

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 277 of 2014

BETWEEN : SHAILENDRA SINGH  
Plaintiff

AND : PC 3114 WAISEA IKANIDRODRO  
First Defendant

: COMMISSIONER OF POLICE  
Second Defendant

: ATTORNEY GENERAL OF FIJI  
Third Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr V. Prasad for the Plaintiff  
Ms O. Solimailagi, Ms B. Kour with her, for all the  
Defendants.

Dates of Hearing : 11 and 12 September 2017  
Date of Judgment : 4 October 2017

**JUDGMENT**

1. This is a claim by the Plaintiff against, inter alia, the Commissioner of the Fiji Police.

2. The Amended Statement of Claim alleges as follows :
  - (1) The First and Second Defendants maliciously and without reasonable and probable cause laid a false charge against the Plaintiff in the Navua Magistrates' Court, of having absconded bail. On 18 May 2012, the Plaintiff was arrested and imprisoned until 21 May 2012 when he was brought before the above court. On 21 May 2012, he was convicted of the said charge and fined \$500.
  - (2) On 31 January 2013, Gates CJ in exercise of the High Court's revisionary powers set aside the conviction and quashed the sentence.
  - (3) The Plaintiff will rely on the above judgment.
  - (4) By reason of the aforesaid matters the Plaintiff was wrongfully imprisoned, deprived of his liberty, greatly injured in his credit, character and reputation, suffered mental and bodily pain, was put to trouble, inconvenience etc. and was injured in his business.
  - (5) The particulars of special damages are loss of earnings totaling \$2,000 as a consequence of his kava shop being closed for 4 days.
  - (6) The Plaintiff claims special damages, damages for false imprisonment and malicious prosecution, punitive damages of \$50,000, interest and costs.
3. The Amended Statement of Defence of all 3 Defendants contends as follows:-
  - (1) The Plaintiff was convicted after a trial on 15 February 2012, of a charge of improper use of a mobile communications device. Due to his failure to attend court, he was charged by the Resident Magistrate with absconding bail on 18 May 2012.
  - (2) The Defendants state the Chief Justice set aside the conviction, substituted for it an acquittal and ordered the fine, if paid, to be returned.
  - (3) The Plaintiff was lawfully arrested on the Friday by the Second Defendant (sic) under the full authority of the Bench Warrant (warrant) issued by the Resident Magistrate, kept in custody and produced in court on the Monday.
4. The Plaintiff filed a Reply.

5. The Minutes of the Pre-Trial Conference dated 3 March 2017 state that, inter-alia, the following issues are to be determined:
  - (1) Whether the Plaintiff was at the material time operating a kava retail shop.
  - (2) Whether on 16 April 2012, he absconded bail at the Navua Magistrates Court.
  - (3) Whether on 18 May 2012, the First and Second Defendants maliciously and without reasonable and probable cause laid a false charge before the court that the Plaintiff absconded bail.
6. The hearing commenced with the Plaintiff (PW1) giving evidence. He said he was in his house on 18 May 2012 when he was told by his wife that a policeman had come looking for him. He went to his shop and there the First Defendant told him there was a bench warrant against him. This was on a Friday. He closed the shop and followed the First Defendant to the Nabua Police Station from where he was taken to the Navua Police Station. He was in a cell on 18, 19 and 20 May, 2012. On the morning of 21 May the police brought him to the Navua Magistrates Court where the Magistrate fined him \$500 on convicting him on a charge of absconding bail to which charge he had not pleaded guilty.
7. The Plaintiff said he was traumatized by his period of detention. His loss of income totaled \$1,850. He wrote to the Attorney General who then wrote to the Chief Justice and as a result his conviction was revised.
8. Under cross examination PW1 said if he was not at the shop it is closed. He failed to attend court on 16 April 2012 for the criminal charge of using a mobile phone while driving. He knew he had to attend court but did not attend as he was attending his aunt's funeral. He phoned the court registry on 17 April 2012 and was informed a bench warrant had been issued for his failure to attend court the previous day.
9. PW1 agreed the warrant has been correctly issued. He was arrested at 4.05pm by the First Defendant. He agreed the warrant is valid. The First Defendant has lawful authority to

make the arrest on Friday 18 May. He was fined \$500 for absconding bail. He was in custody from Friday evening to Monday morning. He never complained about the food in the police station. He never complained at the Magistrates' Court. If he opened the shop he would earn \$700. He has no documentary proof of the loss of earnings.

10. With that the Plaintiff closed his case and the Defendants opened theirs.
11. The first witness was PC Waisea Ikanidrodro (DW1) the First Defendant. He said he received the warrant on 18 May 2012 from the O.C. Highway Division. He went to the Plaintiff's house in the morning and his wife told him he was out. DW1 returned an hour later and the house was closed. In the afternoon he went to the shop where he saw the Plaintiff outside. He executed the warrant at 15.50 hours. The Plaintiff did not question him when he informed him it was the warrant of arrest. DW1 took the Plaintiff to the Nabua Police Station and then to the Navua Police Station where he handed him over to the duty officer.
12. Under cross-examination, DW1 said he did not take the Plaintiff to any other place and went from the Nabua to the Navua Police Station.
13. In re-examination DW1 said the returnable date of the warrant was 4 June 2012. He was to serve it before that date which he did.
14. The next witness was Acting Inspector Rajesh Prasad (DW2), the Station Officer of Navua Police Station. He tendered the Station Diary for May 2012. He said the Plaintiff was released on 21 May 2012 and escorted to the Navua Magistrates' Court. He left without any complaint.
15. Under cross-examination DW2 said the station orderly records what happens in the Diary and he recorded there were no complaints.

16. In re-examination DW2 said the Police did not know at the date of arrest that the warrant of arrest would be quashed at a future date. With that the Defendants closed their case.
17. Counsel for the Plaintiff submitted that based on the judgment of the Chief Justice (judgment), the imprisonment had become false imprisonment and thus the Plaintiff was entitled to the relief claimed. He submitted damages of \$2,500 per day for 4 days (including Monday) would be just. He said there was no need to deal with the facts in the light of the judgment. The Plaintiff did not abscond. Counsel left it to the Court to decide if there was a malicious prosecution.
18. Counsel for the Defendants now submitted that the Plaintiff admitted he was required to be present in the Navua Court on a criminal charge. He instead attended to his aunt's funeral. He admitted that on 17 April 2012 he called in the registry and was informed the warrant had been issued. He confirmed he did not present himself to the Navua Court nor to any police station. He confirmed the warrant was valid and the arrest was validly carried out. He admitted the First Defendant had reasonable cause to arrest him.
19. Counsel relied on s.50 and s.65 of the Magistrates' Courts Act (Act). The police had to obey the bench warrant. At the material time they did not have the judgment. Once a warrant is executed the police are required to hold the Plaintiff in custody. There was no false imprisonment. There was no malicious prosecution as no evidence was adduced that the prosecution proceeded with malice or an ulterior motive. It proceeded from the warrant.
20. Counsel also submitted special damages had not been proved. There is no punitive damages.
21. At the conclusion of the arguments I said I would take time for consideration. Having done so I proceed to deliver my judgment.

22. This is a case where the pivotal issue is whether the police had erred in executing the bench warrant and keeping the Plaintiff in custody until he was produced in court.
23. According to Clerk and Lindsell On Torts (19<sup>th</sup> edit) (Clerk) false imprisonment is “the unlawful imposition of constraint on another’s freedom of movement from a particular place” (Collins v Wilcock [1984] 1 W.L.R. at 1178).
24. It is established on proof of :
  - (1) The fact of imprisonment and
  - (2) The absence of lawful authority to justify that imprisonment.
25. Clerk at 15-35 states “No action for false imprisonment will lie even if the warrant was improperly obtained, because of the intervention of the judicial process.”
26. I turn now to s.50 of the Act which states all police officers are authorized and required to obey the warrants of a magistrate in the exercise of his criminal jurisdiction. Undeniably that was precisely what the First Defendant was doing.

S.65 (2) reads “No officer of any court or other person bound to execute the lawful warrants or orders of any such magistrate, justice of the peace or other person acting judicially shall be liable to be sued in any civil court for the execution of any warrant or order he would be bound to execute if within the jurisdiction of the person issuing the same.
27. I shall now consider the decision of Jiten Singh J in “Prasad v Ryland and Ors : Labasa High Court Civil Appeal No.02 of 2007. At para [7] his Lordship states “The justification provided by the defendants is that the police officer acted under lawful authority in that he was carrying out the statutory duty imposed upon a police officer to obey orders given by a Magistrate. A bench warrant is an order by a Magistrate to arrest a person. The police officer could not refuse to obey it or go behind the issuing of the warrant to check upon its lawfulness. Here the order to arrest was given by a Magistrate. The opinion or

judgment to issue a warrant is interposed between the charge and the arrest. A judicial officer namely in this case a Magistrate acted according to his own judgment; he is not the agent of the prosecuting authority or the police. The prosecutor merely asks for a warrant. The Magistrate in his own deliberate judgment decides whether to issue it or not”.

28. If I may say so the situation in the instant case mirrors that in the case above. And thus the same conclusion too has to be drawn here.
29. The Plaintiff's Counsel is using the judgment to bear down the defence. He says in effect the judgment absolves him of the need to lead evidence or to submit on the law relating to false imprisonment. With respect the judgment does no such thing. All that the Chief Justice was doing was correctly finding that the charge stated the wrong date for the offence of absconding bail and for that reason only the charge was misconnected and therefore a nullity.
30. The judgment makes it clear that the magistrate's dilatoriness in allowing a straightforward case (of using a mobile telephone while driving) to be protracted, entailing 12 court attendances by the Plaintiff, was deserving of judicial stricture.
31. But this cannot in my opinion, be conceived by the Plaintiff and his Counsel as being tantamount to the Chief Justice saying that ipso facto the allegation of false imprisonment has been made out. This is because the judgment did not refer to nor question the validity of the warrant from which all the Police actions emanated. In any event the decision of the English Court of Appeal in *Percy and Another v Hall and Others* [1997] Q.B 947 says the question whether the constables was acting tortiously or lawfully was to be answered at the time of the event complained of.
32. The Police are commanded by the warrant signed and sealed by the Magistrate to arrest the Plaintiff and have him forthwith before the Magistrate. This is exactly what the Defendants did nothing less and nothing more.

Having arrested him on a Friday evening they had to keep him in custody till the following Monday when the court would be sitting to produce him before the Magistrate then. It stretches credulity to breaking point for the Plaintiff to consider this as false imprisonment, or as evidence of bad faith or lack of reasonable and probable cause.

33. For my part I am not willing even for a moment to countenance such a view. If I were to do that, which I certainly shall not, it would be to punish the Police for obeying the law in executing the warrant. In my opinion the subsequent finding (that the charge was defective and the conviction quashed) by no means transformed, what was at the time, the lawful execution of the warrant by the lawful exercise of the First Defendant's bounden duty, into an act of actionable tortious liability on his part. Here I am adopting and adapting the words of Simon Brown L.J. in *Percy v Hall* as I deem appropriate to the situation in the instant case.
34. I am of the opinion that the question whether the First Defendant acted tortiously in keeping the Plaintiff in custody is to be answered as at the time the warrant was executed on the Friday evening. At that time the warrant was to be presumed valid, and in the public interest it had to be executed by the Defendant. The Plaintiff's claim for false imprisonment therefore fails.
35. I turn now to the alleged claim for malicious prosecution, which I must note was not seriously proceeded with by the Plaintiff's Counsel. Clerk states that in an action of malicious prosecution the claimant must show first that the law was set in motion against him on a criminal charge, secondly that the prosecution was determined in his favour, thirdly that it was without reasonable and probable cause, fourthly that it was malicious. The onus of proving every one of these is on the claimant.
36. Here the prosecution was determined in the Plaintiff's favour by the exercise of the Chief Justice's revisionary powers in quashing the conviction. But the prosecution was set in motion by the Magistrate when he issued the Bench Warrant and not by the police or the



Defendants. The Magistrate does not automatically grant a bench warrant everytime a police officer or a Counsel asks him to do so. I myself have refused a Counsel's request for a warrant when it was not justified. It follows this claim must also necessarily fail. In any event in my view the Plaintiff produced no evidence and did not prove the other essential elements of the tort of malicious prosecution.

37. Indeed the Plaintiff's own evidence inculpated himself and exculpated the Defendants in all aspects.
38. In the result all the Plaintiff's claims fail and I therefore enter judgment for all 3 Defendants.
39. For the sake of completeness I shall assess the damages if I had found the Defendants liable. For general damages for false imprisonment I would have awarded \$3,000. For special damages I would have awarded \$500, although the Plaintiff did not strictly speaking provide any documentary proof. Proof of rent paid does not translate into proof of earnings. I would not have awarded any damages for malicious prosecution nor any punitive damages, as no evidence was led and no submission made.
40. In fine the Plaintiff's claims against the First, Second and Third Defendants are dismissed and the Plaintiff is to pay costs, summarily assessed at \$1,000.

Delivered at Suva this 4<sup>th</sup> day of October 2017.



David Alfred  
Judge  
High Court of Fiji