

IN THE HIGH COURT OF FIJI

At Suva

Civil Jurisdiction

CIVIL ACTION NO. 0606 OF 2005

Between :

ILIASERI SAQASAQA

Plaintiff

- and -

FIJI PRISON SERVICE

First Defendant

COMMISSIONER OF PRISONS

Second Defendant

MINISTER FOR JUSTICE AND

Third Defendant

ATTORNEY GENERAL OF FIJI

Counsel : Mr. T. Fa for the Plaintiff
Mr. S. Raramasi for the Defendants

Date of Hearing : 22nd October 2007

Date of Judgment : 23rd October 2007

JUDGMENT

- [1] By section 61 of the Prisons Act Cap.86 a serving prisoner who is within twelve months of his earliest possible date of release with remission may be released to undertake public work outside the prison. This is called extra-mural punishment. It serves to facilitate a prisoner's return to the community after a prison sentence and also is used to alleviate pressure on prison overcrowding for prisoners deemed to be trustworthy. Under

subsection (7)" ... where the supervisor or the Controller (of prisons) is satisfied that any person undergoing extra-mural punishment under this section is in consequence of his behaviour or any other reason unsuitable or unable to continue with such extra-mural punishment, the supervisor or the Controller may order the recall to prison of such person".

- [2] On or about the 2nd of July 2004 the plaintiff, Iliaseri Saqasaqa was sentenced to two years imprisonment for the offence of robbery with violence. He was later released under the provisions of section 61 and went to work under the supervision of Brother Beranado Petero a preacher in the Immaculate Conception Catholic Parish in Lami.
- [3] On 17th October 2005 Mr. Saqasaqa was taken back to prison to serve the remaining fourteen days of his sentence.
- [4] It was put to Mr. Saqasaqa that he had committed a number of disciplinary and extra-mural offences. These he denied. He claims that without a hearing before a tribunal or a visiting justice he was required to serve the remaining fourteen days of his sentence.
- [5] He said this was unlawful as it was done contrary to the provisions of the Prisons Act and its supporting regulations. He claims damages for unlawful imprisonment.
- [6] The defence say that Mr. Saqasaqa had breached the conditions of his extra-mural punishment by irregular attendance at his work. The defendants say that no disciplinary or extra-mural offences were involved but the Controller or supervisor was exercising his power to readmit Mr. Saqasaqa to prison under the provisions of section 61(7) of the Prisons Act on the basis that as a consequence of his behaviour, he was unsuitable or unable to continue with the extra-mural punishment.

- [7] I have heard the evidence of the plaintiff and Brother Berenado Petero for the plaintiff and the evidence of Superintendent of Prisons Orisi Katonibau. There is raised on the pleadings the question as to whether the Controller or a supervisor of Prisons must hold a tribunal hearing or a hearing before a visiting justice before he can exercise the powers under section 61(7), or whether that subsection gives him the power to recall a prisoner if, in his discretion, he considers as a consequence of the prisoner's behaviour or for any other reason the prisoner is unsuitable or unable to continue with the extra-mural punishment. In the light of my findings of fact I do not need to rule upon this issue.
- [8] Brother Beranado gave evidence that Mr. Saqasaqa appeared for work and carried out the work as required. The only occasions he was absent were when he was certificated sick. He confirmed these facts in a letter to the Governor of the Prison dated 24th October 2005. In the last paragraph of that letter he described Mr. Saqasaqa as "a very reliable person".
- [9] Mr. Saqasaqa also gave evidence and stated that he had carried out his extra-mural duties as required and there was no reason for his recall to prison. He further stated that he did not appear before any tribunal or visiting magistrate in relation to this recall.
- [10] Superintendent Orisi Katonibau was called by the defence. He has been in the Prison Department for over thirty years. He knows the plaintiff from the times when the latter has been a prisoner.
- [11] In 2005 he was asked to respond to the statement of claim that had been filed. He himself was not directly involved with any of the incidents in this case. His understanding of the situation was that Mr. Saqasaqa's supervisor was the station officer of Lami and he, the Superintendent, did not know of the involvement of Brother Beranado. He made reference to

a fax he had received from the Lami Police Officer setting out alleged failures to attend. Apart from the complaint of irregular attendance he did not know of any other complaints against the plaintiff. He did not know if the complaint had ever been put to the plaintiff.

[12] The Superintendent's evidence concerning the fax he received of Mr. Saqasaqa's unreliable attendance is hearsay but admissible under section 6 Civil Evidence Act. However, under that Act I am required to make an estimate of the weight to be given to that evidence. The plain fact is no reason has been put before me as to why the Supervising Officer from Lami should not attend and give evidence. Further, a vital and obvious document, the fax, was not even disclosed let alone produced to the Court as a document. I do accept the truthfulness of the Superintendent Orisi Katonibau's evidence. However, under the provisions of the Civil Evidence Act, I do not rely upon it concerning the fax and the failure to attend.

[13] The supervising officer from Lami Police Station was not called by the defence. The document that had been faxed to Superintendent Orisi Katonibau was not produced in evidence nor was it disclosed in discovery of documents. An adjournment to call further witnesses and obtain and disclose a copy of the fax was refused.

[14] Accordingly on the facts before me I am satisfied that Iliaseri Saqasaqa was a prisoner serving part of his term as an extra-mural prisoner under the provisions of section 61. During the currency of that extra-mural punishment he was returned to prison and served the remaining fourteen days of his sentence. I make no specific ruling as to whether a tribunal or visiting justice hearing should have been held.

[15] However, the plaintiff alleges there was no good reason for the curtailment of his extra-mural punishment and the defence have not

adduced any evidence to show that as a result of his behaviour or for any other reason Mr. Saqasaqa was unsuitable or unable to continue with extra-mural punishment. Whether or not a tribunal or visiting justice hearing is required, the power given by section 61(7) is not one that can be exercised on a whim. The prisoner concerned is entitled to expect he can continue as an extra-mural prisoner whilst he keeps to the terms of his extra-mural punishment and does not commit any other offences. In this case there is simply nothing to show that Mr. Saqasaqa committed any criminal offences, disciplinary offences or extra-mural offences or failed to abide by the terms of his extra-mural punishment. There is no evidence to show that on any basis he could or should have been recalled to prison.

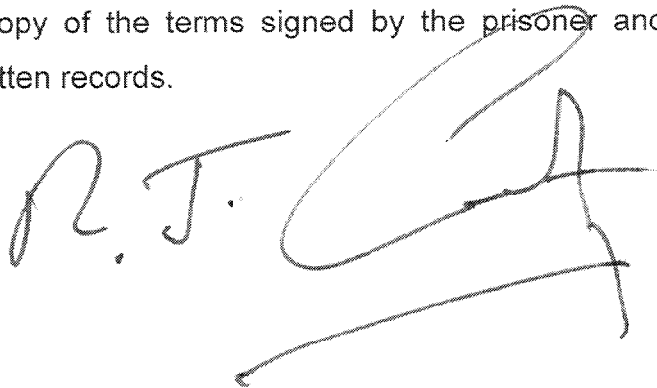
- [16] Mr. Saqasaqa was a serving prisoner and as such his liberty had been lawfully curtailed. His release extramurally, into the community was not the same as a full restoration of liberty. However, the claim is for “unlawful imprisonment” and that he did suffer.
- [17] Counsel for the plaintiff has put forward written submissions in support of his case generally and in particular to support a claim for \$10,000.00. He provides supporting authorities and figures including the case of *Eseroma Ledua v. Fiji Police and Others* (Civil Action 0307 of 2004). Counsel for the defence has not put forward any authorities and has speculatively suggested the figure of \$5,000,00.
- [18] In the case of *Ledua*, Justice Pulea set out the considerations to be taken into account in cases like this and gave a sum of \$4,000.00 for an unlawful imprisonment of 26 hours. It might be said that someone like Mr. Saqasaqa would not feel the loss of liberty and imprisonment for fourteen days as much as someone who had never lost their liberty at any time before. In my judgment, that is the wrong approach. I treat the

actual loss of liberty to Mr. Saqasaqa in exactly the same way as I would treat the loss of liberty to any other person.

[19] In my judgment \$5,000.00 is too low and is not supported by any case authority. I rely upon the dicta of Justice Pulea in the Ledua case. I find the earlier cases, properly cited by Mr. Fa, as not being particularly helpful in this case. I accordingly award the sum of \$1,000.00 for the first hour. I award the sum of \$3,000.00 for the remainder of the first 24 hours of unlawful imprisonment. And I award \$300.00 per day for the remaining thirteen days. This makes a total of \$7,900.00.

[20] Accordingly I give judgment for the plaintiff in the sum of \$7,900.00 together with interest at 5% from the date of service of the Writ and costs.

[21] I would suggest that when prisoners are released on extra-mural punishment that written terms of the release are agreed and signed by the prisoner. Supervisors should have written instructions as to what is expected of them, a copy of the terms signed by the prisoner and a requirement to keep written records.



(R. J. Coventry)
JUDGE