IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBC 275 of 2019 (Lautoka)**

BETWEEN : **Deshwar Kishore Dutt** of Maximum Correction Centre, Naboro Prison.

Plaintiff

AND : **Sakeasi Veviwili** Former Supervisor, Fiji Corrections Services, Western Division.

1st Defendant

AND : **Meli Taito** Former Chief Operating Officer, Natabua Corrections Centre.

2nd Defendant

AND : **Francis Bulewa Kean** Commissioner Fiji Corrections Services.

3rd Defendant

AND : **The Attorney General of Fiji.**

4th Defendant

Representation

Plaintiff: In Person.
Defendants: Mr. V. Ram & Mr. V. Chauhan (AG's Office)

Date of Trial: 30th July 2024.

Judgment

A. Introduction

[1] This action relates to **false imprisonment**. The Plaintiff an inmate at the Corrections Centre filed a Writ at the Lautoka High Court against the 4 Defendants. He sought damages and costs for wrongful confinement (false imprisonment). A Statement of Defence was filed by the Defendants. The matter was transferred to Suva by the Master of the High Court with the consent of the Parties. On the day of the commencement of the Trial the Plaintiff withdraw his claim against the 3rd Defendant. He has pursued the claim against the other 3 Defendants.

B. The background to the claim

[2] The Plaintiff was sentenced by Justice Temo (as he then was) in the High Court criminal case # 338 of 2012 on 20th April 2015 for the offence of receiving stolen property to 1 year 6 months (18 Months) imprisonment, with a non-parole period of 12 months.

C. The case for the plaintiff

[3] The Plaintiff gave evidence. His case is that with the consent of the 3rd Defendant, the 1st Defendant, together with the 2nd Defendant wrongly confined him for further 4 months. Instead of releasing him on 19th April 2016, the defendants released him on 19th August 2016. Wrongly confining him for 4 months. This according to the Plaintiff is in breach of Sections 27 and 28 of the Corrections Service Act 2006 and the provisions of the Bill of Rights enshrined in the Constitution. The Plaintiff claims that his right to liberty under Section 9 (1) (a) of the Constitution was violated.

[4] The Plaintiff stated that he was unaware of wrongful confinement as he lacked sufficient knowledge on the operation of the non-parole and the Corrections remission system. That from the decision of the Supreme Court in **Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019)** he ascertained that the practice followed by the Corrections Services for the calculation of the remission period, being the head sentence minus the non-parole period is statutorily impermissible and constitutionally invalid and having no legislative backing.

[5] The Plaintiff's contentions are as follows:

(i) Why was the Plaintiff held in custody for extra four months;
(ii) Was there any law permitting the Defendants to deprive the Plaintiff his personal liberty, especially when he had earned it (Remission) whilst held in custody for 12 months;
(iii) The Defendants had acted ultra-vires when they failed to release the Plaintiff on the 19th or 20th April 201[6];
(iv) Does the 4 months of unlawful confinement amounts to mental and emotional torture; and
(v) Was there any statute backing-up the Commissioner's illegal practice for holding the Plaintiff in custody for 4 months.

[6] The Plaintiff relies upon **Timo** (supra) in particular para 49 where Justice Lokur stated:

> "*Since remission and parole or non-parole period are completely different in content and meaning, mixing them up leads to the confusion that is evident from the view taken by the Legal Counsel, which does not have the sanction of law and acts to the detriment of the personal liberty of a convict by requiring him or her to remain in custody for a period longer than necessary....*"

[7] The Plaintiff's position is that justice can be served if the Court assesses the claim in light of violations of human rights as determined in **Kasim v Commissioner of Police [2001] FJLawRp 112; [2001] 2 FLR 415 (3 December 2001)** and grant him $1000.00 per day for wrongful confinement and $500.00 per day for exemplary costs,

for the 4 months of his detainment. The total sought by the Plaintiff is $120,000.00 as general damages and $60,000.00 as exemplary damages.

[8] In response to the defendants' contentions the plaintiff responded that amendment made to the Corrections Service Act in 2019 and Timo (supra) confirmed that the remission must be calculated from the total sentence, not only the remaining period after the expiry of the non-parole period.

D. The contention on behalf of the Defendants

[9] The witnesses for the Defendants were Isireli Nataga and Meli Taito (2nd Defendant). Mr. Nataga is the Director Operations and Intelligence of Corrections Services, while Mr. Taito is an Assistant Superintendent of Corrections.

[10] According to the defendants they exercised lawful authority in detaining the Plaintiff from 19th April 2015 to 19th August 2016. The detention was carried out under committal warrant number 213/15 for a period of 18 months with a non-parole period of 1 year (12 months). The calculation of remission was applied on the remaining portion of the sentence that the non-parole period did not cover. After calculating the remission, 2 months was set aside from the sentence and the plaintiff was required to serve 1 year 4 months (16 months).

[11] The defendants deny violating any right of the Plaintiff or breaching any law. They maintain that at the material time the plaintiff was required to serve 4 months of his sentence after the remission of 2 months was deducted from the 6 months which the non-parole period did not cover. They sought that the claim be dismissed.

E. The Authorities

[12] The Plaintiff is this matter has relied upon **Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019)**. Timo was charged with aggravated robbery and entered a plea of not guilty. As the trial in the High Court was in progress and after the 3rd prosecution witness completed his evidence, he changed his plea to guilty. The guilty plea was accepted and he was convicted and sentenced to 12 years and 1 month imprisonment (reduced from 13 years to reflect the 11 months period, he had been remanded in custody). The non-parole period imposed was 12 years. Timo appealed against conviction and sentence to the Court of Appeal. This was dismissed. Timo then sought leave to appeal to the Supreme Court against his conviction and sentence.

[13] The Supreme Court with their judgment in **Timo** has clarified "*the dilemma of how the non-parole period is to be ordered in a sentence of imprisonment and how it relates to the remission of that term, an administrative matter, has troubled both serving prisoners and the courts.*" – Per Gates J. Justice Gates further went on to state that "*...the legislative schemes for remission and for parole are different. This means that remission remains to be calculated as set out in the Corrections Services Act [2227 and 28] and in no other way.*" and that "*there is no support in the Corrections Legislation for the present administrative decision to apply remission only to the remaining post non-parole term of the sentence of imprisonment. The written law as it has been passed by Parliament is to be applied.*"

[14] The Supreme Court declared "*that the practice followed by the Commissioner of calculating the remission period on the expiry of the non-parole period, being the head sentence minus the non-parole period is statutorily impermissible and constitutionally invalid and having no legislative backing.*" – Per Lokur J. The defendants for their part have neither acknowledged nor referred to the Supreme Court judgment and the declaration that was made in **Timo**.

[15] The Defendants for their part have referred to and relied upon **Curusese v Attorney General of Fiji [2008] FJHC 373; HBC 190.1999 (19 December 2008).** Mataiasi Curusese had commenced writ action against the defendants, namely the Attorney General and the Commissioner of Prisons. The claim was that the Magistrate had sentenced the Plaintiff to 2 ½ years' imprisonment, when allegedly no offence was committed. The decision of the Magistrate was over-turned by the High Court on appeal. However, by the time the appeal was heard, the plaintiff had served the term of imprisonment. As a result of the imprisonment the plaintiff alleges to have suffered acute hypertension and developed other illnesses. The Plaintiff had sought the following relief: -

> (a) An order that the plaintiff pay damages in the sum of $500,000-00.
>
> (b) Such other order or orders the Honourable Court may seem just and proper.

An application was made by the Defendants by way of summons to strike-out the action under *Order 18, rule 18(1) of the High Court Rules 1988* on the grounds that:

(i) It discloses no reasonable cause of action.
(ii) It is scandalous, frivolous, or vexatious.
(iii) It is otherwise an abuse of the process of the Court.

Master Udit in **Curusese** found as follows:

> "[33] Firstly, pursuant to *S 65(2) of the Magistrates Court Act* any such action is barred as long as the act was undertaken pursuant to an order of the Court, which s/he is ***"bound to execute if within the jurisdiction of the person issuing the same."*** *S 65(2)* provides: -
>
> > *"(2) 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 which he would be bound to execute if within the jurisdiction of the person issuing the same."*
>
> This provision extends the statutory protection to person executing a warrant whether defective or invalid but is of a kind which under the circumstances was within the jurisdiction of the court to issue***: Simpson -v- A-G [Baigent's Case]*** **[1994] 3 NZLR 667** at ***716 (CA)***. In the case before me the question of jurisdiction does not arise.
>
> [34] Secondly, immunity attaches to the Prison Officers under the former Prisons Services Act that is when the alleged cause of action purportedly

arose. Since then the Act is repealed and replaced by Prisons and Corrections Act 2006. It provides: -

> *"**25**.-(1) Where the defence to any suit instituted against an officer of the Prisons Service is that the act complained of was done in obedience to a warrant purporting to be issued by a judge, magistrate or justice of the peace, the court shall, upon production of the warrant containing the signature of the judge, magistrate or justice of the peace, and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of such officer of the Prisons Service.*
>
> *(2) No proof of the signature of such judge, magistrate or justice of the peace shall be required unless the court has reason to doubt the genuineness thereof, and where such signature is proved not to be genuine, judgment shall nevertheless be given in favour of such officer if it be proved that, at the time when the act complained of was committed, he believed, on reasonable grounds, that such signature was genuine."*

[35] The English Court of Appeal in ***Hendersen - v- Preston [1888] 21 QBD 362***, in interpreting in a similar provision as to ours held that as long as the Governor of Prisons acted within the four corners of a warrant s/he shall be immune from any subsequent civil suit for false imprisonment. ***Lindley LJ*** at page 366 of the report stated: -

> *"All that one has to do is to read the warrant. What is a governor of a goal who receives such a warrant to do, except to obey it? It is perfectly valid and correct,* ***and is authorized by the Act of Parliament****, and issued by persons who have jurisdiction to issue it. It appears to me that the governor* ***by obeying that warrant has simply done his duty,*** *and the warrant* ***protects him and is an answer to the action****."*
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> *(emphasis added)*

[36] There is no allegation made as to the Prison Authority acting outside the four corners of the warrant.

[37] Thirdly, S.3*(5) of the State Proceedings Act (Cap 24)* makes it impermissible to file any action against the State for any act done in due execution of any judicial function or in connection with the execution of any orders of the court.

[38] For the foregoing reasons, no reasonable cause of action is disclosed against the Prison officers or the State. As such the claim against the Prison Officers and State is also dismissed."

[16] The Defendants argument using **Curusese** is that in this matter the Defendants acted within the sentence ordered and the warrant issued by the High Court. There is no evidence that the defendants acted outside the direction given in the warrant to

confine the Plaintiff for more than 18 months. They argue for this reason the Plaintiffs claim should be dismissed in its entirety.

[17] The other case authority that the defendants rely upon is **Setevano v Attorney-General [1995] FJHC 106; Hbc0119d.1995s (21 June 1995)**. Setevano had issued a Writ against the Attorney-General claiming damages for *'malicious prosecution'* and *'false imprisonment'* arising out of a successful appeal to the Fiji Court of Appeal against his conviction for an offence of Manslaughter after a High Court trial. Justice Fatiaki (as he then was) in his Ruling stated that:

> "The fact that the learned trial judge was subsequently held by the Court of Appeal in Criminal Appeal No: 14 of 1989, to have misdirected himself in the exercise of his statutory power to differ from the opinions of the assessors does not, under any conceivable circumstance, give rise to a *'cause-of-action'* sufficient to support or maintain *'a civil proceeding against the state.'*
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> Lord Diplock in delivering the majority judgment of the Privy Council in **Maharaj v. Attorney-General of Trinidad and Tobago *(No.2) [1978] UKPC 3; (1979) A.C. 385*** in which a barrister purported to include a claim in tort against the Crown arising out of his committal for contempt by a High Court judge, said at **p.394**: *(of the claim in tort)*
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> > *"To this extent the application was misconceived. The Crown was not vicariously liable in tort for anything done by Maharaj J. while discharging or purporting to discharge any responsibilities of a judicial nature vested in him; nor for anything done by the police or prison officers who arrested and detained the appellant while discharging responsibilities which they had in execution of judicial process."*
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> Furthermore, in discussing the nature and scope of the alleged breach of the appellant's fundamental freedom not to be deprived of his personal liberty under the Constitution, Lord Diplock said at **p.399**:
>
> > *"... no human right or fundamental freedom ... is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair.""*.

[18] The defendants argue that they are assisted by **Setefano** in that the Plaintiff's claim for wrongful confinement is misconceived as the Defendants were acting under a warrant which was a lawful order. The Defendants further say that the standard practice of calculating remission and release date of prisoners was also applied to the Plaintiff and that the Defendants were always acting in good faith under Section 9 (4) of the Corrections Act.

F. Conclusions

[19] This matter falls under the law of torts. It is concerned with those situations where the conduct of one or more persons causes harm to or invades the interests of another. It is the body of rules that determines whether or in what circumstances that person is liable to pay compensation to the injured party. Torts are creatures of common law. False or wrongful imprisonment is committed when one is detained or imprisoned by another person acting without lawful justification: **Willis v. Attorney-General [1989] 3 NZLR 574 (CA) at 579**. It has also been put that it is "the unlawful imposition of constraint on another's freedom of movement from a particular place": **Collins .v. Wilcock [1984] 1 W.L.R 1172 at 1178.**

[20] False imprisonment is established on proof of (1) *the fact of imprisonment*; and (2) *the absence of lawful authority to justify the imprisonment. For these purposes, imprisonment is complete deprivation of liberty for any time, however, short, without lawful cause:* **Bird v. Jones (1845) 7 Q.B 742; Meering .v. Grahame-White Aviation Co (1919) 112 L.T 44.**

[21] In this matter the Plaintiff was incarcerated. He has alleged that he was detained beyond the period that he was supposed to be in custody. False imprisonment also results from a positive act of detention. In the case of an omission to release a person from detention, this is actionable as a false imprisonment at least where the continued detention is unlawful or there is a breach of duty to release the person. The examples include; failure to release a lawfully arrested person where there has been undue delay in bringing him or her before a court (**Whithair v. Attorney- General [1996] 2 NZLR 45 (HC**), and a failure to discharge a prisoner at the end of his or her sentence (**R v Governor of Brockhill Prison, ex parte Evans (No 2) [2000] 4 All ER 15); Manga v. Attorney-General [2000] 2 NZLR 65 (HC)).** I note that a failure to discharge a prisoner at the end of his sentence was held to be actionable as long as **Withers v. Henley (1614) Cro Jac 379**.

[22] Torts are creatures of the common law. Statutes on some occasions amend or simplify the common law. The Parliament has acted to fill in the gaps in the law. We also need to take into account the provisions of Chapter – Bill of Rights of the Constitution of the Republic of Fiji. We will examine the relevant sections of the Constitution. I also intend to look at the impact of statute. In this matter which is the Corrections Service Act 2006.

[23] The Supreme Court in **Timo v State [2019] FJSC 22; CAV0022.2018 (30 August 2019)** has dealt with how the non-parole period is to be ordered in a sentence of imprisonment and how it relates to the remission of that term, an administrative matter. This was subsequently endorsed in **Nadan v State [2019] FJSC 29; CAV0007.2019 (31 October 2019), Kreimanis v State [2023] FJSC 19; CAV13.2020 (29 June 2023)** and **Ismail v State [2023] FJSC 40; CAV0002.2022 (26 October 2023)**.

[24] In **Kreimanis** (supra), Chalanchini J explained how since 2010 there was a practice applied by the Commissioner of Prisons for calculating the date of release of a prisoner that involved reference to both the early release date after remission had been

calculated and to any non-parole period fixed by the sentencing Court under section 18(1) of the Sentencing and Penalties Act:

> *"First, the Commission considered the non-parole period as his starting point. By example, assume a person has been sentenced to 12 years head sentence with a non-parole term of 10 years. The starting was 10 years which the Commissioner regarded as a sentence that must be served. The one third remission was calculated as the difference between the head sentence and non-parole sentence. In the present example the difference is 2 years. The Commissioner would then add to the non-parole sentence the two thirds remaining after the one third remission. A one third remission on 2 years (24 months) is 8 months and the two thirds being 16 months was added to the non-parole term of 10 year with a sentence to be served of 11 years and 4 months before release. As a result, the prisoner always served a sentence in excess of his non parole period but usually less than the head sentence. It must be noted that this approach by the Commissioner was prompted to some extent by the absence of any functioning parole board in Fiji."*

[25] The Supreme Court's decision in **Nadan** (supra) there was further criticism of Corrections approach. Shortly after the **Nadan** decision the Government introduced amendments to both section 18 of the Sentencing and Penalties Act and section 27 of the Corrections Service Act 2006.

[26] The Plaintiff was sentenced on 20th April 2015. He was sentenced to 18 months imprisonment. The non-parole period was 12 months. The calculation for the remission for the Plaintiff should be on the 18 months period of imprisonment. The remission he is entitled to which is one-third of 18 months, is 6 months. Taking away 6 months remission from the 18 months the Plaintiff's date of release should have been 12 months from the date of imprisonment. The non-parole period was also 12 months. There is no evidence before me that the Plaintiff was not entitled to the one-third remission or he forfeited the remission. Mr Dutt spent 4 months (19th April 2016 to 19th August 2016 -120 days) more in custody than his sentence required or authorised. He is seeking compensation for these periods of false imprisonment. The Plaintiff having proved false imprisonment, the onus rests on the defendants to prove that the conduct in question was legally justified.

[27] The cases the Defendants have relied upon are clearly distinguished from the matter at hand. **Curusese**, **Setevano** and **Maharaj** dealt with different aspects. Those cases did not deal with the administrative issue of the Corrections, involving the calculation of the remission period and the non-parole period to be served by a prisoner. Justice Temo (as he then was) had set a non-parole period of 12 months for the Plaintiff. The sentence imposed upon the Plaintiff is never in dispute. The confusion was on the calculation of the remission period by the Corrections. These are calculated according to Sections 27 and 28 of the Corrections Service Act 2006. The Plaintiff was entitled to 6 months remission. It was an entitlement. The initial classification of the Plaintiff set the release date at 12 months. The remission was an entitlement if the Plaintiff was of good behavior during his term and complied with the Commissioner's Orders. The evidence before me shows that the Plaintiff earned his remission. He was entitled to be released after serving 12 months imprisonment.

[28] It is important to that that "*the law knows no tort special to prisons and prisoners. The question has to be resolved within the contours of the general principles governing the tort of false imprisonment. It is common ground that the tort of false imprisonment involves the infliction of bodily restraint which is not expressly or impliedly authorised by the law. The plaintiff does not have to prove fault on the part of the defendant. It is a tort of strict liability.*" – Per **Lord Steyn** in **R v Governor of Brockhill Prison, ex parte Evans (No 2) [2000] 4 All ER 15. Section 9 (1)** of the **Constitution of the Republic of Fiji** provides for the right to person liberty. Upon the completion of the term of imprisonment of 12 months the Plaintiff was to be released. The Plaintiff spent additional period in custody subsequent to the date on which he was lawfully entitled to be released. The Corrections misapplied the law, there is no justification for the extra period the Plaintiff spent in custody. Section 48 of the Corrections Services Act 2006 sets out the process for the discharge of prisoners. It is upon: (a) end of the effective sentence; (b) in accordance with the order of any court; (c) into the custody of any person having lawful authority over the prisoner in accordance with a law applying in Fiji; and (d) in accordance with any decision made by a competent authority authorising a prisoner's release on parole.

[29] An effective sentence means the term of imprisonment that a prisoner is to serve, after taking into account remission as provided by section 28. Section 48 further in subsection (2) provides that in the event of any doubt arising as to actual date upon which discharge is due, the lawful authority of any person into whose custody a prisoner is to be released, the officer in charge shall refer the matter for determination by the Commissioner, and subsection (3) goes onto provide that where a matter has been referred to the Commissioner under subsection (2), and the Commissioner is unable to ascertain the effect of any law applying in that context, the Commissioner may refer the matter for determination by the Attorney General. The process for the discharge of a prisoner is clearly set out in the Corrections Service Act 2006. The assistance of the Attorney Generals office should have been sought if the Corrections Services was not clear on the calculations and the processes it had to follow in relation to the prisoners.

[30] The Defendants in their submissions have relied upon Section 9 (4) of the Corrections Service Act 2006 which states that "*all officers shall be immune from criminal or civil proceedings when acting in good faith –*

> *(a) in the exercise of any power or duty provided for by this Act;*
> *(b) in the execution of any warrant that is purported to have been duly issued by a judge, magistrate, or any other officer duly authorised by law; and*
> *(c) in compliance with any order or directive made by the Commissioner under section 5(2) and section 6(5).*"

[31] The Defendants did not plead good faith in their statement of defence. The closest they went to pleading good faith was stating that "...as per current practice, the calculation of sentence remission was and continues to be in accordance with the law..". The statement of defence was filed on 12th December 2019. This was after the Supreme Court in **Timo** and **Nadan** clarified the law on the remission and the non-parole periods. The parameters of a case are contained in the pleadings of each party. It is trite law that one is bound by his/her pleadings. To do otherwise would defeat the purpose of filing and relying on the pleadings. The parties are bound by their pleadings. In **Hicks v. Faulkner (1881) 8 QBD 167** at 170 Hawkins J said that "*...in*

false imprisonment the onus lies upon the defendant to plead and prove affirmatively the existence of reasonable cause as his justification..." There is no evidence before me that the Defendants acted in good faith. They needed to comply with the Correction Service Act 2006. They did not comply with it. It is open to them to seek assistance and advise from the Attorney General. They have not shown that they sought any advice. They did not follow the law which resulted in them not correctly calculating the remission period of the prisoner.

[32] The method of calculating the date of release depends on the statutory provisions which must be applied correctly. It must be correct in law. For the Correction authorities, or Commissioner to escape liability for any extended period of detention on the basis that they were acting honestly, or on reasonable grounds analogous to those which apply to arresting police officers, a significant extension of the law, reducing the protection provided by the tort of false imprisonment, would be required. That step cannot be taken in this court.

[33] Judge LJ's comments in the Court of Appeal **([1998] 4 All ER 993 at 1015** in **R v. Governor of Brockhill Prison, ex parte Evans (No 2)** is relevant and note-worthy:

> "*The action for false imprisonment provides one of the important safeguards against unlawful deprivation of liberty. Although hallowed by usage, unless the word 'false' is understood to mean wrongful or unlawful it is liable to mislead. To succeed with a claim for damages the plaintiff does not have to establish moral culpability or bad faith, which, as Taylor LJ observed in* ***Hague v Deputy Governor of Parkhurst Prison, Weldon v Home Office [1990] 3 All ER 687 at 707, [1992] 1 AC 58 at 123****, 'has never been a necessary ingredient' of the tort. So the present claim could not be defeated by the governor simply demonstrating good faith or even an honest but mistaken endeavour to perform his duties as he understood them.*"

[34] The plaintiff succeeds in the claim for false imprisonment against the defendants. The plaintiff had the legal right to be released and the Corrections/Defendants were under a clear and obvious legal duty, owed directly to the plaintiff to release him on the due date. I am of the view that once the term of imprisonment of the Plaintiff expired, he had an absolute right to leave prison. He was denied that right. The Defendants had no justification for detaining the Plaintiff following his term of imprisonment of 12 months. I also find that the Defendants have not pleaded to have acted in good faith. In any event by ignoring the law they would not have been entitled to that immunity.

G. <u>Damages</u>

[35] The Plaintiff has sought $120,000.00 as general damages. Seeking $1000.00 per day for the 120 days. He sought $500.00 per day for exemplary damages, which comes to $60,000.00. The total sought by the Plaintiff is **$180,000.00.**

[36] The Plaintiff has relied on **Kasim v Commissioner of Police [2001] FJHC 133; HBC0471.1999 (3 December 2001)** where the Plaintiff (Kasim) who was a Motor Car Sales and Spare Parts Dealer. He was travelling to Auckland from the Nadi

International Airport. He was detained and later escorted to the Airport Police Post where he was further detained. His luggage was recalled from the flight and searched. The Plaintiff was not informed as to why he was brought to the Airport Police Post by the officers. He was detained for a period of 1 hour and 10 minutes. He was not charged with any offence nor informed as to why he was detained. Upon enquiry as to why he was detained. He was informed that there was a charge against him pending in Suva. He requested the officer-in-charge of the Post to speak to the CID Suva Branch and seek clarification. Upon this being done he was released.

[37] Kasim missed the flight that he was to board and had to arrange for another flight. As a result of the delay caused by his unlawful detention, he claimed to have sustained economic loss and that he failed to secure $70,000.00 worth of Japanese second-hand spare parts. On the 6th of January 2000, Kasim once again travelled from Nadi to Auckland. He was again prevented from boarding the aircraft and escorted to the Airport Police Post. He was detained again for approximately 45 minutes. He was not informed as to why he was detained nor was he charged with any offence. His baggage was searched. Kasim once again requested that he speak to the CID Suva Branch. Upon the instructions of a superior officer's he was released. This time he managed to board the flight on which he was booked as it had been delayed in its schedule.

[38] Kasim's claim against the Defendants was damages in the form of special damages in the sum of $1,453.00, general damages and exemplary damages. The Court awarded Kasim, aaggravated damages $5,000.00- interest thereon at 4% from the 12th of October 1999 to the 3rd of December 2001 = $5,000.00 + $400.00 = **$5,400.00**. Special damages $1,153.00 - interest at 2% from the 12th of October to the 3rd of December 2001 = $1153.00 + $46.12 = **$1,199.12**. Exemplary damages $5,000.00 = **$5,000.00**. Total award = **$11,599.12**.

[39] The Plaintiff in this matter cannot be compared to Kasim. Kasim was a spare parts dealer. A businessman. The Plaintiff claims to be a farmer and a taxi driver earning $300.00 to $400.00 dollars a day. There is no evidence before me of his earning or any earning capacity of the Plaintiff. The Plaintiff is a serving prisoner. I would however assess the Plaintiff based on his claim to be a farmer and a taxi driver.

[40] Lord Woolf in the Court of Appeal in **R v. Governor of Brockhill Prison, ex parte Evans (No 2)** a decision which was up-held by the House of Lords on appeal in relation to damages for false imprisonment declined to propose an amount for each extra day imprisoned. He favored a global approach. I favor and use that approach. **Lord Woolf** stated that "*we recognize that it is possible to work out a daily, weekly, or monthly figure from this amount for the approximately two months extra imprisonment of this case but we discourage such an exercise. No two cases are the same. The shorter period, the larger can be the pro rata rate. The longer the period, the lower the pro rata rate.*"

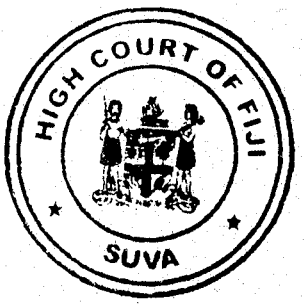
[41] The Plaintiff's claim of $180,000.00 is unrealistic and disproportionate. Having considered all the factors in this matter I intend to take global approach for damages. Therefore I award $4000.00 for the 4 months of extra imprisonment of the Plaintiff. The award bears an interest at the rate of 4 % from the date of filing of the writ to the date of judgment.

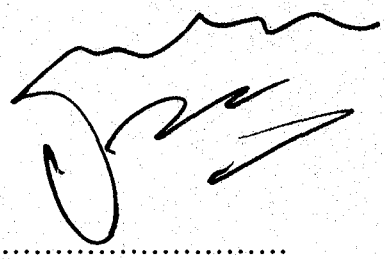
H. Court Orders

(a) The Plaintiff succeeds in is his claim against the Defendants for false imprisonment.

(b) The Defendants are to pay the Plaintiff a sum of $4000.00 as damages.

(c) The Plaintiff is entitled to 4% interest per annum on the $4000.00 awarded from the date of filing of the writ to the date of judgment.





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Chaitanya S.C.A Lakshman

Puisne Judge

27th September 2024