

Uata v Fifita

10 Court of Appeal
 Morling, Martin & Burchett JJ.
 Appeal in Civil Case No.137/91

7 & 15 April 1994

Damages - false detention - quantum for injury to feelings.

20 The appellant appealed against the quantum of \$1500 damages awarded to the respondent a Police Officer, for the indignity and distress suffered when the appellant falsely detained the respondent for some one and a half hours on a ferry.

Held, reducing damages to \$500.

1. The false arrest was made in circumstances calculated to cause a degree of public humiliation to the Respondent.
2. But the respondent had received an apology for the embarrassment caused him.
- 30 3. The action might well have been brought in the Magistrates' Courts.
4. The only damage suffered was injury to feelings over a short period.

Counsel for Appellant : Mr Edwards

Counsel for Respondent : Mrs Vaihu

Judgment

40 This is an appeal from a decision of Dalgety J awarding the respondent \$1500 damages for the indignity and distress he suffered when he was falsely detained by the appellant. The appeal is limited to the question of damages.

The circumstances in which the respondent was detained are set out in considerable detail in His Honour's careful reasons and we need give only the briefest account of them.

The respondent went to a public wharf in Nuku'alofa to meet his father who was arriving on a ferry owned by the respondent's employer, Walter Trading Co. Ltd. The principal shareholder of the Company was the appellant's father. The respondent did not hold any executive position in the Company.

50 The respondent went on board the ferry to meet his father, having obtained

permission from another of the Company's employees to do so. When attempting to leave the ferry a short time later he was prevented from disembarking by the appellant who believed he had travelled on the ferry without paying for a ticket.

A verbal altercation ensued, and a slight scuffle took place. The respondent claimed he was assaulted by the appellant in the course of the scuffle, but this claim was rejected by Dalgety J.

The respondent was prevented from leaving the ferry for nearly one and a half hours during which period he was the subject of some banter and apparently good natured derision by bystanders on the wharf, some of whom knew that he was a Police Officer.

In spite of repeated requests to do so, the appellant failed to take immediate steps to confirm the accuracy of the respondent's assertion that he had not travelled without a ticket.

Dalgety J correctly criticized both parties for over reacting to the situation. Had they both exercised a greater degree of common sense the incident would have blown over then and there. Instead, it gave rise to a three day hearing in the Supreme Court.

Mr Edwards submitted that damages of only \$100 or so would have been adequate to compensate the respondent. He relied on an award of damages by Ward CJ in another case which, so he submitted, showed that only minimal damages were called for in the present case. We do not accept this argument. The facts of the present case differ significantly from those in the case decided by Ward CJ.

In the present case the false arrest was made in circumstances calculated to cause a degree of public humiliation to the person arrested, but that factor was not present in the case upon which Mr Edwards relies.

Nevertheless, we are persuaded that the damages awarded were excessive. The respondent received an apology from the appellant's father (though not the appellant himself) for the embarrassment he had been caused. As Dalgety J pointed out, the claim for damages was one which might well have been brought in the Magistrates' Court. In reality, the only real damage suffered by the respondent was the injury to his feelings over a short period. In our opinion \$500 is an appropriate measure of the damages sustained.

Accordingly, the appeal is allowed, and the verdict of \$1500 set aside. There will be judgment for the respondent in the sum of \$500. The order for costs made by Dalgety J is not disturbed, but the respondent must pay the costs of the appeal, which we assess at \$750.