

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. 40 of 2017

BETWEEN : LILA WATI

PLAINTIFF

AND : RAJESH ESKARAN

FIRST DEFENDANT

AND : TREEKAMS TEXTILES LIMITED t/a TRIKAMS TEXTILE
GARMENT FACTORY LABASA

SECOND DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr A. Sen for the Plaintiff.
Mr V Sharma, Mr W. Mucunabitu, with him, for the First and
Second Defendants.

Date of Hearing : 9 August 2018
Date of Judgment : 23 August 2018

JUDGMENT

1. The Plaintiff in her Statement of Claim says as follows:
 - (1) At all material times she was employed the by Second Defendant (the company) as a machinist.
 - (2) The First Defendant (Eskaran) was at all material times, an employee, servant and or agent of the company.
 - (3) Circa November 2011 the Plaintiff informed Eskaran that some parts have come out of the machine and needed repairs.
 - (4) Eskaran instructed her to keep it safely and he would later attend to it.
 - (5) Circa 20 February 2012 Eskaran as an employee, servant and or agent of the company reported to the police that she had stolen a machine part from the company.
 - (6) Circa 3 August 2012, during the investigation Eskaran told the police that it was a misunderstanding on his part and that he had received the stolen/lost parts.
 - (7) On 10 August and 9 October 2012, the Plaintiff was arrested and taken to Labasa Police Station and was interviewed under caution when she denied the theft.
 - (8) At the time she was arrested and taken into police custody, the Defendants knew and ought to have known that she had not committed any offence and that her detention was unnecessary and unlawful.
 - (9) On the insistence of the Defendants the Plaintiff was on 9 October 2012 charged with theft.
 - (10) Circa 12 November 2012, the Defendants maliciously and without reasonable and probable cause preferred before the Magistrate a charge of theft against the Plaintiff and caused the Magistrate to issue a summons to her directing her appearance before the Court to answer the charge.
 - (11) Circa 8 November 2013 the Defendants continued to prosecute the charge and caused the Court to commit the Plaintiff for trial before the Court. The prosecution was

- actuated through malevolence as the Defendants wanted to terminate the Plaintiff's employment through summary dismissal without paying her entitlements.
- (12) Circa 17 February 2014 the Plaintiff stood trial and she was acquitted because the Court ruled that the prosecution (sic, the Plaintiff) had no case to answer.
- (13) By reason of these matters, the Plaintiff was injured in her credit, character and reputation, suffered mental anguish and pain and suffered loss and damage.

Particulars of Special Damages

Solicitor fees for defending the Plaintiff in the criminal case.....\$5,000.

Particulars of Exemplary Damages

The Defendants abused their powers to undermine the Plaintiff's rights that breached her fundamental rights against persecution.....\$25,000.

2. The Defendants in their Statement of Defence say as follows:
- (1) The complainant of the proceedings was the police and the Defendants do not have conduct and carriage of the proceedings and the investigations.
- (2) The Defendants had no conduct and carriage of the criminal action which was a proceedings of the State.
- (3) The Defendant pleads res judicata as the Plaintiff "had claimed against the Defendant's" in the Employment Relations Tribunal for inter-alia, unfair dismissal, loss of dignity, injury to her feelings and humiliation.
3. In her Reply to Defence, the Plaintiff says the Defendants proceeded with the prosecution through its false complaint and therefore had full knowledge in the conduct of the prosecution.
4. The Minutes of the Pre-Trial Conference dated 24 May 2018 include, inter-alia, the following:

Agreed Facts

- (1) The Plaintiff was employed by the company as a machinist.
- (2) Circa 20 February 2012 Eskaran as employee, servant and or agent of the company reported to the police that the Plaintiff stole a machine part from the company.
- (3) Circa 17 February 2014 the Plaintiff stood trial and was acquitted of the charge of theft.

Issues

- (1) Did Eskaran instruct the Plaintiff to keep the part safely to be attended to later.
 - (2) Did Eskaran on 3 August 2012 inform the police that there was a misunderstanding on his part and he had received the stolen/lost part.
 - (3) Did the Defendants make a false complaint and have full knowledge in the conduct of the prosecution.
 - (4) Did the Defendants on 12 November 2012 maliciously and without reasonable and probable cause cause the Plaintiff to be prosecuted before the Magistrate for theft.
 - (5) Was the Defendants actions actuated through malevolence as the Defendants wanted to terminate the Plaintiff's employment through summary dismissal.
 - (6) "Is the defendant's plea of res judicata" concerning unfair dismissal relevant to the Plaintiff's claim.
5. At the outset of the hearing both counsel informed the Court that the Plaintiff's Bundle and the Defendants' Bundle are agreed documents subject to cross-examination.
6. The hearing commenced with the Plaintiff (PW1) giving evidence. She said she joined the company in 1993 and was employed as a machinist. On 20 February 2012 her employment was terminated. Eskaran was the manager of the company. They did not give any reason for the termination and did not give her, her sick sheet, holiday leave and bereavement leave. When she asked for these Eskaran told her to go home.

7. On 3 February 2012 he had suspended her for 2 weeks and had told her to come back on 20 February. When she did, he told her there is no work in the company. There was no letter of termination. The manager permitted her to take all her personal effects away. A machine part (thread puller) had been given to her in November 2011 by Eskaran, to keep safely. She did not take it out of the premises. When he terminated her employment she gave him the thread puller. He told her she had stolen it.
8. On 10 August 2012 she was called by the police at 11.30am and was interviewed, at the Labasa Police Station, for 2 hours. On 9 October 2012, the police called her again to the station and charged her. She was arrested and placed in a cell for 2 hours. Later the police gave her a summons to go to court. She appeared in the Labasa Magistrates' Court, about 7 times. Eskaran testified in court and told the Magistrate that she had stolen the machine part that he had given her to keep safely. He said there was a misunderstanding on his part. The Magistrate acquitted her.
9. Under cross-examination PW1 said she was aware of the company policy that company items were not to be taken home. On 3 February 2012 she asked for her money and they suspended her. She did not take the part home. Eskaran and a co-worker were State witnesses. She was never told to return to work.
10. In re-examination PW1 said Eskaran never told her she had taken the part home.
11. With that the Plaintiff closed her case and the Defendants opened their's.
12. Eskaran (DW1) now gave his evidence. He said he was the manager and the Plaintiff was a machinist in the company. In November 2011, the Plaintiff informed him that one of the machines parts had come out. He advised her to keep it with her. In January 2012 there was a stock take and they found a variance. The main office advised him to suspend 3 workers including the Plaintiff and to report to the police. She was suspended on 6 February 2012 for 2 weeks and advised to return after 2 weeks which would be 20

February 2012. When she did he stopped her and told her the main office had directed she not start work as an investigation was in progress. She opened her wallet and gave him the part which he had asked her to keep. He reported to the Police and gave 3 statements. The part was not in the office when investigations were conducted so he had to report to the police to investigate. He gave the Plaintiff the part to keep until he was free to come to fix it. He left it at that because the machine was functioning without that part. He gave evidence in the police case that he told her to keep the part.

13. Under cross-examination DW1 said he agreed with para 2, page 1 of the PBD (police letter). He has no suspension letter to show and her suspension was not recorded anywhere. In his statement to the police it does not state she took the part home. It is not stated anywhere in the statement of defence that the Plaintiff took the part home. She returned it of her own volition. He was told by the directors to pursue the police action. As an employee he had to follow the instructions of the bosses. He was directed by the bosses to go to Court to have the charges prosecuted against the Plaintiff. He took the bosses' instructions. In the criminal court the evidence was not there and he told the truth. If someone is prosecuted it gives them worry and stress. The prosecution was maliciously done as the Plaintiff was asking for her rights.
14. With that the Defendants closed their case and Counsel began their submission.
15. The Plaintiff's Counsel submitted that from the evidence the Plaintiff did not commit any wrong. She was only asking for her rights, her leave pay etc. Eskaran was under the direct instructions of his bosses. His first statement to the Police disclosed no wrongdoing. Eskaran admitted malicious prosecution.
16. Counsel said the false imprisonment was the 6 hours the Plaintiff was in the police station which is not challenged. The general damages for this should be \$3,000.

17. With regard to the malicious prosecution, she was under prosecution for 2 years and the general damages should be \$50,000 and another \$25,000 for exemplary damages. There was nothing else.
18. Counsel for the Defendants then submitted. He said he accepted that the Defendants' action led to the malicious prosecution against the Plaintiff. The quantum for false imprisonment should be based on the cases and he would leave it to the Court to assess the quantum of the exemplary damages.
19. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my judgment.
20. There are two issues for me to decide viz (1) whether there was any false imprisonment and (2) whether there was any malicious prosecution. I shall deal with (1) first.
21. According to Clerk and Lindsell on Torts, 19th edition (Clerk), "False imprisonment is the unlawful imposition of constraint on another's freedom of movement from a particular place" (para 15-23 on page 891).
22. Here the evidence led in Court showed the Plaintiff was in police custody for 6 hours, which was not challenged by the Defendants. That, that custody directly arose from a complaint by the First Defendant acting on the instructions of the Second Defendant which complaint was baseless is shown clearly by the document at page 1 of the PBB which is a letter from the police dated 3 August 2012. In para 2 the officer states that "Investigation Conducted through investigation it was discovered by the investigating officer that the compliant (sic, complainant) had a misunderstanding as he told police in his statement that he has received the machine part back from staff namely LILA REDDY, whereby he had given it to her to keep for safe keeping, and didn't wish to further with his report as per report book vide 858/12. Investigation Officer PC 4550 Ronald Raj".

23. I am fortified in the decision I am reaching by the decision of Rooney J in : *Nirmala Wati v. A Hussain & Co Ltd and Asim Hussain* on 26 September 1986. His Lordship said in para F on page 7 of his judgment "But, where there has been no offence, there is no duty to complain to the police and thus set the law in motion. If a baseless complaint leads to the arrest and detention of another, the maker of that complaint must accept full responsibility for the actions taken on his behalf by the police".
24. The above decision was delivered 32 years and the award was \$500 for two and half hours deprivation of liberty. I think the award for the Plaintiff here adjusted for the change in money values should be the sum of \$3,000 and I so award this sum.
25. I turn now to consider the malicious prosecution issue. Clerk at page 972 in para 16 – 06 states the essentials of the tort of malicious prosecution are (1) The claimant must show he was prosecuted by the defendant that is to say the law was set in motion against him on a criminal charge (2) The prosecution was determented in his favour (3) It was without reasonable and probable cause (4) It was malicious.
26. Although the First Defendant told the police he had received the machine part back from the Plaintiff (See para 22 above), nevertheless he appeared in the Magistrates' Court as the star witness for the prosecution against the Plaintiff. The charge was kept hanging over the head of the Plaintiff for a period of 15 months from the date of charge (5 November 2012) to the date of her acquittal (17 February 2014).
27. The evidence, to my mind shows that the Plaintiff has satisfied the onus of proving each of the above. She was prosecuted by the police on a baseless complainant made by the First Defendant at the behest of the Second Defendant. The prosecution ended in her favour because the Magistrate acquitted her. Her acquittal on the grounds that she had no case to answer showed that the prosecution was without reasonable and probable cause. The fact that the prosecution was malicious was shown by the sworn evidence of

the First Defendant that he was directed by the bosses (the Second Defendant) to go to Court to have the charge prosecuted against the Plaintiff, and that the prosecution was maliciously done as she was asking for her rights.

28. I turn now to consider the appropriate award for the damages she is entitled to receive for the tort of malicious prosecutions that I find the Defendants committed against her.
29. In the case of Resene Paints Fiji Limited, Rakesh Malhotra and Hampton Singh AND Vikram Singh Mohindra and Madhavi Mahendra [2012] FJHC 1392 in his judgment delivered on 5 October 2012, Hettiarachchi J awarded the Second Plaintiff general damages in the sum of \$20,000 for the malicious prosecution. In the instant case I think a sum of \$25,000 as general damages will be adequate damages for the Plaintiff.
30. The Plaintiff is claiming special damages but I shall not be making any award under this head as it is trite that the same have to be strictly proved and this the Plaintiff has not done at all.
31. Finally I shall deal with the issue of res judicata. I have perused the Determination of the Employment Relations Tribunal dated 4 July 2017 and note that it only made orders for reimbursement of wages lost by the Plaintiff and payment of 12 months wages to her as compensation for humiliation, loss of dignity and injury to her feelings. I do not consider that these are what I am considering in making my awards for false imprisonment and malicious prosecution. In the event res judicata cannot apply.
32. The Plaintiff is also claiming exemplary damages. Here I shall accept and adopt the reasoning of Lord Woolf MR in the English Court of Appeal in : Thompson v Commissioner of Police of the Metropolis [1998] Q. B at para (12) on page 516 where he said damages awarded with the object of punishing the defendant is exceptionally possible where there has been conduct, including oppressive or arbitrary behavior, by police officers which deserves the exceptional remedy of exemplary damages. Here, If I

may say so with respect the Plaintiff has not suffered such behavior at the hands of the Defendants and cannot be entitled to an award of exemplary damages in her favour.

33. At the end of the day the evidence showed the whole affair was orchestrated by the Second Defendant to prevent them having to pay the Plaintiff her small monetary entitlements. I shall now enter judgment for the Plaintiff against the Defendants, and hereby order the Second Defendant to pay the Plaintiff:

- (1) General damages of \$3,000 for the false imprisonment;
- (2) General damages of \$25,000 for the malicious prosecution;
- (3) Interest at the rate of 4% per annum on the judgment sum of \$28,000 from the date of the service of the writ to the date of payment;
- (4) \$3,000 as costs summarily assessed on this action.

Delivered at Suva this 23rd day of August 2018.



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David Alfred

JUDGE

High Court of Fiji