

10 **'Akau'ola v Fungalei & ors**

Supreme Court, Nuku'alofa
 Martin CJ
 Civil Case No.75/1990

7,8,9,10 & 17 May 1991

20 *Assault - damages - police officers - exemplary damages*
Damages - police officers - abuse of authority - exemplary
Tort - assault - damages - exemplary

The Plaintiff, after a traffic chase, was apprehended and found to have been assaulted by various police officers. He sued for damages.

Held:

- 30
1. He had exaggerated claim but given the injuries found established \$2000 damages were awarded him;
 2. Police Officers do not have the right to exercise discipline over the public by physical beating; and such abuse of authority will not be tolerated and should sorry exemplary damages - her \$2000.

Counsel for Plaintiff : Mr Niu
 Counsel for all Defendants : Mr Whitcombe

Judgment

This is yet another case in which it is alleged that police officers have assaulted a person in custody. It is a fairly common allegation. It is easy to make. It is usually made by someone who has an interest in discrediting the police, or a grudge against them.

The Facts

The Plaintiff, Fakaofilani 'Akau'ola, (" 'Akau'ola") is a young soldier. On Saturday, 14th April 1990, he was in town on a motor cycle. He had a passenger, Siieli Manuha'apai. Traffic was busy, and being controlled by police officers. He was recognised by one officer as a person without a driving licence and was ordered to stop. Knowing that he had no licence, he decided to try to escape. He rode off. A high speed chase ensued, which eventually involved an army vehicle and two police vehicles: a Traffic vehicle containing the first three defendants Talanoa Fungalei, Kuata Lupe Tokolahi and Saia He (driver); and a Royal Escort vehicle driven by the Fourth Defendant, Corporal Moala,

'Akau'ola knew that he was required to stop. He had no intention of doing so. At Beulah College the Escort vehicle came alongside him and he was ordered to stop. He kept going. A little further on the same vehicle overtook him, lights flashing, and forced him to stop on the grass verge. When the police vehicle stopped he rode around it and raced off again.

Eventually he reached Tatakamotonga. He turned off the main road and tried to escape along side roads. The Traffic vehicle followed him. He was trapped. A police officer tried to seize the passenger and the riders fell off the motor cycle.

So far there is full agreement on what happened. 'Akau'ola said that when the police officers finally caught him they punched and kicked him; threw him into the police vehicle causing further injury; and on the way back to Nuku'alofa punched and slapped him all the way.

Conclusions

I am satisfied from the evidence that both Fungalei and Tokolahi used greatly excessive force on 'Akau'ola when they finally caught up with him. It is impossible to determine which of them inflicted a particular injury, but it does not matter. It was a joint attack, and the extent of the injuries shows that it was a vicious attack. The bulk of 'Akau'ola's injuries were caused by Fungalei and Tokolahi, who pretended throughout that they had done nothing.

There is no satisfactory evidence that He inflicted any injury on the Plaintiff. The case against him is dismissed.

Corporal Moala on his own admission slapped the Plaintiff without any legal justification. It is greatly to his credit that he was prepared to say so. Such injuries as he inflicted would have been very minor; the provocation was great and he should not be criticised too severely for going a little too far in the heat of the moment.

It follows that the Plaintiff's claim succeeds against all Defendants except Saia He, and is entitled to damages.

Damages

As indicated, I find that the Plaintiff has greatly exaggerated his claim.

He suffered a temporary nosebleed, and received 2 black eyes which would have healed after a few days. He received a more serious injury to his jaw, and I accept that he was unable to eat solid food for 2 weeks. I do not accept his complaints about other

supposed injuries to his body.

For these injuries I assess damages at \$2,000.00

I am also asked to award exemplary damages. This case falls into one of the categories where such damages are appropriate - abuse of public authority.

90 We know from a depressing series of cases in this court, both criminal and civil, that this sort of behaviour does occur with some frequency. It must be acknowledged that a police officer has a very difficult job. He has to deal with very difficult people, and there are times when his patience is sorely tried. Nevertheless, when dealing with offenders he may only use such force as is reasonably necessary to restrain them. A number of police officers still appear to believe that they have the right to exercise discipline over the public as a parent would over a child - by physical beating. By now the message from this court should be loud and clear. Such abuse of authority will not be tolerated, and where it is proved to have occurred it will be stamped on, with increasing severity, until the bully boy in uniform no longer roams our streets.

I award a further \$2,000.00 exemplary damages.

The Plaintiff is also entitled to his costs, which I assess at \$2,500.00

100 As for Fungalei and Tokolahi, I direct that a copy of this judgment be sent to the Hon. Minister of Police so that he may consider whether they are fit persons to remain in the Police Force.