

DENNIS BITIAE  
v.  
ATTORNEY GENERAL

PLAINTIFF  
DEFENDANT

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 252 of 1994

Hearing: 2/2/95

Judgment: 3rd March, 1995

*P. Lavery* for Plaintiff

*C. Ashley* for Defendant

**PALMER J:** The Plaintiff was convicted by the Shortlands Local Court on the 24th of June, 1994, on a charge of common assault contrary to section 237 of the Penal Code. He was sentenced on the same day and ordered to serve a prison sentence of 4 months.

On the same day, he was taken into custody by the Police, but as there was no food to feed him while being detained at the Korovou Police Station, and waiting for a ship to transport him to Gizo Prison, he was told to return to his home village and wait until he was sent for.

On the 16th of July, 1994, he was collected and taken on the patrol boat "Auki" to Gizo, and arrived at Prison on the 18th of July, 1994.

The date for commencement of his prison sentence was calculated as from the 16th of July, 1994. For good behaviour and with one third remission of his sentence, the date of discharge was calculated as the 4th of October, 1994.

The above has been deposed to without challenge in the affidavit of Dennis Bitiae filed on the 20th of September, 1994.

By application filed on the 29th of September, 1994, for the issue of a Writ of Habeas Corpus, it is contended by Mr. Lavery that the period of imprisonment should have been calculated from the 24th of June, 1994, the date on which the Applicant was taken into custody. He submits, that the period of three weeks or so, spent at the home village of the Applicant whilst waiting for a ship to transport him to Gizo, should be included in the time period of having been "taken into custody" for purposes of calculating the period of 4 months prison sentence. He submitted that the Applicant was not a 'free man', whilst residing at his home village. He was under orders from the Police to reside at his home village and not to go anywhere else.

By order dated on the 30th of September, 1994, a Writ of Habeas Corpus was issued against the Controller of Prisons, requiring the release of the Applicant. It was executed on the 4th of October, 1994.

The relevant law applicable to this case is section 14 of the Local Courts Act (Cap. 46):

*"Where a local court sentences a person to imprisonment for any period exceeding two months he shall, upon confirmation of the sentence by a Magistrate, be detained in a prison established under the Prisons Act, and the term of imprisonment shall commence on the day on which the person sentenced is taken into custody in pursuance of the confirmation of the sentence as aforesaid."*

It has not been disputed that the plain and ordinary meaning of the above provision is that, the sentence imposed by the Local Court of 4 months, does not become effective, until it had been confirmed by the learned Magistrate, and that the Warrant of Imprisonment became enforceable, only after it had been countersigned by the learned Magistrate. The term of imprisonment therefore "shall

*commence on the day on which such person sentenced is taken into custody in pursuance of the confirmation of the sentence as aforesaid."*

In this particular case, the sentence was confirmed on the 19th of July, 1994. Dennis Bitiae therefore could only have been lawfully taken into custody as from the 19th of July 1994.

The next question that arises then is, what was the period of unlawful detention? Was it from the 24th of June, 1994, as contended by Mr. Lavery, or from the 16th of July, 1994, the day he was sent for and taken by boat to Gizo.

What happened on the 24th of June, 1994? The Applicant was taken into custody, on conviction by the Local Court, for purposes of conveying him to Gizo to serve his prison sentence. Unfortunately or fortunately for him, there was no rations available to feed him, while waiting in custody at the Korovou Police Station.

The Applicant accordingly was "*released*" and told to wait at his home village until sent for. Was the Applicant a free man, when told to return to his home village and wait? The answer in my view would be no. He had been sent home out of necessity. But, for the lack of rations, at the Korovou Police Station he would have remained in detention, at the Police Station, until a ship was available to transport him to Gizo Prison.

The context on which the Applicant had been taken into custody and told to go and wait at his home village must be put in its correct perspective.

It is not in dispute that the Police were clearly mistaken about their powers and subsequent actions. They were under the impression, that the Applicant, having been convicted and sentenced to imprisonment by the Local Court, was no longer a free man. Accordingly he was taken into custody. From that moment, the Police were obliged to keep the Applicant, in safe custody until a ship was available to collect him. The Police had no power in those circumstances to order the "*release*" of the

Applicant. However, the harsh realities of the situation, and the practical difficulties encountered, must be taken into account, when assessing the actions of the Police and determining, the question as to the status of the Applicant in those circumstances.

Taking all the above factors into account, it is my view that the Applicant was taken "into custody" on the 24th of June, 1994, and remained so "in custody" despite being told to return and reside at his home village, whilst waiting for transport.

His purported release was not authorised by law. Rather, it arose out of necessity. His "release" therefore was conditional, in that he had to reside at his home village and wait for transport. He was not free to leave his village, even if he had wanted to. His liberty therefore for practical purposes was still under restraint. Had he sought to leave his village, then he would have been subjected to a chase and arrest, and liable to be prosecuted for "escaping", (*compare with the case of US ex rel. Wirtz v. Sheehan, D.C. Wis. 319 F. Supp. 146, 147, in which it was held that for purposes of habeas corpus relief, "in custody" does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty*).

The period of unlawful custody accordingly should be calculated with effect from the 24th of June, 1994, to the 19th of July, 1994; a total of 25 days.

The Applicant was released on the 4th of October, 1994. His due date of discharge on a one-third remission for good behaviour as calculated from the 19th of July, 1994, would have been the 9th of October, 1994. He was therefore released five days earlier. The period of unlawful custody, must accordingly be off-set by five days, which leaves a total of 20 days whilst being subject to unlawful custody (*i.e. 25 days - 5 days*).

The next question that follows then is, whether damages should be awarded for false imprisonment, and if so, by how much? The circumstances surrounding this case are peculiar and quite distinguishable, from other past cases, already dealt with by this Court.

First, the Police were clearly mistaken about their powers and subsequent actions. There is however, no evidence of malice or a deliberate attempt to circumvent the provisions of the Local Court Act, (compare with *Jack Malaumo v. Attorney General, CC51 of 1991*). There is also no evidence of loss of employment opportunities and reputation, (compare with *Wilson Wong v. Chin Foot Hap and Attorney General CC134/91*). The Applicant and every body else, knew that he had been convicted and it was only a matter of waiting for transport. Even if he had to wait for the sentence to be confirmed, and a warrant duly endorsed by the District Magistrate, it would still be a matter of waiting for the appropriate time to be sent for and escorted, to jail. So though there has been a restraint of liberty, I am not satisfied, that the Applicant had suffered any injury to his feelings, indignity, mental anguish, disgrace or humiliation, as a result of that false imprisonment. The Applicant himself was mistaken and voluntarily submitted himself to the actions of the Police.

All in all, I am satisfied that nominal damages should be the order of the day, plus costs.

Award of nominal damages: \$100.00.

Finally, the Police and Local Courts should take cognisance of the requirements of section 14 of the Local Courts Act, to avoid such mistakes from recurring in the future.

**ALBERT R. PALMER**

A.R. PALMER

JUDGE