

**IN THE SENIOR MAGISTRATE'S COURT
FOR THE REPUBLIC OF VANUATU**

Civil Case No. 48 of 2003

BETWEEN:	EZRA BANGA
	<u>Plaintiff</u>
AND:	THE COMMISSIONER OF POLICE
	<u>Defendant</u>

JUDGMENT

By an amended Magistrates Court Claim, plaintiff prays this court order defendants to pay compensatory damages. These include special damages, exemplary damages, costs and further orders court deems fit. This is in regards to his unlawful arrest and detention in cell no.6 at Port Vila police headquarter.

Brief Facts

Sometime 18 April, 2002, at 12.05 pm, the Claimant was driving his bus registered No. 4007 in Port Vila. The police stopped him and asked him to come to the police station. Here, he was interrogated for 4 hours. Dissatisfied with his response the police then detained him in cell No.6 for about 15 and a half hours before releasing him the next morning. No statements or charge were made against him. The Claimant now comes to this court stating that he was wrongfully imprisoned and as such was deprived of his liberty. For this reason, the first and second defendant must compensate him for the physical, mental distress and humiliation he had to go through.

Issue

The main issue here is whether the claimant was legally arrested. In short, do the police have reasonable grounds to suspect that the claimant has committed an offence warranting 4 hours of interrogation and detention in

cell no.6 over night. If so, this would be termed as legal arrest. On the contrary, if there is insufficient grounds warranting such confinement then this would be considered as false imprisonment.

Evidence

There are 3 witnesses who gave evidence for the plaintiff. The first one is **Ezra Banga** himself. At paragraph 12 of his sworn statement he stated that the police arrested him on 18 April, 2002, sometime at 12.05 pm. He was then taken to the police station and interrogated until somewhere 4.30 pm. He said that during that time police officer then, **Tarimas Pakoa** and 2 other constables, which he did not know their names, used force and threats to obtain his statement. He said that he did not know why they arrested him. He only learnt later that he has been accused of hiding a girl by the name of **Natalie Leon**. He went on to say that after 4.30 pm, officer **Tarimas**, then locked him up in cell No.6. That evening he said that the police later learnt that **Natalie** was staying with some families at Ohlen Freshwind. That despite that he was still kept overnight in cell No.6. He denied that he consented to being kept in cell No.6 for his own protection and the property. Having done so he said that his reputation has been tarnished. During cross examination he confirmed that police did not lay any charges against him nor taking his statement before detaining him.

The second witness for the plaintiff is **Joshua Garae**. I must say that his evidence does not assist this court in anyway. Most of his statements are hearsay statements and ones that are not hearsay statements, do not go further to support the issues raised here.

The third witness for the plaintiff is **Fr. Joseph Tagaro**. Although, the defendant objected to his statements, I allowed the witness to give evidence on one particular issue and that is his encounter with **Natalie**. I allowed him because the rule of hearsay does not prevent evidence being given to the existence of the state of affairs. (See '**Woodhouse-v-Hall**' (1980) 72 Cr. App. 39). **Fr. Tagaro** gave evidence that **Natalie** did admit to him that she went to Ohlen Freshwind by herself.

The defense provided 2 witnesses. The first one is **Tarimas Pakoa**, a police officer, as he then was. He said that sometime on 17 April, 2002, he was then on duty and **Mr. Leon Enoch** made a complaint about his missing girl. He said that following that complaint he and the other 2 officers approached

a bus driven by **Ezra Banga** and told him to stop the bus. That they then asked him to accompany them to the police station. He said that when **Ezra Banga** was taken to the police station he was questioned about the missing girl. That he denied knowing anything about her disappearance. At about 4.30 pm, officer **Tarimas** said that **Ezra** still denied the allegation made against him. He then said that he had no alternative but to shut **Ezra** up in cell No. 6. Officer **Tarimas** then justified his action by stating that it was necessary for security and protection of **Ezra** and the bus. With regard to food, officer **Tarimas** said that he did inform the prison house to serve **Ezra** food. He also said that he was not aware of the missing girl being found until the next morning, 19 April, 2002. At paragraph 17 of his affidavit, officer **Tarimas** did admit that **Ezra** did not commit any offence but had acted only on hearsay statements that he received about the missing girl. During cross examination he admitted that he gave orders that **Ezra** be locked up. He also said in cross examination that the police had this assumption that **Ezra's** life and the property were in danger.

The second defense witness is **Leon Enoch**, the complainant and father of the missing girl. He said that on 17 April, 2003, he informed the police of her daughter's disappearance. At paragraph 4 of his statement, which is plainly a hearsay statement, he said that he heard from **Natalie's** friends at the Lycee school that a person by the name of **Ezra**, a red bus driver, has been picking and dropping **Natalie** at USP and at home. He said that **Natalie** did confirm to him and his wife of her relationship with **Ezra**. During cross examination he confirmed that he did not know who hid **Natalie**.

The law

Section 12¹(1) of the CPC reads as follow;

“Any police officer may, without ^{an order} the warrant from the judicial officer, or warrant, arrest any person whom he suspects upon reasonable grounds of having committed a cognisable offence”.

Section 13,

“When any officer in charge of a police station requires any officer ^{subordinate} to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall give the other officer required to make the arrest an order in writing specifying the person to be

arrested and the offence or other cause for which the arrest is to be made."

Section 18 (1),

"Subject to subsection 2 when any person has been taken into custody without a warrant for an offence other than intentional homicide or any offence against the external security of the state, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate court within 24 hours after he has been so taken into custody, inquire into the case. Unless the offence appears to the officer to be of a serious nature the officer shall release the person on his signing a written undertaking to appear before a court at a time and place to be named in the undertaking; but where any person is kept in custody he shall be brought before a court as soon as practicable.

(2) The officer in charge of the police station may release a person arrested on suspicion of committing any offence, when after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with a prosecution for the offence.

The issue I raised at the beginning is whether the defendant was legally arrested. S12(1) stated above does authorize the police to arrest a person without a warrant. Before he does that that officer must obtain sufficient information before he can arrest the person. Here, the word 'reasonable' is used and I quote Boreham J's word in Hall (1985) 81 Cr App R 260 at page 264,

"Belief, of course, is something short of knowledge. It maybe said to be the state of mind of a person who says to himself: I cannot say I know for certain that the goods are stolen, but there can be no other reasonable conclusion in the light of all the circumstances, in the light of all that I have heard and seen".

S13 talks about a situation where an officer instructs another officer to arrest a person without the warrant. Such instruction must be in writing and this section applies only where the offender is not in the presence of the officer giving the order. Such instructions must state the offence committed and the reason for such arrest. S18(1) provides for the officer in charge of a police

station to release an offender arrested and detained without a warrant. This occurs where within the 24 hours it is not practicable to bring the offender to court and the officer must then inquire into the nature of the matter. If the offence is not serious, then the officer must release the offender and make him sign an undertaking to come to court on the date to be fixed. Subsection 2 authorizes the police to release an offender where upon inquiry insufficient evidence is disclosed upon which to lay charges.

Apply the law to the facts

The evidence showed that sometime on 18 April, 2002, officer **Tarimas**, as he then was and 2 other constables asked the plaintiff whilst driving his bus to come to the police station. There was no where in the evidence to show that the officers had reasonable grounds to belief **Ezra** was involved in **Natalie's** disappearance. 'Reasonable' here means the officers should have obtained sufficient information so that in their opinion there is nothing to stop them thinking the plaintiff did not commit the offence. Evidence showed that **Mr. Leon Enoch**, went to the police station and made a complaint. Without making further investigations the officers decided to stop the plaintiff and take him to the police station. There was no written order from the officer in charge at that time to arrest the plaintiff without the warrant.

According to officer **Tarimas**, **Ezra Banga** was not arrested but had accepted to come to the police station following the police request. If that is the case, it must be stressed here that a person who attends voluntarily at the police station or at any other place, or who accompanies an officer to a police station or such, or such other place without having been arrested, is entitled to leave at will unless he is arrested. If the officer feels that the suspect should be prevented from leaving at will, then he should inform the suspect at once that he is under arrest. If he is not placed under arrest but is cautioned as a prelude to putting questions to him for the purpose of obtaining evidence which maybe put before a court concerning the offence under investigation, the officer administering the cautioned must immediately inform him that he is not under arrest and that he is free to leave if he wishes and that he may obtain free and independent legal advice if he wishes. In this case, the officers failed to informed him that he was arrested nor did they informed him that he was free to leave. Despite this, the officers decided to lock **Ezra** in cell no.6 overnight. That to me, having

taken all the circumstances surrounding this case, is unwarranted and can only be termed as false imprisonment.

False imprisonment

False imprisonment consists of depriving the plaintiff of freedom of movement without lawful justification. In **Collins-v-Wilcock [1984] 3 ALL ER 374**, false imprisonment was defined as 'the unlawful imposition of restraint on another's freedom'. The tort is not committed unless movement is restrained in all directions. The evidence showed that the plaintiff was shut up in cell no.6 and there is no way that he could escape.

Damages

By way of compensatory damages plaintiff prays the court will order general and special damages. He also asked for exemplary damages. I set each one below and explained their relevance in this case.

General damages

These are designed to compensate for the kinds of damage that the law presumes to be the result of the tort and include non-pecuniary losses, such as pain and suffering. It also include things like loss of reputation, mental and physical distress. In his statement of claim the plaintiff has particularized the injuries he suffered to be physical and mental distress.

Aggravated damages

This, in my view, would come under the heading of 'aggravated damages'. Here, the plaintiff is entitled to be compensated, not only for the restraint placed upon his liberty, but for the effect on his reputation in the general circumstances prevailing. Subsequently, any evidence which tended to aggravate the damage must be admissible up to the moment when damages are assess. (see case of **Hook-v-Cunard Steamship Co. Ltd [1953] 1 ALL ER 1021** and **Nirmala Wati-v-Hussain & Co. Ltd (1986) 32 FLR 1**). In both cases, the court stated that the plaintiffs were entitled to aggravated damages because they were detained by the police in the presence of friends and relatives and no apology was offered to them by the persons responsible.

Although, I am not bound by the decisions of the 2 above cases, the principles are clear. In this case, **Mr. Banga**, having accepted at his own free will to follow the officers to the police station, was interviewed for 4 hours. Later on sometime at 4.30 pm, he was led to cell No.6. He was given no food during that period. Instead he sent a police officer with some money to buy him some bread and lemonade in which he consumed inside the filthy and smelly cell no.6. Things, however, could have ended that very evening after the discovery of **Natalie** later that evening but instead the officers decided to ignore him and left him overnight in prison. The following morning when he was released officers nor Natalie's parents made an apology to him. These actions, in my view, warrants this court to order aggravated damages against the defendants.

Special damages

These are the plaintiff's measurable loss calculated between the time he was taken to the police station and the time he was allowed to have his bus back. This kind of damages must be specifically pleaded and proved in court by way of receipts and other documents. In this case, the plaintiff relies on his daily takings to be VT11,500. This figure is based on his knowledge as a bus driver.

Exemplary damages

This is also known as punitive damages and involve sums of money much greater than would be required simply to compensate the plaintiff's loss. There are 3 categories exemplary damages can be applied. First is where it is allowed by the statute, secondly, where the defendant's conduct has been calculated to make a profit that may well exceed the compensation payable to the plaintiff. Thirdly, one that applies in this case, is where the plaintiff has suffered from oppressive, arbitrary or unconstitutional action by servants of the government. In my view, I cannot see how the plaintiff can succeed here. The reason being that the actions of the police at that time were, in my view, cannot be termed oppressive. There were no evidence to show that the police applied force or assaulted the plaintiff nor was there any physical injuries caused.

In the case of **F. Harrison-v-J.P. Holloway (Commissioner of Police)**, civil case No.62 of 1984, Supreme Court of Vanuatu, Cookley J found that

"the failure by the servants of the government to comply with the law did not amount to oppressive and arbitrary action on their part; they were negligent in failing to carry out their duty in a proper manner, but there is nothing to show they acted in bad faith or with malice towards the plaintiff. Thus the only ground on which exemplary damages could be awarded related to breach of his Constitutional rights and this relief can only be determined by the Supreme Court".

There are no general principles upon which this court can rely on to calculate damages. The plaintiff has calculated his compensatory damages to be VT465,000, this being for physical and mental distress and loss of reputation. Like I said earlier this comes under one heading of 'Aggravated damages'. In his last submission, the plaintiff referred to the case of **White-v-Metropolitan Police Commissioner**, where 1,000 pound was awarded to the plaintiff for false imprisonment and 2,500 pound was awarded for distress, anxiety and injury to reputation. He urged this court to apply the same principle by applying today's rates equivalent to English pound. With the greatest respect to counsel for the plaintiff, I cannot accept this submission for the simple reason that this calculation was meant for England not for Vanuatu. In the case of **R.Solzer-v-Pierrot Garae [1989-1994] 2 VLR 528**, Vaudin d'Imecourt J said,

"The likely award in pound sterling, if translated into Vatu, would amount to a sizeable sum of money for this jurisdiction. However, commendable it is for counsel to so urge on behalf of his client, I find no difficulty in declining such request and for good reasons. The cost of living here (Vanuatu) and in Great Britain are very different. The standard of living in both countries are very different. Finally and more appropriately the earning capacities are considerably different. The average wages now in Vanuatu is half of that of England".

For the reasons set out above, I award VT232,500, being half of the total amount requested of Vt465,000.

For special damages, I award VT11,500 being for a day's taking:

For exemplary damages, like I said above, I do think it applies here.

COURT ORDER

The result is that the defendant is now ordered to pay a total sum of VT232,500 as aggravated damages, being for injuries caused to the plaintiff's reputation and specific damages of VT11,500, a total of VT244,000, increasing at the rate of 10%, calculated to be VT70 per day commencing from the date of filing this case, that is 5 June, 2003, until completion.

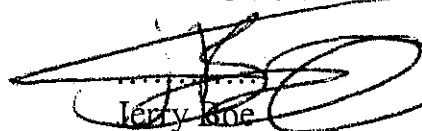
He is also ordered to pay costs in the middle scale as follow:

For drafting and settling claim	VT10,000
For preparation for trial only	VT3,000
For any court appearance (3 times)	VT45,000
First day appearance, for each half day or part of half day	VT20,000
For filing	VT8,000
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	Total=VT86,000

To be paid within 1 month from the date of this order.

Dated at Port Vila this 5 day of March, 2004.

BY THE COURT


Leoty Koe

