

## SIVAROSI RAIKALI

v.

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THE ATTORNEY-GENERAL & THE COMMISSIONER  
OF PRISONS

[HIGH COURT, 1999 (Scott J) 10 December]

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*Torts- false imprisonment- quantum of damages.**Damages- false imprisonment- quantum and nature of.*

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The Plaintiff who was a prisoner serving a life sentence released on licence was mistakenly reincarcerated for 11 months. The High Court explained the correct approach to the assessment of damages for the tort of false imprisonment in Fiji. It emphasised that such awards should bear a reasonable relationship to awards arising from other torts. It declined to award exemplary damages but awarded general damages of \$1,000 per month.

Cases cited:

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*Attorney General v. Reynolds* [1980] AC 637*Broome v. Cassel & Co* [1972] AC 1027*Donselaar v. Donselaar* [1982] 1 NZLR 97*Holden v. Chief Constable of Lancashire* [1987] 1 QB 380*Marika Lawanisavi v. Kapieni* - ABU 49/98*Mataika v. Attorney-General* HBC 507/92*Nirmala Wati v. Hussain* 32 FLR 1

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*Rookes v. Barnard* [1964] AC 1129*Thompson v. Commissioner of Police of the Metropolis* [1997] 3 WLR 403

Assessment of damages by the High Court.

*I.V. Tuberi* for the Plaintiff

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*N. Barnes* for the Defendants.**Scott J:**

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Section 99 (1) (a) of the 1990 Constitution (now repealed and replaced) gave the President of Fiji, acting on the advice of the Commission on the Prerogative of Mercy the power to grant convicted persons a pardon "either free or subject to lawful conditions".

The Plaintiff was convicted of murder in 1984 and was sentenced to life imprisonment. After serving 11 years imprisonment and following a successful application to the Commission, the President ordered his release subject to a 12 months Compulsory Supervision Order (CSO).

During the currency of the CSO the Plaintiff committed a further offence for which he was sentenced to 18 months imprisonment. Upon learning of this fresh conviction the Minister of Home Affairs revoked the CSO.

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On 18 September 1997 the Plaintiff was released from prison having served the 18 months sentence but on 30 September 1997 the Chief Magistrate ordered that he be returned to prison to serve the balance of his life sentence on the ground that he had breached a condition of his CSO namely that he not re-offend.

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Some time after the Plaintiff's return to prison doubts were raised as to the correctness of the Chief Magistrate's order. The Commissioner of Prisons sought legal advice from the Attorney-General's Chambers and in July 1998 he commenced proceedings for declaratory relief in the High Court (HBC 376/98). The question asked of the Court was whether Section 90 of the 1990 Constitution gave the President power to grant a pardon subject to a CSO.

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Following the hearing on 28 August 1998 the High Court (Byrne J) ordered that the Plaintiff be immediately released. On 1 September the Court ruled that a CSO may only be made by the Minister for Home Affairs under the provisions of Section 65 of the Prisons Act, Cap 86, that the President had no power to make a CSO and that therefore the Plaintiff had been unlawfully returned to and detained in prison. The present proceedings seeking damages for the tort of false imprisonment for the period of 11 months from 30 September 1997 to 8 August 1998 were commenced in February 1999. Liability has been admitted by the Defendants; the only question now is the proper quantum of damages.

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There is a very wide gap between the parties but fortunately both Counsel filed helpful and comprehensive written submissions. Mr. Barnes suggested that an appropriate award would be between \$500 and \$1000 per month resulting in a maximum award of \$11,000. Mr. Tuberi, on the other hand, relying on 3 local decisions as well as 2 New Zealand authorities suggested a daily rate of \$2500 for the whole 363 days of detention resulting in a claim for \$907,500.00. Given this very wide difference between the parties it may be helpful briefly to indicate the general way in which the Courts approach these claims.

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An award of damages arising from false imprisonment has as its primary purpose compensation for the loss of the Plaintiff's liberty and its consequences such as indignity, mental suffering, disgrace, humiliation and loss of reputation or social status. In addition, there may be recovery for any resultant physical injury, illness or discomfort where the imprisonment has had a deleterious effect on the Plaintiff's health. Furthermore, any pecuniary loss which is not too remote is also recoverable.

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Awards of damages under these heads are termed compensatory and will be liable to aggravation or mitigation depending on the whole circumstances of the case. In addition to such awards there may, in special circumstances be an award of exemplary damages, the purpose of which is to punish the Defendant for inflicting

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A the harm on the Plaintiff. Following the very important case of Rookes v. Barnard [1964] AC 1129 awards of exemplary damages are, absent specific statutory authority, only open for consideration either where there has been “oppressive arbitrary or unconstitutional action by servants of the government” or where the Defendant’s conduct was “calculated by him to make a profit for himself which may exceed the compensation payable to the plaintiff”.

B In computing the award under these heads there is, as pointed out by Lord Hailsham in Broome v. Cassel & Co [1972] AC 1027, 1073 a danger in hypostatising the different heads of damage. Although the element of compensation must obviously always be taken into account in arriving at a final award other elements such as aggravation, mitigation or exemplary damages “are not separate heads to be added mathematically to one another.” When making an award, although the Court will obviously indicate the principal factors taken into account in making its assessment, there is no need to specify the precise amounts awarded under each head (see Attorney General v. Reynolds [1980] AC 637, 662).

C In England in Thompson v. Commissioner of Police of the Metropolis [1997] 3 WLR 403 the Court of Appeal has comparatively recently given some helpful guidance which although primarily designed for juries contains a number of important principles, particularly those to be found at pages 415 to 419 of the report. They include:

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- (a) the total figure awarded in compensatory damages should not exceed what is considered to be a fair compensation for the injury the Plaintiff has suffered;
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- (b) exemplary damages will only be awarded in exceptional cases and only where it is considered that the award of compensatory damages is insufficient punishment for the defendant;
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- (c) in a “straightforward case of wrongful arrest and imprisonment” the starting point is likely to be £500 for the first hour and £3,000 for a period of 24 hours but that for subsequent days the daily rate will be on a progressively reducing scale; and
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- (d) awards of damages for false imprisonment should bear some reasonable relationship to awards for personal injuries (page 418 C-D).

Before applying these principles to the facts of the present case I would offer a further observation. In Fiji incomes are very much lower than there are in more advanced countries. While overseas awards are helpful in evaluating proportionality they do not translate well into exact quanta. As recently pointed

out by the Fiji Court of Appeal in Marika Lawanisavi v. Kapieni (ABU 49/98) there is a danger in paying too close a regard to awards in other jurisdictions where similar social and economic conditions do not exist. £500 is equivalent to approximately F\$1700 while £3000 is equivalent to approximately F\$10,000, both of which seem to me to be very generous amounts by comparison with current awards for damages for personal injuries in Fiji or by comparison with the Ministry of Labour's published schedules of wage rates.

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As I see it, by far the most serious feature of this case is the length of time for which the Plaintiff was detained. When however it is borne in mind that the 11 months were in addition to 12 years which were lawfully served, that the original sentence was one of life imprisonment, that the CSO was revoked because the Plaintiff re-offended following his release, and that there is nothing in the Plaintiff's supporting affidavit to suggest any other circumstances of aggravation then the injury suffered by the Plaintiff becomes altogether less severe than would otherwise be the case.

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As pointed out in Thompson (supra) the value of an extended period of incarceration is not to be calculated merely by multiplying the value of a short period such as that considered by Fatiaki J in Mataika v. Attorney-General HBC 507/92 where there was an award of \$1500 (which clearly included an exemplary element) for an embarrassing, humiliating and reckless semi-public arrest and brief detention of a wholly innocent public servant (and see also Nirmala Wati v. Hussain 32 FLR 1).

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Mr. Tuberi, relying on Donselaar v. Donselaar [1982] 1 NZLR 97 argued that the Plaintiff was entitled to exemplary damages because of the "outrageous and contumelious way" in which the Defendant had acted. Although he did not specifically refer to Rookes v. Barnard (supra) I do not doubt that he also wished to submit that the Defendants' actions were "oppressive, arbitrary or unconstitutional actions by servants of the government" and as such were capable of giving rise to an exemplary award.

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In Holden v. Chief Constable of Lancashire [1987] 1 QB 380 the Court of Appeal considered whether in every case falling within a Rookes v. Barnard category there should be an award of exemplary damages. It concluded that this was not the law and that what the Court had to do in each case was to consider all the circumstances and to decide whether such an award would serve any useful purpose.

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In the present case the main reasons for the Plaintiff's prolonged incarceration were his own lack of legal representation, the opacity of the law and the endemic slowness of the legal process in Fiji. To his credit however it was, as has already been seen, in fact the 2<sup>nd</sup> Defendant who initiated the legal proceedings which eventually led to the Plaintiff's release.

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No pecuniary loss is claimed. As pointed out by Mr. Barnes the claim for exemplary damages was not pleaded. In my assessment this is in any event not a case where the amount of compensatory damage to which I believe the Plaintiff is entitled will fail to remind the authorities to avoid imprisoning people without being absolutely sure that they are entitled to do so. In my opinion the approach advanced by Mr. Barnes is sound. With respect I find the Plaintiff's claim for almost \$1 million to be quite unrealistic and disproportionate. There will be an award to the Plaintiff of \$11,000.00 which award will bear interest at the rate of 4% from the date of the filing of the Originating Summons until Judgment. I will hear counsel as to costs.

*(Assessment delivered.)*

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