

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL APPELLATE JURISDICTION

CASE NUMBER: HBA 09 of 2010

BETWEEN: PENI TIRIKULA MARAMANIONO
1ST APPELLANT

AND: COMMISSIONER OF POLICE
2ND APPELLANT

AND: THE ATTORNEY GENERAL
3RD APPELLANT

AND: MAKARITA MARAMANIONO
RESPONDENT

Appearances: Mr. Mainavolau, J for the Appellants.
Mr. Vere for the Respondent.

Date/Place of Judgment: Friday, 23 August 2013 at Labasa.

Coram: The Hon. Justice Anjala Wati.

JUDGMENT

Catchwords:

APPEAL- CLAIM FOR NEGLIGENCE, BREACH OF STATUTORY DUTY, ASSAULT AND FALSE IMPRISONMENT- COURT DECIDES ACTION ON BREACH OF CONSTITUTIONAL RIGHTS INSTEAD OF CAUSES OF ACTION PLEADED- AWARD CANNOT BE MAINTAINED FOR WANT OF JURISDICTION- THE NEED FOR RE-TRIAL AS MATTER NEVER DETERMINED ON THE CAUSES OF ACTION PLEADED.

Legislation:

The Constitution Amendment Act 1997: s. 41

1. The respondent is a laboratory technician at Taveuni Hospital. The 1st appellant is a police officer who arrested the respondent on 14 June 2007 and charged her for drunk and disorderly contrary to s. 4 of the Minor Offences Act. On 23 August 2007, she was acquitted by the Magistrate's Court on a no case to answer application by the defence counsel.
2. Subsequently in August 2008, the respondent filed a civil suit in the Magistrates' Court arising from the arrest, the charge and the acquittal.
3. In her writ, the respondent pleaded four causes of action against the appellant. The causes of action included an action for negligence, breach of statutory duties, assault and false imprisonment.
4. In the statement of defence, the appellants' stated that the respondent was arrested within the boundaries of the Hospital compound. They denied breaching their duty of care, the allegations of assault, false imprisonment and abuse whilst in police custody.
5. The appellants' further stated in the statement of defence that the spraying of the capsicum in the respondent's eyes was justified on the grounds that she was drunk and behaving in a disorderly manner, was very abusive, was resisting arrest, causing a lot of commotion, and damaged the uniform of Police Support Officer and the tea shirt of a Sergeant.
6. The Court in making a determination stated that it had to make two findings. The first was whether the initial arrest of the plaintiff was for a reasonable and a probable cause and the second was whether the plaintiff's treatment by the police after arrest contravened her rights under the constitution and what damages if any are to be awarded to the plaintiff.
7. The Court found that the initial arrest of the plaintiff was for a probable and reasonable cause but found that her constitutional rights were breached after she was arrested in that she was sprayed with water, kept cold for 19 hours, made to sit on the sink bench without being provided with sleeping materials, and not allowed to change her clothes when she was having her menstruation.
8. The Court then awarded special damages in the sum of \$530, general damages in the sum of \$3,000 and costs in the sum of \$1,000.

9. Aggrieved with the decision, the appellants' appealed. So did the respondent. The appellants' grounds of appeal are 5 which states that the Resident Magistrate erred in law and in fact:

1. *In referring to an unnamed Constitution in his judgment and if he was referring to the Fiji Constitution Amendment Act, then it was wrong to rely on the same as it was abrogated at the hearing of the matter [Grounds 1 and 2 amalgamated].*
2. *When he failed to take relevant matters into consideration like:*
 - (i) *the violent, annoying, demanding, irrational attitude and spiteful behaviour of the respondent against the police;*
 - (ii) *the effect of drunkenness and the state of mind of the respondent when she was detained at the Taveuni Police Station; and*
 - (iii) *the unbecoming behaviour of the respondent as a civil servant.*
3. *In awarding an unreasonable amount of \$530 in special damages when it was not properly addressed in the ruling and supported by any documentary evidence and without applying the relevant case authority.*
4. *In awarding an excessive and an unreasonable amount of \$3,000 for breach of constitutional rights without referring to a particular Constitution and the particular provisions of the same and in failing to specify the method used in arriving at the general damage without applying the relevant case authorities.*

10. The respondent's grounds of appeal are that the Court erred in failing to award reasonable amount of general damages, exemplary and punitive damages for the plaintiff's causes of action and other financial entitlements like interests and costs.

11. I have revisited the claim and I find that the respondent did not bring the claim on a cause of action for breach of her constitutional rights. She had maintained an action in negligence, breach of statutory duties, assault and false imprisonment. The Court erred, when it did not,

on the evidence before it, make a determination on whether the respondent has established her case on the four causes of action.

12. The Court went on a tangent from the issues before it. It assumed that the cause of action before it was for breach of constitutional rights. It was not, and even if it was, the Magistrates' Court, under the abrogated Constitution, the Constitution Amendment Act 1997, by s. 41, did not have any powers to hear a claim for breach of any provisions of the chapter on bills of rights.
13. The High Court has been vested with the original jurisdiction to hear constitutional redress cases: *s. 41(3) of the Constitution Amendment Act 1997*.
14. I thus set aside the general damage which was granted for breach of constitutional rights for want of jurisdiction. I also set aside the special damages because there was no evidence of special damages adduced at the trial. In the whole, I set aside the entire judgment of the Court which includes the order for costs.
15. The next issue is to decide whether I am in a proper position to exercise my jurisdiction to determine the respondent's claim based on the evidence before me. I will answer this in the negative as I have not had the benefit of hearing the witnesses, seeing their demeanour and deportment and asking them the necessary questions on the different causes of action. I also have not had the benefit of seeing the tenor of evidence and its impact to put the relevant weight to it.
16. It is best that this matter be heard by another Magistrate in absence of which the respondent would be prejudiced because the Court did not make any finding on the existing pleadings.
17. It would be prejudicial to send the matter before the same Magistrate as I do not know why the Court did not deal with any causes of action and make a determination on it. Did it think that it was not proved on the balance of probability or that it was an overlook on the part of the Court? Whatever it is, to avoid any prejudice, I will order a different Magistrate to hear the case.
18. In the final analysis:

- (a) *I allow the appeal on the grounds that the determination by the Court that the respondent's constitutional rights had been breached was without any jurisdiction and that the Court erred in law and in fact when it failed to determine the matter based on the pleadings.*
- (b) *The orders of the lower Court are fully set aside.*
- (c) *The matter must be tried by another Magistrate.*
- (d) *Each party shall bear their own costs.*

Anjala Wati

Judge
23.08.2013

To:

1. *AG's Chambers, Labasa for the Appellants.*
2. *Mr. Naipote Vere for the Respondent.*
3. *File: HBA 09 of 2010.*