

IN THE FIRST CLASS MAGISTRATES COURT
AT SUVA

Civil Case No. 771 of 1998

BETWEEN:

SEMI VOLITI

PLAINTIFF

AND:

EPELI SENILOLI

1ST DEFENDANT

AND:

THE ATTORNEY GENERAL

2ND DEFENDANT

Plaintiff: Messrs Q. B. Bale & Associates
Defendants: Attorney General's Chambers

DECISION

The writ commencing this action was issued in August 1998 and is instituted by the plaintiff on behalf of his son, Poasa Ravea Qawaqawa Voliti, ("Poasa"). The plaintiff claims damages for false imprisonment.

It is alleged that on the 20th March 1998, Poasa was taken into police custody and without lawful justification held for four hours at the Nadera Police Post in circumstances which amounted to false imprisonment and breach of his constitutional rights.

Liability is disputed and the question of assessment of damages contested.

An amended statement of defence was filed in September 1998. The defendants **admit** that Poasa was taken into police custody at Nadera on or about the 20th March 1998. The defendants state that Poasa was in police custody for no longer than was necessary to carry out due police inquiry with regards to the items found on his person. The defendants however deny the allegation of false imprisonment and unlawful detention, also denying that Poasa suffered any physical or mental pain and stress, as alleged in the plaintiff's statement of claim.

The principle question to determine is whether Poasa was detained by the defendants without lawful justification.

On the 23rd April 1999 in the absence of the defendants, I ruled that the plaintiff had established liability against the defendants and further postponed delivery of reasons and determination of the question of assessment of damages.

My reasons and assessment hereunder.

Having heard and considered all the evidence, observed all the witnesses in the witness box, I prefer the plaintiff's version of events. I consider the evidence from PW1, the plaintiff, to have been truthfully and objectively given. I have cautioned myself in regard the shortcomings in the testimonies of PW2 Poasa, PW3 Apenisa, and PW5 Kaveni, which I am satisfied arose from lapses in memory rather than dishonesty. These witnesses are all

children. The events they were called to testify on were traumatic. Despite vigorous cross-examination, these witnesses stood firm and the evidence from them substantially consistent with the facts. The demeanor of these young boys from the witness box left a very strong impression that notwithstanding, their nervousness (understandable in the court environment), they were all keen to relay from the witness box, the events of 20/3/98. They wanted their story told. This is in contrast to the defence witnesses, all policemen and, who left a clear and distinct impression of a general reluctance to testify.

With respect, the submissions of the defendant's learned counsel that the earlier statements given by these policemen was consistent with the versions they gave in court is erroneous.

DW2 S/C Semesa Heritage

His testimony was not only evasive generally, his continuous movement in the box whilst testifying reflected poorly on his evidence. His discomfort was apparent.

He testified that on 20/3/98 he did not see Poasa inside the police post. He saw Poasa outside the post. He did not know what Poasa was doing there. He testified that he questioned Poasa outside the post where he was standing.

In a previous Police statement, recorded on 31/7/98, (D/Exhibit 3) S/C Heritage stated that on 20/3/98, "when I came **inside** the Nadera Police Post, I found S/C Cakacaka and S/C Udit were in the station. Also I saw some

small Fijian boys sitting in the Post Reception area and among them was Semi Voliti's son, Poasa."

Further on, "I had questioned Poasa what he was doing in the Police Post and he did not say anything. At no time I saw Poasa was hand-cuffed. Also I didn't release his hand-cuff when I saw him, he was just sitting on the bench."

There are glaring inconsistencies in the 2 statements. His earlier statement confirms the fact that Poasa was **inside** the police station, sitting on the bench, on 20/3/98.

DW4-S/C 463 Cakacaka

He testified that on the afternoon 20/3/98, he saw Poasa walking on the road in front of the Police Post in a suspicious manner. He said he called him and went outside to where he was on the main road. When questioned as to what he was hiding under his T-shirt, Poasa took out a tin of fish. He testified that Poasa was then required to accompany him to his houses to verify source of supply. He testified he later just gave the tin fish to Poasa. He denied ever liaising with Corporal Epeli.

In his police statement, self recorded on 21/5/98, he stated that when he questioned Poasa as to "what he was hiding inside his T-shirt? He then answered me nothing. **So I take his hand outside and found out 1 tin fish and a plastic of boiled cassava.**" He also states that he later gave the tin fish and cassava back to him as his mother requested. There is no reference to Corporal Epeli in the entire statement.

DW3 Corporal 1164, Epeli Seniloli.

He testified that he did not see Poasa during the day, either inside or outside the police post, neither did he consult with S/C Cakacaka about Poasa. In cross-examination, he testified that he "couldn't remember the earlier police statement he gave on the 28th July 1998. Suffice it to say he was extremely evasive and cast a thoroughly unfavourable impression over the entire defence case and on his own conduct on 20/3/98, subject to these proceedings. Over 1/3 of his answers to questions put to him by the plaintiff's counsel on his earlier statement was "can't remember." When he was shown a photocopy of the statement (the original later produced) he conceded having made the statement on the 29th July 1998 and read what he had self – recorded on the 29th July 1998. However, he maintained the earlier stance taken, that he did not see Poasa on 20/3/98 or consult with S/C Cakacaka about him.

His earlier police statement portrays a **COMPLETELY** different picture. The inconsistencies are not trivial, as submitted. The central issue in this case is one of credibility. That the Post officer and 1st defendant proffered two vastly contrasting statements without even attempting to explain the reason(s) for the different versions of what transpired at the Nadera Police Post on the 20/3/98, cast an extremely unfavourable impression over the entire defence case. He maintained under oath that the version given at trial was the correct one. Which means that the self-recorded police statement of 29/7/98 is not factual.

His earlier statement, recorded 4 months after the incident is specific in its attention to detail as opposed to 11 months later whilst testifying under oath and not being able to remember any details at all.

Corporal Seniloli had earlier stated that "I could recall for the day mentioned 20/3/98 at about 16.46 hours. S/C 463 came home and informed that he was going to Reba circle Rental flats to check for information regarding one Poasa T. Voliti who was walking in a suspicious manner on main Ratu Dovi Road in front of the Police Post, questioned and searched beside the road and found with a large tin fish with no wrapper plus some boiled cassava inside a white plastic. S/C 463 Cakacaka left with the above suspect to check parents." Also "at no time at all the suspect was brought and detained at the police post, in the verandah or being hand-cuffed."

The numerous inconsistencies in their respective versions of the truth of what transpired on 20/3/98 (both inconsistent with own earlier statements and with each others account, both earlier and at trial) renders the account advanced by the defendants and witnesses as both unreliable and unsafe.

In my assessment of witness credibility it is the plaintiff and his witnesses that I have preferred and accepted as having testified truthfully. On the evidence produced I have found having been satisfied as a fact that on the 20th March 1998 Poasa Voliti, then aged 14 was detained at the Nadera Police Post for approximately 4 hours as a suspect. He was questioned and searched as a suspect. Food items found on his person during the search was taken from him and held by the police. I am also convinced and find that he

was also hand-cuffed to a bar/post inside the police post and released at the behest of Constable Heritage, later on that afternoon.

The account from PW2, PW3 and PW5 are materially consistent. They had all returned from a youth picnic held at Deuba. On their return, Poasa's friends remained at a swimming creek while Poasa went to his home to collect some food for him and his friends. Whilst returning to his friends, with a tin of fish and a bag of cooked cassava, he was detained by constable Cakacaka and later held on the authority, of the 1st defendant. I have accepted the boys account of Poasa being hand-cuffed – Poasa's own account of this incident in the witness box, corroborated by his friends and in particular, the obviously painful re-collection by Apenisa and Kaveni of their friend Poasa crying at the time, will leave a lasting impression.

Defn. False Imprisonment.

“False imprisonment occurs when the plaintiff is arrested, detained or imprisonment by the defendant without lawful justification. The process need not necessarily be forceful. If the plaintiff is induced to submit by an assertion of authority on the part of the defendant, that is as much a false imprisonment, unless lawfully justified, as if the plaintiff had been the subject of forcible confinement: see Todd, Burrows, Chambers, Mulgan and Vennell, *The Law of Torts in New Zealand* (1991) at pp 91-92 and *Salmond and Heuston on Torts* (19th ed, 1987) at pp 137-138 and the cases there cited. In such non-forcible cases the plaintiff must show that in the circumstances he or she felt obliged to submit to the instructions or dictates of the defendant. A wholly voluntary submission is sufficient. The plaintiff must

submit in circumstances where he or she reasonable considers there is no choice but to submit. That is what the Judge found in this case.”

Attorney-General -v- Niania [1994] 3 NZLR per Tipping J at page 108.

Clearly Poasa was detained. This is admitted by the defendants in their statement of defence. I have also arrived at this finding have accepted the evidence from the children and Poasa's father over the policemen. S/P Cakacaka admitted in both statements that he stopped the "suspect", Poasa, questioned him, searched his person, and confiscated food Poasa was carrying. At no stage was Poasa arrested, cautioned or informed of his rights.

The suggestion that Poasa and his friends may have been hanging around the police station voluntarily is ludicrous given the circumstances of this case. Poasa was given no choice but to submit to the authority of Cakacaka, and Seniloli. Clearly he was not free to leave the police station till his father collected him later that evening. Poasa's plans to continue the picnic with his friends at "Paradise" came to a halt when he was apprehended by S/P Cakacaka and remained detained until the evening.

WAS THE DETENTION UNLAWFUL.

Defence counsel has submitted that the police were merely conducting informal inquiries. If that was the case, then I concur with the plaintiff's submission that Poasa ought not to have been detained.

Clearly from the evidence heard from the defence witnesses, Poasa was detained as a suspect. He was not arrested. He was not cautioned. He was not informed in a language that he understood the reason for his detention and of the nature of any charge that may be brought against him. He was also subjected to cruel, inhumane and degrading treatment whilst he was kept in detention. Poasa constitutional rights – Sections 25, 26 and 27 of the Constitution was breached by the defendants.

Article 37 of the Convention on the Rights of the Child, and which I have applied to the facts of this case has also been breached by the defendants. Poasa was subjected to cruel treatment, contrary to Article 37 (a). Further that he was deprived of his liberty arbitrarily, his detention did not conform with the law and the detention was not used “only as a measure of last resort and for the shortest appropriate period of time,” contrary to Article 37 (b).

DAMAGES.

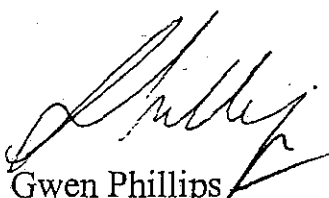
The plaintiff's counsel has submitted that an award of \$10,000.00 would be a reasonable award taking into account the aggravating factors in this case viza viz Poasa was a child, a class 8 student, he was humiliated and subjected to what can only be described as a deliberate abuse of power.

None of the normal procedural safeguards – Judges Rules, Constitutional rights, Article 37 CRC; were applied by the authorities in this case. Poasa is entitled to be compensated for the pain, distress and trauma he was subjected to. I am also satisfied that this is an appropriate case where a greater sum is necessary to compensate the plaintiff for the injury suffered because of the way in which and the circumstances in which the tort was committed.

Having considered fully the respective submissions of counsel on this question, I have adopted the level of assessment advanced by the plaintiff's learned counsel. Accordingly I have fixed the plaintiff's award under aggravated damages in the sum of \$10,000.00.

It is also my view that the facts of this case also warrants an award of * punitive damages. I have considered the conduct of all police officers on duty at the Nadera Police Post on 20/3/98 and who appeared in this court as outrageous, a gross abuse of powers and an absolute disregard to the fact that Poasa is a child. The plaintiff was compelled to institute these proceedings – the outcome of the police internal inquiry being entirely unsatisfactory and no wonder – the pertinent officers had all colluded to cover-up the events of 20/3/98. It didn't end there. They maintained their stance and dishonesty throughout the conduct of this case. In the circumstances I am also awarding the plaintiff the sum of \$5,000.00 for punitive damages.

Accordingly there is to be judgment for the plaintiff in the sum of \$15,000.00. The defendants are also to pay the plaintiff costs.


(Sgd) Gwen Phillips

Resident Magistrate

20/7/99