

CHEDE & OTHERS -v- THE ATTORNEY GENERAL

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 127 of 1991

Hearing: 12 March 1993

Judgment: 24 March 1993

A.H. Nori for Plaintiff

C. Ashley for the Defendant

PALMER J: This is a claim by four plaintiffs, John Chede, Bena Pituru, Terence Ripoka and Johnson Saro against the Police for false arrest and false imprisonment. The Police are represented by the Attorney General as the Defendant.

The plaintiffs called three witness, John Chede, Bena Pituru and Mr. Luke Kakai, the Operations Manager of the Water Unit.

The Defendant called three Police Officers as witness.

Background information

The Solomon Islands Public Employees Union (SIPEU) and the Solomon Islands Government had been at loggerheads inter alia, about the question of termination of the new 15 contracted permanent secretaries that had been appointed by the Government.

The Solomon Islands Public Employee Union set a deadline for the 19th of April 1991 and when its demands were not met it instructed its members to go on strike. The strike continued for about three weeks. The members of Solomon Islands Public Employees Union returned to work on the 10th May 1991 after the issue on the termination of the 15 permanent secretaries was referred to the Trade Dispute Panel.

On the 16 May 1991 the Solomon Islands Public Employees Union held a meeting and voted to go on strike with effect from the 17 May 1991. The members of SIPEU who work in the essential services, such as the Water Unit would join the strike at 1.00 p.m. on the 17th of May 1991. At 1.30 p.m. on that same day an application was made before this Honourable Court by the Attorney General for an order to restrain the members of Solomon Island Public Employees Union from going or continuing with the strike. The

Court handed down its decision at 5.00 p.m that day and ordered the members of SIPEU to refrain from going on strike or continuing with any strike action.

The proceedings before this court that day naturally engendered much interest and more so the outcome of the application.

Earlier on that afternoon an order was issued it seems by the Commissioner of Police that all the Water tanks around the capital were to be guarded by selected Police Officers with effect from 18.00 hours that evening to 1800 hours the next morning. At approximately 17.45 hours Police Officers were dropped off at the Panatina Water tank area and after having gained access into the fenced off water tank were already positioned and keeping watch inside the fenced off tank.

FINDINGS OF FACTS

When the interim injunction was granted, restraining the members of Solomon Islands Public Employees Union from continuing with any strike action, the plaintiffs were duly informed by their bosses, in this case, the Director of the Water Unit, Mr. Donald Makini, and Mr. Luke Kakai, the Operations Manager. They were told to carry out their normal duties.

At about 6.00 pm the first plaintiff who was also the first witness set off to drop off a pump Operator at White River. That pump operator usually sleeps overnight at that pumping station. He then drove to the Tuvaruhu Pumping Station and dropped off another Operator who also sleeps overnight there. From Tuvaruhu he drove to Naha to pick up Bena Pituru, the 2nd plaintiff, who was their electrician.

Accompanying him was Johnson Saro.

There had been an electric fault at the Dodo Creek area and Mr. Pituru was required to deal with the electric fault to the Water Pumping Station there.

On their way to Naha, Mr. Terence Ripoka, the third plaintiff was picked up.

From Naha they drove to the Panatina Water tank to check the chlorine tank and injector pump.

It was when they went to carry out their normal duties in respect of the Panatina Water tank that these plaintiffs were arrested and brought down to the Rove Police Headquarters in a Police Landrover for further questioning and then detention overnight.

I have heard the detailed evidence of the first and second plaintiffs, and the evidence of the Defendant's witness, Richard Falasi, one of the Police Officers stationed at the Panatina Water Tank, and I am satisfied that what these plaintiffs did that night was nothing more than to carry out their normal duties. There was no evidence whatsoever in the actions, behaviour and conduct of these plaintiffs that can be regarded as suspicious or sinister.

They arrived at the Panatina Station in their Departmental vehicle No.G3018, with the words 'Water Unit' clearly marked on the side of the vehicle. One of them, Mr. Pituru, entered the fenced off area in the presence of six Police Officers and proceeded to carry out his normal duties.

This involved checking the chlorine tank. He noticed this was empty and so shouted back to Mr. Chede and told him so. He was then instructed to turn off the injector pump so that the chlorine tank could be refilled.

The reason for turning off the injector pump was to avoid it from overheating and thus burning out. The injector pump injects the chlorinated water into the main tank for purposes of treating the water in the main supply tank.

The injector pump has to be carefully calibrated to ensure that the correct amount of chlorine is being injected into the source of supply. Too much would mean that the water smells strongly of chlorine and people would not be able or refuse to drink the water, and too little would mean contaminated water.

It was when Mr. Pituru sought to turn off the injector pump that he was arrested by the Police Officers, who were I might say present right beside him all the time when all this was going on. He tried to explain he says but was ignored.

Mr. Chede, who was their supervisor at that time also tried to explain but again his explanation was not accepted. They were arrested and brought to the Police station for further questioning. Nothing seems to have happened other than that they were spoken harshly to by the Police Officer in charge of the Operations that night and then placed in the cells overnight.

When Mr. Luke Kakai, the Operations Manager called in that night at the Police Station he was ignored and simply told that his workers had been placed in the cells and that there was nothing further to be done.

Mr. Kakai did attend the Panatina Tank area the next morning and confirmed that the chlorine tank was empty and that the injector pump had been turned off. He filled the tank that morning and turned the injector pump on again.

The Law:

There are two sources of law relied on; the constitution and the Criminal Procedure Code.

However, the only applicable law would be section 5(1)(f) of the Constitution.

Section 18(a) too of the C.P.C was mentioned.

However, that paragraph refers to a person being suspected of having committed a cognisable offence. The offence referred to in the submissions of Mr. Ashley (section 172 Penal Code) is a misdemeanour and secondly, the basis of the arrest was not that the plaintiffs have committed an offence but were about to commit an offence. Section 5 of the Constitution therefore is the applicable provision. That section states and I quote:

"No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say -

- (f) Upon reasonable suspicion of his having committed, or being about to commit, a Criminal Offence under the law in Solomon Islands,." (Underlinings mine).

The defendant relies on section 5(1)(f) of the Constitution to justify the arrest and subsequent detention of these plaintiffs.

The key words are 'reasonable suspicion' and 'being about to commit a criminal offence'. The requirement is that the Police must have reasonable suspicion that the plaintiffs were about to commit an offence. Mere suspicion is not enough. The suspicion must be a reasonable one. In other words the suspicion must be based on reasonable grounds.

The burden of proof in this case is on the defendant to show that the Police did have reasonable grounds to suspect that the plaintiffs were about to commit an offence.

There are numerous English authorities which have considered in detail the question of reasonable grounds for suspicion. The wording of the English Legislation is slightly

different in that it uses the words "reasonable grounds for suspecting". However, it is my firm view that that phrase is no different in the requirement it places on the standard of suspicion as compared to the words used in our legislation, which is, 'reasonable suspicion'. These words in my view mean the something. They require the same standard of suspicion; which is reasonable suspicion, or that there must be reasonable grounds or reasonable basis for the suspicion to exist.

In the Privy Council case of Hussein -v- Chong Fookam [1970] A.C. 942, Lord Devlin made some pertinent comments about the use of the word 'suspicion'. He stated:

"suspicion in its ordinary meaning is a state of conjecture or surmise when proof is lacking: "I suspect but I cannot prove." Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is at the end. When such proof is obtained the police case is complete, it is ready for trial and passes on to its next stage."

The second case that I wish to refer to is the case of Dumbell -v- Roberts [1944] 1 All.E.R. 326 AT 329 per judgment of Scott L.J. and I quote:

"The duty of the police when they arrest without warrant is no doubt to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. The British principle of personal freedom, that every man shall be presumed innocent until proved guilty, applies also to the police function of arrest-in a very modified degree it is true, but at least to the extent of requiring them to be observant receptive and open minded and to notice any relevant circumstances which point either way, either to innocence or guilt. They may have to act on the spur of the moment and have no time to reflect and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who has ex hypothesi aroused their suspicion, that he is probably an 'offender' attempting to escape, they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try to prove innocence; that is not their function: but they should act on the assumption that their prima facie suspicion may be ill founded. That duty attaches particularly where slight delay does not matter because there is no possibility in the circumstances of the arrest or intended arrest, of the suspected person running away. The duty attaches, I think simply, because of the double-sided interest of the public in the liberty of the individual as well as in the detection of crime."

These comments are directly relevant to the facts of this case.

The third case I will refer to is the case of Hotham -v- M.P.C. The Times, January 8, 1987 in which Peter Pain J. made the following pertinent comments. He stated that the phrase 'reasonable grounds for suspicion' meant that it:

"was a good deal more than suspicion. That meant that the police were required, when in the course of investigation some new factor emerged that threw doubt on the suspicion that existed already, to re-examine the suspicion to see whether it could be reasonably maintained.

In the present case there were two new factors: the plaintiffs were not hostile to the police as they had expected but had been open and co-operative, and the police search had revealed nothing. That required the police to re-examine their suspicion."

Finally, I'll refer to the English Code of Practice on Stop and Search which provides guidelines on what 'reasonable suspicion' is. I quote from the book, 'Civil Actions against the Police' by Richard Clayton and Hugh Tomlinson, 1987 Sweet and Maxwell at page 151, and I am grateful to the Attorney General for lending me this book.

"1. Reasonable suspicion does not require certainty... nor does the Officer concerned have to be satisfied ... beyond reasonable doubt. Reasonable suspicion, in contrast to mere suspicion must be founded on fact. There must be some concrete basis for the Officer's suspicion, related to the individual person concerned, which can be considered and evaluated by an objective third person. Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective observer. An officer who has such a hunch or instinct may well be justified in continuing to keep the person under observation or speak to him, but additional grounds which bring up mere suspicion to the level of reasonable suspicion are needed before he may exercise [the appropriate]... powers...(Underlinings mine)

2. Reasonable suspicion may arise from the nature of the property observed or being carried or suspected of being carried coupled with other factors including the time, the place or the suspicion behaviour of the person concerned or those with him. The decision to search must be based on all the facts which, to a careful officer, bear on the likelihood that [what is suspected will be true]... and not only on what can be seen at the time. So an officer with prior knowledge of the behaviour of someone he sees in a certain situation, or acting on information received [such as a description of a

suspected offender] may have reasonable grounds for searching him although another officer would not. (Underlinings mine)

3. *Reasonable suspicion cannot be supported simply on the basis of a higher than average chance that the person has committed or is committing an offence, for example, because he belongs to a group within which offenders of a certain kind are relatively common, or because of a combination of factors such as these. For example, a person's colour of itself can never be a reasonable ground for suspicion. The mere fact alone that a person is carrying a particular kind of property or is dressed in a certain way or has a certain hairstyle is likewise not of itself sufficient. Nor is the fact that a person is known to have a [relevant] previous conviction...*

4. *The degree of suspicion required to establish the reasonable grounds justifying the exercise of powers of stop and search is no less than the degree or level of suspicion required to effect an arrest without warrant for any of the suspected offences to which these powers relate."*

Application:

The initial suspicion seems to have been engendered by a report made to the police by Mr. Billy Gatu on the afternoon of the 17 May 1991.

In his statement made to the Police and submitted to this court as 'exhibit 1', Mr. Gatu stated that he had been informed by one, Mr Alvin Indu, an accountant at the Water Unit that the Water supply would be turned off, that morning.

It was this piece of information that was relayed to police that afternoon which appeared to have given rise to the order to man the water tanks from 6 p.m to 6.00 a.m of the next day.

In Mr Richard Falasi's evidence he stated that he was briefed by his superiors at Naha Police Station at about 3.00 p.m. He was dropped off at the Panatina tank at about 17.45 hours.

There has been no evidence produced or submission made that the order to man the tanks was based on any other information or evidence than the piece of information relayed to police by Mr. Gatu. I find this surprising and a serious lapse in investigative work.

When an information is received or report is made which on the face of it is suspicious, then it is incumbent on the Police to check it out and to use the words of Scott L.J "to make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries for truth." The first step would be to check the source of that information and to verify it. Had that been done in this case they would have been told straightaway that the source was an accountant at the Water Unit, by the name of Alvin Indu.

The other way of verifying their suspicion is to check with the Director of the Water Unit, Mr. Donald Makini, and in his absence any Senior Officer of that division. Had they done so, they would have been told that there was a case pending before the High Court on an application by the Attorney General to restrain the members of Solomon Islands Public Employees Union from going on strike! They would also have been told depending on who they spoke with, if it was the workers, they would have been told that they were awaiting the result of that High Court application and any subsequent directions from their superiors. Had they spoken with the Director or Mr. Kakai they would have been assured that they may not be going on strike despite the actions of other members of SIPEU in the other essential services.

Prudence would have dictated that the Police maintain close contact during that afternoon and especially after the High Court ruling with the Director or Mr. Kakai.

One of the unfortunate lapses in the Police investigation is the ignorance displayed about the High Court application that afternoon. One would have thought that they would have been the first or some of the first persons to be informed or be aware of such an application.

One lapse leads to another.

Without first checking their source of information and ascertaining reasonable grounds for their suspicions, a blanket order was issued for Police Officers to man all the Water Tanks around town that night and to prevent any workers of the Water Unit from 'interfering' or even entering the fenced off water tanks. Richard Falasi stated that he was briefed at about 3.00 p.m. There was ample time between 3.00 p.m to 6.00 p.m to investigate the information that had raised suspicions. That was not done.

The order was issued without consultation with the Director of the Water Unit or any Senior Officers of the Water Unit. They were not even given the courtesy of being informed about the operation.

It seems that when the information was received, the Police took a stand-off or aloof position immediately without first enquiring and checking with the responsible people at the Water Unit. It may be an oversight or even an inadvertent mistake. But that oversight or mistake had dire effects on the personal liberties of these plaintiffs. Police responsibilities should never be taken for granted. In the words of Scott L.J., they should in the minimum be "observant, receptive and open-minded to notice any relevant circumstances which point either way, either to innocence or guilt".

The Director of the Water Unit in the country too should never have been taken for granted. He is the head of a team of workers that perform a very important work which provides an essential service to the public at large in Honiara Town. In that respect it is no different from other Government departments that also provide an essential service, such as the Police, Immigration, Customs and Excise, Civil Aviation and others.

The directors post is a very Senior and Responsible position. At least the Director of the Water Unit should have been accorded that respect by being informed or consulted about what the police suspicions were and what they were intending to do. There is no evidence whatsoever before me to show that the Director had been unco-operative with Police and had refused to talk with them, for instance.

There is no evidence before me that he or any of the Senior Officers of the Water Unit were ever contacted or consulted about their stance or position with regards to the strike that was being called. Had the source of the information been contacted, and there was ample time for that to be done, especially in such times of crises, they would have been told that it was all a big joke. This is what Mr Indu stated in his statement marked 'exhibit 2' and submitted by consent to the court.

The Police were ignorant too it seems of the High Court injunction granted against Solomon Islands Public Employees Union that afternoon. If they were aware, it never did have the effect of causing them to re-examine the basis or grounds on which their suspicions were founded.

The effect of the High Court injunction was of vital importance as it meant that the members of Solomon Islands Public Employees Union who were on strike or were contemplating of going on strike were obliged to return to work and to resume normal duties.

In the evidence adduced from the plaintiff's witnesses it was clear that their supervisors were awaiting the result of the High Court application and they in turn were

awaiting for any instructions from their supervisors. When the injunction was granted, they were duly informed by their supervisors that they were to carry out normal duties.

It may be that from 1.00 p.m the Water Unit workers were contemplating on going on strike depending on the result of the High Court application. However, after the result was made known, they were informed plainly by their superiors that any plans or thoughts of going on strike were to be put aside and that normal duties were to be carried out.

Had the Director been contacted at that time for instance he would have informed the Police straightaway that his workers would be carrying out their normal duties as usual.

The actions of the Police accordingly, with the greatest of respect, in this particular occasion I find to be unfounded, unreasonable and unlawful. The order to man the Water Tanks was based on mere suspicion. There was no reasonable grounds to justify the issue of such officious order.

It was an over-reaction to a state of affairs which by the time the High Court injunction had been granted was reduced to a matter of little or no significance. The suspicions of the Police could have been dispelled at once by simply contacting the Director or any of the Senior Officers of the Water Unit.

And even if they would not care to accept and believe the assurances of the Director or any Senior Officer of the Water Unit they should have been given in the minimum the courtesy of being informed about the suspicions and apprehensions of the Police, and the draconian measures that were being undertaken to safeguard the Water Tanks. It is wrong to presume that the Senior Officers of the Water Unit are irresponsible persons, not to be trusted and relied on and therefore should not be contacted.

The Police had simply failed to make and maintain contact and communication with the Director or his deputy, as the responsible officers accountable to Government. There has been no evidence adduced before me to justify such stand-off or aloof attitude. There has been no evidence before me to show that the Director was unco-operative to Police or that he or his Senior Officers had acted or were acting irresponsibly. In fact the Operations Manager, Mr. Luke Kakai stated in evidence that his staff had discussed the question of strike action and had decided that they will not go on strike even if other members of SIPEU in the essential services should go on strike. This is being responsible and to be expected from persons in such Senior positions.

The order issued therefore was totally unwarranted and subsequently the actions of the Police unmerited.

There are several other matters that should have caused Police to be more discreet in their approach.

1. The arrival of the plaintiffs at the Panatina water tank was done in a frank and open manner. They used a departmental vehicle. They did not try to run away when they saw the Police inside or outside the fence. Everything was done in the presence of Police Officers. This should have caused the Police Officers to re-examine their suspicion. The plaintiffs were co-operative to Police and tried to explain but were virtually ignored.

2. The witnesses of the defendant stated that they were not satisfied with the explanations of the plaintiffs, and so they took the plaintiffs to the Police station to verify their explanations.

I ask therefore what could or how could the statements of these plaintiffs be verified?

The only logical conclusion would be to check with the Director of the Water Unit or any other Senior Officer. There seem to be some tentative attempts but nothing serious or positive. When Mr Kakai out of his own concern for his officers did turn up at the Police Station, no one it seems paid any serious attention to him at all. His appearance that night of the 17/5/91 at the Police Station presented an opportunity for Police to verify the statements of the plaintiffs and to re-examine their suspicions. One of the very persons who had directed or instructed the plaintiffs to carryout their normal duties was Mr Kakai and he was present at the Police Station to say so and explain. Had the Police were serious enough about their arrests, then Mr Kakai should have been arrested too that night as one of the initiators of the so-called suspicious operation that night. He was not arrested and neither was any serious attention given to him.

There is another matter I wish to point out here. This is the entry of the Police into the fenced off area around the Water tank at Panatina. I do note that no issue was raised about this. But I ask under what authority or under whose permission did the Police get before entering that fenced off area?

That fenced off area is under the sole responsibility of the Water Unit. No permission appears to have been sought from the Director to enter that premises and no permission either was granted to the Police to enter that fenced off place.

The very fact that that premises was fenced and locked should have caused Police to stop and reconsider and examine their actions. Have they consulted and asked the

permission or if not informed the person who is in charge of that premises about their actions?

If Police are relying on their general duties to protect and preserve property and prevent crime, then they should be standing guard outside and not inside.

With the greatest respect I do not find that the Police had any right to enter that fenced off water tank. There is no reasonable grounds to justify their actions. The only other way which they could have validly entered that premises is to be asked or invited to do so by the Director of the Water Unit. Had they done their investigative work properly, and been alert, they may not have needed to guard the water tanks and if they did decide to do so, then they may not have been so officious in their approach and subsequently acted unlawfully.

I just need to make one final point.

The Police do perform a vital role in the maintenance of Law and order and must be commended for that. They do perform some of the most difficult, toughest and most unpleasant tasks, and perhaps many times without even a word of appreciation or thanks from the people helped.

The lapses if I may sum up in the actions of the Police in this particular case are as follows:

- (i) A failure to carry out proper investigation, when there was time to do it.
- (ii) A failure to consult with the Director of the Water Unit,
- (iii) Not being alert enough to what was happening.

The arrest therefore was unlawful and the subsequent detention illegal.

The plaintiffs are therefore entitled to be compensated for these.

Cost of this application to be borne by the defendant.

(A. R. Palmer)

JUDGE