

IN THE HIGH COURT OF FIJI

At Suva

Civil Jurisdiction

CIVIL ACTION NO. 0371 OF 1993**Between:****DR. ANIRUDH SINGH
s/o Charan Singh**

Plaintiff

- and -

**SOTIA PONIJIASI
WAQA VAKALOLOMA
UATE QALO
ILIESA RAIQISO
SAMUELAKENI
ATTORNEY GENERAL OF FIJI**First Defendant
Second Defendant
Third Defendant
Fourth Defendant
Fifth Defendant
Sixth Defendant**Counsel:**Mr. F. Haniff for the Plaintiff Defendants
1-5 - not present
Mr. L. Daunivalu for the Sixth Defendant
Dr. S. Shameem for the Human Rights
Commission**Date of Hearing
Date of Ruling**22nd June 2007
2nd July 2007**RULING UPON APPLICATION BY HUMAN
RIGHTS COMMISSION TO INTERVENE**

[1] On 1st November 2006 I gave judgment upon liability in this matter. At paragraph 76 of that judgment I stated "... I do find that there were tortious acts as pleaded in the Statement of Claim committed by the first five defendants ... I find that the tortious act committed by the five

defendants were so closely connected with their employment ... that the sixth defendant, representing the state, is vicariously liable for those tortious acts". Evidence has been heard concerning the assessment of damages and the 16th of July has been fixed for closing arguments from the parties concerning the assessment:

- [2] Before judgment was given the Human Rights Commission notified its intention of making application to intervene to make representations concerning the assessment of damages in circumstances of the kind pertaining in this case. Counsel for the Commission states that those submissions will be limited to statements and authorities concerning general principles and that the Commission does not wish to be heard on the specific facts of this case. Application to intervene is made under section 37(2) Human Rights Commission Act 1999. In particular, the Commission states, given the court's findings that the first five defendants had subjected the plaintiff to Acts which amounted to torture and inhumane and degrading treatment and the sixth defendant is vicariously liable, section 25(1) of Chapter 4, the Bill of Rights section of the Constitution, is clearly in point and the Court would benefit from the Commission's submissions when assessing damages.
- [3] Counsel for the plaintiff and the sixth defendant oppose this application. They state that the action was brought and maintained in tort, no breaches of constitutional rights were specifically alleged or argued at any time and the plaintiff seeks damages and exemplary damages in accordance with normal principles for actions brought in tort.
- [4] There is no doubt that the Human Rights Commission has the standing to make this application. Section 37(2) of the Act states,

"With leave of the court, tribunal or arbitrator, the Proceedings Commissioner may appear and be heard in relation to any

proceedings before a court, tribunal or arbitrator in which human rights are in issue."

- [5] All counsel agreed that by the use of the words "with leave of the court, tribunal or arbitrator" discretion is conferred on the Court as to whether or not the Commission should be permitted to intervene.
- [6] Counsel for the plaintiff also sought to argue that the words "in issue" in section 37(2) mean that application can only be made when the proceedings in which intervention is sought already involve "human rights" as being "in issue". In effect, counsel averred that section 38(2) is only operative when a plaintiff has brought proceedings in which specific breaches of human rights are alleged.
- [7] Counsel for the Human Rights Commission opposed this narrower interpretation of the words "in issue". She stated that the whole tenor of the Human Rights Commission Act and the functions of the Commission itself lend themselves to the interpretation that the Commission can make application whether human rights are directly or indirectly involved.
- [8] Counsel for the Commission stated that intervention was as *amicus curiae* and to "advise on points of law and advise on points of practice. The Commission did not seek to intervene for one or other party". She stressed that the Commission should be heard if it was in the interests of justice so to do.
- [9] In my judgment, I find the more restrictive interpretation is incorrect. It is perhaps unfortunate that the section uses the ambiguous term "in issue". However, looking at the prescribed functions (section 6) and powers and duties (section 7) of the Commission as set out in the Act I find the less restrictive interpretation is the correct one. The Commission has "the function of promoting and protecting the human rights of all persons in

the Fiji Islands" (section 6(1)(a)) and the power and duty "to promote better compliance in the Fiji Islands with standards laid down in international instruments on human rights" (section 7(1)(f)). Other sections of the Act support this view. Further, it might well be that proceedings come to the notice of the Commission which do involve human rights but in which the parties have either not realised human rights might be involved or are not clearly and correctly putting them to the court. In those circumstances, the Court might well benefit from the intervention of the Commission as *amicus curiae*.

[10] Accordingly, I find that the Human Rights Commission may apply to intervene in this case even though it does not specifically involve breaches of human rights provisions.

[11] In deciding whether or not to exercise my discretion in favour of permitting the Commission to intervene I first look to the Statement of Claim in this case. I do not reiterate here the full allegations, evidence and findings. These are set out in my judgment of 1st November 2006. I do set out paragraph 5 of the Statement of Claim as an example of the tenor of the claim itself. That paragraph states,

"As a result of the barbaric acts of abduction, false imprisonment, torture and interrogation described above by the said defendants the plaintiff was hospitalised for three weeks at the Colonial War Memorial Hospital in Suva."

[12] There is then set out a list of the defendants "particulars of injuries".

[13] The specific findings in the judgment were that some five soldiers, the first five defendants, who were members of a special unit of the Royal Fiji Military Forces (as they then were) carried out the wrongful acts and

indeed had been convicted and sentenced before a court for them. After trial, the sixth defendant was found vicariously liable for those acts.

- [14] The Human Rights Commission therefore says one could not have clearer circumstances in which human rights considerations were involved, there are no authorities in this country upon the assessment of damages, exemplary damages are sought which takes the court beyond the usual assessment of damages in tort cases of false imprisonment, assault and battery and the court would benefit from submissions from the Commission when setting what in effect is a precedent.
- [15] Counsel for the Human Rights Commission also averred that given the current circumstances pertaining in Fiji there is a public policy interest in allowing the intervention of the Commission. She stated "the case has current enormous implications. Judicial notice can be taken of the fact that people are taken up to the Queen Elizabeth Barracks and what is acceptable before the law" are factors to take into account.
- [16] Counsel for both plaintiff and the sixth defendant strenuously oppose the application. They both state that the proceedings were commenced in tort and that had Dr. Singh wished to pursue a constitutional action he would have done so. He specifically chose not to do so and is, I am informed, personally opposed to Human Rights Commission intervention. He wishes to stress that he has brought this as a plain action in tort and wishes it to be completed as such. Both counsel stressed that there were two different principles of assessing damages between actions in tort and actions under the Constitution and that the claim for exemplary or special damages did not alter this fact. The principles for awarding and measuring exemplary damages are well known.
- [17] Counsel stress that it would be difficult for the Commission to present submissions upon the level of damages to be awarded. Only one set of

damages would be available, ordinary tort principles of measurement of damages were sufficient and there was no need to consider damages or "redress" which might be available under the Constitution.

[18] Counsel did not address the "public policy" argument of the Commission as appertaining at any time or in the current circumstances in Fiji. Counsel for the plaintiff was at pains to point out that his client, Dr. Singh, had brought and wished to maintain this action as one based in tort.

[19] The Court is exercising a discretion.. I have carefully considered all the arguments of counsel. First, I do state that this application to intervene is properly brought and reasonably founded, particularly given the way in which the Statement of Claim was framed and necessarily the factual allegations and findings in this case, in particular the persons against whom those allegations were made.

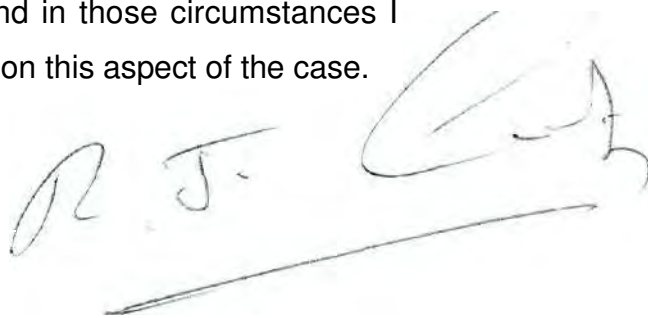
[20] This is a finally balanced matter. The original Statement of Claim is framed in a way which uses the kind of language found in a constitutional claim under the Bill of Rights chapter. Further, the defendants in this case are not ordinary civilians but members of the Executive arm of the State. The assaults and battery went beyond what might be regarded as the kinds of violence one finds on a day-to-day basis in society and coming up before the courts for trial. I do take note of the fact that counsel informed me that there are no precedents in Fiji under the Bill of Rights provisions setting out the principles for assessing damages in cases of this kind. I accept that the Commission's application is made by way of seeking to become an amicus curiae and to assist the court on points of law and practice.

[21] However, having given due weight to these arguments I do not grant leave for the Human Rights Commission to intervene. These proceedings have been conducted throughout as claims in tort, opening

and closing speeches, evidence and argument have all been on that basis and both the plaintiff and the defendant consider that there is adequate scope within the normal rules for damages and exemplary damages for meeting what is due to Dr. Singh and what he is claiming. Whilst I do not give great weight to the fact, I do take into consideration the wishes of Dr. Singh himself.

[22] I do accept that there is a clear public interest in setting principles and guidelines for the assessment of damages and "redress" in cases involving breaches of the Bill of Rights. However, I do not consider that this is such a case given the fact that throughout it has been conducted as an action in tort and not under the Constitution. I do note what the counsel for the Human Rights Commission concerning public policy. I point out in the clearest terms that I make no comment upon the current circumstances pertaining in the country nor specifically the kind of allegation to which counsel for the Commission referred. That argument formed no part of my decision in this case.

[23] In the circumstances, I therefore refuse the Human Rights Commission application under section 37(2) of the Human Rights Commission Act 1999 to intervene in these proceedings. I have found that the application was properly brought and in those circumstances I make no order for costs on this aspect of the case.

A handwritten signature in black ink, appearing to read 'R.J. Coventry', written over a horizontal line.

(R.J. Coventry)

JUDGE