.
- [26] In support of the determination of the damages, counsel for the plaintiff refers the Court to the decision of Mr. Justice Finnigan in *Yasar Khan v Commissioner of Police and Attorney General* - HBC 075 of 2004. In that matter His Lordship after considering various authorities on the assessment of damages for claims of this kind concluded that an appropriate rate for assessing damages is \$2,200.00 per hour that the plaintiff was unlawfully detained. I see no reason to demur from the finding of His Lordship and accordingly I assess damages for the period of incarceration at the rate of \$2,200.00 per hour which totals \$20,900.00.

[27] It is submitted on behalf of the plaintiff that he is entitled to the damages for the extensive delay that was occasioned in advising him that no action would be taken and that it was not until January 2002 that he was ultimately informed that the matter was at an end. I am of the view that this together with the detention of the plaintiff without a meal and the added trauma of his wife not being informed and his concern for his son, warrant a separate assessment of aggravated damages. Again being guided by His Lordship in *Khan v Commissioner of Police and Anor* I would assess damages in this regard in the sum of \$20,000.00. Counsel urges that interest be awarded on the total damages at the rate of 4%. There seems no reason not to allow interest at the rate of 4% from the date of service of the writ which was the 18<sup>th</sup> September 2002. The total damages therefore amount to \$40,900.00 and the plaintiff is entitled to interest at the rate of 4% from the 18<sup>th</sup> September 2002 to the date of judgment.

[28] The plaintiff also seeks costs and I assess costs in the sum of \$2,500.00. I leave it to the counsel to bring in orders that reflect the terms of the judgment.



  
JOHN CONNORS  
JUDGE

At Lautoka  
23 February 2007