

2. I shall therefore start by giving a thumbnail sketch of the Fiji Police Force. It's motto in Latin reads "*Salus Populi*" which means the welfare of the people. It is the lineal descendant of the Armed Native Constabulary (ANC) set up by Queen Victoria's Governor after these islands were ceded to Her late Majesty in 1874. The significant role to be played by the ANC is indicated by the Governor appointing his ADC Lieutenant Henry Olive as the first Superintendent of Police. Later in 1906 the ANC became the Fiji Constabulary. At the time of independence, it became the Royal Fiji Police. It is against a police force with a history going back 142 years today that this action has been brought by the Plaintiff.
3. He alleges in his Statement of Claim that officers of the 1st Defendant (I take this to mean policemen) had punched and kicked him and beaten him with an iron rod. As a result of this, he had suffered injuries, had been physiologically affected, and his rights and freedom had been violated by the officers of the Commissioner of Police. The Plaintiff is therefore claiming general damages, aggravated damages and exemplary damages.
4. The 1st, 2nd and 4th Defendants admit the policemen concerned were attached to and members of the crime branch at the material time but deny the allegations of assault and battery and put the Plaintiff to strict proof of his allegation against them.
5. The 3rd Defendant in its Statement of Defence in essence denies all the Plaintiff's allegations against it, which is only that it allowed the police officers to use its premises to assault him.
6. The Plaintiff filed Replies to the Statements of Defence but I do not need to refer to them after having perused the same.

7. The Minutes of the Pre-Trial Conference held on 13 July 2011 record, inter-alia, the following:
- A. Agreed Facts include:
1. The 1st Defendant is appointed pursuant to section 111 (now section 129) of the Constitution and is responsible for the operations etc of the Fiji Police Force.
- B. Disagreed Facts include:
1. The Plaintiff was restrained with reasonable force and was handcuffed.
 2. He was not informed of his constitutional rights and was never informed he was being arrested.
 3. The 1st Defendant's officers assaulted him at a number of locations.
- C. Issues include:
1. Was the arrest lawful?
 2. Did the Defendants or their servants or agents assault the Plaintiff?
 3. Is the Plaintiff entitled to make the various claims for damages?
- D. Disputed Issues include:
1. Was the Plaintiff brought to the 3rd Defendant's premises.
8. In this Judgment I shall refer to the 1st, 2nd and 4th Defendants as the State Defendants and the 3rd Defendant as Supreme.
9. The hearing commenced with the Plaintiff (PW1) giving evidence. He said he was in court because he had been assaulted by police officers. On 20 October 2008, he was with a friend, Imraz Khan in Nadi. He received a call on his mobile from a police officer named Monish who asked him to come to Suva for questioning regarding a robbery at the 3rd Defendant's premises.
10. The next day he returned to Suva and with a solicitor from Messrs M.A Khan, he went to Nabua Police Station. There 3 police officers asked for his name and then told him they

were looking for him. They gave their names as Sachin, Monish and Nilesh. They were in civilian clothes.

11. The Plaintiff said he was handcuffed and taken in a vehicle to a property on Fletcher Road. He was assaulted by the police officers. When they arrived at the Vine Road carwash he pointed out one, Mohsin and the officers got out of the car and assaulted him and put him in the back of the vehicle.
12. An Indo-Fijian was passing by and when he questioned them, the officers assaulted him and put him in the back of the vehicle. They took them to the Suva Muslim College where they all got out. The officers assaulted the Indo-Fijian and Mohsin. After they got back into the vehicle they assaulted him. The Indo – Fijian man had run away. They took the Plaintiff and Mohsin to the 3rd Defendant's fuel shop (Supreme's premises). Officer Monish took Mohsin upstairs and the Plaintiff heard Mohsin shouting, "I did not do it". Monish came down and all 3 officers pushed him (Plaintiff) to the floor onto his back.
13. Nilesh put his foot on his neck. His shoes were removed and Monish took a metal pipe and hit him on his left foot. Sachin was using his foot to hit the Plaintiff on his right hand, ribs and right arm. Monish was asking him to tell him whether he (Plaintiff) was involved in the Supreme Fuel robbery.
14. He was assaulted for 30-40 minutes. After that he and Mohsin were taken to the Nabua police station. He said Monish told him not to tell anyone he had been assaulted. At the police station his solicitor and his mother arrived and the solicitor advised him to make a report against the officers. He was then taken by his family for a medical examination. He tendered as Exhibits P1, P2 and P3 his police statements, and as P4 the police letter.
15. He was taken to the Colonial War Memorial Hospital (CWMH). The doctor examined him, filled the form given him (Plaintiff) by the police and told him to take it to the Nabua Police Station.

16. The Plaintiff said the injuries sustained as a result of the assault by the officers were to his head, neck, left arm, right ribs, right arm and left foot.
17. He said the police officers were not charged as he was informed, they could not find any evidence that the officers had assaulted him. Nabua Police Station has an internal affairs section where they investigate complaints against the police officers. There was no further (medical) examination.
18. On the next date of hearing I heard arguments from all 3 Counsel on the admissibility of the Medical Report. I said I would decide if the medical examination form dated 21 October 2008 could be tendered in accordance with the Civil Evidence Act after I had heard the evidence of the doctor.
19. Counsel for the State Defendants now cross examined the Plaintiff. He confirmed Exhibit P1 was his report and his signature on it. The events of 20 and 21 October were fresh in his mind and he signed to confirm their contents are correct. He said the police report is correct. He said he signed Exhibit P2. He was taken to the car wash where he was assaulted.
20. In Exhibit P1 he did not mention he had been punched in the ribs. He was taken to the Muslim College after school hours and assaulted there. At the car wash he did not try to run out of the car. It was not correct that the Police had to take reasonable force to restrain him for his own safety.
21. The Plaintiff was referred to his cautioned interview. He said a caution was put to him and identified the signatures of himself and his lawyer. He signed in the presence of his lawyer. He denied he was selling recharge cards in the Western Division.
22. He said at the Supreme premises he was hit with a metal pipe on his left foot by Monish. He would never forget the incident because of the pain and the abuse.

23. When he was referred to Exhibit P1, the Plaintiff said the statement is true and accurate and was read back to him and he approved of its contents. The statement did not state that Monish hit him with a metal pipe on his left foot.
24. He also said he made a complaint against Nilesh. It is true that in his examination in chief he said he did not make any complaint against Nilesh.
25. When cross-examined by Counsel for Supreme and referred to Exhibit P1, the Plaintiff agreed, none of these injuries are mentioned in the statement. He did not mention he was hit by a metal pipe in his statement. He stands by his statement. His solicitor, Ms Sofia, was with him when he gave his statement. He had legal advice when giving the statement.
26. The Plaintiff said Mohsin did not complain of any assault. He said he did not know whether the Indo-Fijian had complained of any assault. He knew Daniel and Ravin were charged with the break-in in Supreme.
27. In re-examination, the Plaintiff said that as there was a medical report he did not mention his injuries in his statement.
28. The Plaintiff's next witness was Dr Osea Volavola (PW2).
29. He is the Acting Head of the emergency department of the CWMH, and had been 8 years as a Medical Officer. He had the medical file of the Plaintiff. He said PW1 had been examined on 21 October 2008 by a Dr Saraf who has migrated to New Zealand.
30. When cross-examined by State Counsel, PW2 said he never saw the Plaintiff, had no recollection of what he suffered at the time he presented and cannot confirm the injuries are what they are stated to be. He filled the Fiji Police Medical report 2 weeks (before the

hearing). It cannot be said that just pain is due to an assault. He could not confirm that the injuries are due to an assault.

31. Under cross-examination by Counsel for Supreme, PW2 said he did not bring the Plaintiff's medical folder which would include the doctor's findings, treatment and management of patient and x-rays. The x-rays are not before the court. PW2 said he could not confirm the accuracy of the findings. Exhibit D14 was not filled in by the examining doctor but should have been. He agreed the doctor has not made a finding that the injuries were consistent with an assault.
32. In re-examination, PW2 said it is mandatory for the medical officer to fill in Exhibit D14.
33. The Plaintiff's next witness was Mohammed Mohsin Rafiq (PW3). He said he was sitting down with his friends at the car wash. A rental vehicle drew up and 2 Indo-Fijian men came out, grabbed his collar and punched his stomach. They took out their police ID cards, handcuffed him and took him inside the van. The policeman punched them inside the van. They took them to the Suva Muslim College. He, the Plaintiff and a passing man were beaten up. The Police then took them to Supreme's premises, took him inside and questioned him about the Supreme robbery and continuously punched him. The Supreme owner was there. PW3 saw a police officer kicking the Plaintiff with his boots.
34. Under cross-examination by State Counsel, PW3 said at the carwash, he stood up and they punched him. He did not run away. The Plaintiff was injured when he saw him.
35. When cross-examined by Supreme's Counsel, PW3 said he did not lodge a police report against the Police Officers involved. He returned from New Zealand in 2009 and remained in Fiji ever since. He did not lodge a complaint against the Police because he did not want to come to Court. None of his friends gave any statement of assault to the Police. He said questioning is part of police investigation of robbery. The Police were on

official business to conduct an investigation. His father was informed of the assault but decided to take no steps about it.

36. In re-examination, PW3 said he did not ask them to complain because he did not want to lodge any complaint against the police.
37. The next witness was Sheik Shiraaz Hussain (PW4). He said he was hanging out at the car wash with 8-9 of his friends. a van appeared, 2 men came out, asked for Mohsin, and then pulled him (Mohsin) and punched him on the stomach. He saw the Plaintiff sitting in the van. They showed their ID cards and took Mohsin inside the van and moved off.
38. When cross-examined by State Counsel, PW4 said he is good friends with Mohsin.
39. When cross-examined by Supreme's Counsel, PW4 said he had been at Gloria Jeans that morning (of the hearing) with the Plaintiff, Plaintiff's Counsel, Mohsin and another lady. He said he did not give any statement to the Police about the incident. Both Mohsin and the Plaintiff did not request him to give a Police Statement. He could have given a statement if he wanted to. He said Mohsin was not handcuffed.
40. With that the Plaintiff closed his case and the State Defendants opened their's.
41. The first State witness was P.C Sachin Sami (D.W.1). He said he had been 10 ½ years in the police force. He does investigating, arresting suspects etc. He is familiar with the arrest process. He remembered the incident. There had been a break-in at Supreme and the manager and cashier were the suspects. From the robbery all the cash had been recovered but only some of the recharge cards were recovered. The Plaintiff and Imran were suspected to be accessories after the robbery. When the Police raided Imran's house, Moshin had run out with a parcel. They arrested Mohsin, and the Plaintiff tried to run away, so they arrested him and when they arrested him, he resisted arrest so the Police

applied reasonable force and he (Plaintiff) fell on the road. The Police read both Mohsin and the Plaintiff their legal rights.

42. Under cross examination by Supreme's Counsel, DW1 said he was the Investigating Officer for the break-in. The Manager and the cashier were charged with the break-in.
43. When cross-examined by Counsel for the Plaintiff DW1 said there were no cases of assault against him. He had called Imran to the station, not the Plaintiff. Imran was called as a suspect, as an accessory after the fact, not for the break in. Both Imran and the Plaintiff were together in Sigatoka, so both became suspects. The Police wanted to check the car to see if there was any evidence connected with the recharge cards. At the car wash, the Plaintiff ran out of the vehicle and he and P.C Monish used only reasonable force which was to handcuff him and bring him back to the station. There was not any injury on him at that moment. He (Plaintiff) fell on the road. He was running so they had to tap him to handcuff him. They did not put any civilian passerby in the van. They did not take the Plaintiff and Moshin to the Supreme premises, but back to the station.
44. During re-examination by State Counsel, DW1 said the Plaintiff informed them the car was at the carwash. This was the car that they suspected the Plaintiff and Imran were using to sell the recharge cards. There were no disciplinary charges against him in the Police Force.
45. The next witness was P.C Sachindra Monish Lal (DW2). He has been 11 years in the Police Force. In 2008 he was in the C.I.D. They were investigating a break-in at Supreme's premises. They were looking for Imran and called him by phone to come to the station to confirm he had received \$500.00 from a suspect. When they called Imran, the Plaintiff would answer the phone.

46. When Imran finally came to the station, he was accompanied by a solicitor and the Plaintiff. Their investigation revealed that in the break-in, some recharge cards were stolen.
47. At the car wash, the Plaintiff got out of the vehicle and walked away. They called on him to stop but he kept on walking. He had to be brought back and forced into the car as he was resisting arrest.
48. Under cross examination by Supreme's Counsel. DW2 said they had gone once to Supreme's premises as a team in investigations relating to 2 employees of Supreme. There was no visit by the police on 21 October 2008 to Supreme's premises.
49. When cross-examined by Plaintiff's Counsel DW2 said Imran was required to give a statement and the Plaintiff was answering Imran's phone. Vodafone confirmed the stolen recharge cards were used in the Western Division. When he called them they told him they were in the West. They could have told him where they were so that the Police there could take statements from them. Their jurisdiction (DW1 and DW2's) were confined to the Nabua area. At the car wash, the Plaintiff got out of the vehicle and when they told him to stop he said he was going. DW1 and him went after the Plaintiff. They had to physically hold him and bring him inside the van.
50. With this, the State Defendants closed their case.
51. The 3rd Defendant opened theirs'. Their only witness was Arun Kumar, the Operations Manager (DW3). He said there was a robbery where among other missing items were recharge cards to a value of \$8012.00 and cash of \$11,262.00. The suspects were the site manager and the cashier. The cash, cheques and recharge cards were recovered, hidden within the shop. The 2 suspects were charged and both were convicted. By Sunday 19 October 2008 the suspects were identified by the Police. By Monday 20 October 2008 the

items were also recovered. The Plaintiff was not assaulted by the Police at Supreme's premises.

52. When cross examined by State Counsel, DW3 said he was not aware of any complaint lodged by the Plaintiff regarding an assault.
53. Under cross-examination by Counsel for the Plaintiff, DW3 said he cannot say if the Police officers came to Supreme's premises on 21 October 2008. He was there for that period.
54. With that the 3rd Defendant closed its case. The oral submissions began the next day with all Counsel also providing written submissions.
55. Counsel for the Plaintiff submitted he had been examined by the doctor at CWMH. He had suffered injuries. He did not try to escape. He has proved he was assaulted by two policemen at Supreme's premises. The event revolves around 21 October 2008. Why was the Plaintiff called for questioning a day after the goods were recovered? The Plaintiff had proved his case on a balance of probabilities. Counsel concluded by leaving it to the court to award the quantum of damages.
56. State Counsel now submitted. She said she agreed with the court that the issues were whether the Plaintiff had been assaulted and if proved that injuries were sustained, what are the damages. The defence witnesses had established the robbery at Supreme's premises. The Plaintiff was an accessory after the fact and had been questioned after the items were recovered. There was no assault from the station to the car wash back to the station, and that is the entire story. The Police never took him to the Muslim College and never took him to Supreme's premises because there was no reason to, as the items were recovered prior to 21 October 2018.
57. Counsel said the story is a fabrication. The Police had lawful authority to arrest. The assault had not been proved on a balance of probabilities. The proper way to prove an

assault is through a proper medical report which proved an assault caused by a beating with a rod or a pipe for 30-40 minutes. The maker of the medical report was present in court to give evidence but the full report was not provided and the supporting documents e.g x-rays were missing. The medical report was inadmissible as it did not comply with section 4 of the Civil Evidence Act 2002. The injuries were not proven. The injuries, damage and loss were not particularised. The trauma and losses to business were not proved. Counsel concluded by asking for the claim to be dismissed.

58. Counsel for Supreme now submitted by saying she supported State Counsel's submission. She said the medical report should not be admitted. There was no reason for the Plaintiff and PW3 to be taken to Supreme's premises. The suspects had been identified in the robbery and investigations therein concluded. There were no particulars, nor evidence nor proof provided of the injuries, loss and damage.
59. Plaintiff's Counsel in her reply said the Police took the Plaintiff to Supreme's premises because not all the recharge cards were recovered.
60. At the conclusion of the arguments, I informed I would take time for consideration. Having done so, I proceed to deliver my judgment.
61. The facts of this case are contained within a very small compass and they give rise to 2 issues which fall to me to decide: *viz* (1) Was the Plaintiff assaulted by certain policemen. (2). If so, did he suffer proven injuries and proven loss and damage as a result thereof.
62. First things first - the alleged assaults. If one were to believe the number of times the Plaintiff and Mohsin (PW3) were allegedly assaulted by the police, one would be justifiably surprised that they are still walking about normally. If they are to be believed, they were used as punching balls at various locations. Even if they were to be believed there was no rhyme or reason for the Police to take the Plaintiff to the Muslim College when that was not the crime scene. There was no justification to take the Plaintiff to

Supreme's premises for a crime scene investigation when he was not suspected nor charged with committing the robbery there. He was only suspected of selling stolen recharge cards in the Western Division which would be the crime scene for accessories after the robbery. The proceeds of the robbery had been recovered and if other recharge cards were there, these would also have been discovered. For Counsel for the Plaintiff to submit the Police took him to Supreme in search of the cards, is doing her client, no service for she is in effect suggesting his possible participation in the robbery which had never been in the minds of the Police at all.

63. The fact that Mohsin (PW3) was called as a witness by the Plaintiff did not help the Plaintiff's cause for PW3 confirmed he never made a complaint regarding the alleged assault and no plausible reason was offered by him for failing to do. This has the effect of militating against the Plaintiff's claim.
64. Finally, the medical report of Dr Saraf which in the interests of justice I allowed to be received in evidence, only stated the following specific medical findings:
 - (i) Pain on area of right arm, right side of chest and left foot - no open wound.
 - (ii) Pain on area of neck, no open wound.
 - (iii) Pain on area of head – no open wound.
65. The causes of the pain stated viz "with rod, due to assault, due to assault", cannot be accepted in the absence of other cogent evidence that entitle these to be considered as specific medical findings. In any event, I find it hard to believe such severe beatings as alleged could only result in mere pain and nothing more.
66. The alleged assaults are a question of fact to be tried by me as the tribunal of fact (and of law). I have had the advantage of seeing and hearing the witnesses and determining any question whether a witness is telling what he believes to be the truth. That is why I have reproduced the evidence in extenso in this judgment. There is therefore a basis for me to

draw the proper conclusions about the reliability of witnesses' memory and their credibility. The Police witnesses impressed their veracity on me by the way in which they stood up to cross-examination by Plaintiff's Counsel. In my view it would strain credulity to breaking point if I were to find the evidence of the Plaintiff and his 2 witness to be anything other than what Ms Ali, State Counsel, called a fabrication.

67. The claim for pain and suffering is disallowed, as I find and so hold the Plaintiff has failed to prove on a balance of probabilities that the injuries (pain) were caused by member of the Police Force whether as alleged or at all. If he had succeeded I would have allowed general damages in the sum of \$2,000 for pain and suffering.
68. Similarly, the Plaintiff's claims for aggravated and exemplary damages are not allowed as no evidence was led and no proof provided by the Plaintiff.
69. The cases cited are of no relevance to this action and I think it would be inexpedient to discuss them.
70. At the end of the day because of the evidence led and the able way the case has been presented and argued by Counsel for the Plaintiff, I am able to conclude that I do not entertain any doubt that the Plaintiff has failed to prove the policemen named had assaulted him and failed to prove the 3rd Defendant had permitted them to do so at its premises.
71. In fine, I dismiss the Plaintiff's claims against the First, Second, Third and Fourth Defendants with costs which I summarily assess and order the Plaintiff to pay as follows:
 - (i) \$3,000.00 to the 1st, 2nd and 4th Defendants.
 - (ii) \$1,750.00 to the 3rd Defendant.

Delivered at Suva this 15th day of November 2016.



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David Alfred
JUDGE
High Court of Fiji