

In the High Court of Fiji at Suva  
Civil Jurisdiction  
Civil Action HBC 133 of 2016

Romeo Nasila  
Plaintiff

And

Inspector Randhir  
First defendant

And

The Commissioner of Police  
Second defendant

And

The Attorney General of Fiji  
Third defendant

Counsel: Ms N. Raikaci for the plaintiff  
Ms S. Ali with Mr V. Chauhan for the first, second  
and third defendants

Date of hearing: 5<sup>th</sup> and 6<sup>th</sup> February, 2018

Date of Judgment: 15<sup>th</sup> February, 2019

### **Judgment**

1. The plaintiff, a Corporal in the Police Force claims that he suffered loss and damages, as a result of his unlawful arrest and detention by the first defendant, from his residence on 25<sup>th</sup> June, 2010, on orders issued by the second defendant. The statement of claim states that he was detained with two other detainees in unhealthy, unhygienic and OHS non-compliance conditions at the Central Police Station, for approximately 29 hours until 26<sup>th</sup> June, 2010. He was not interviewed nor informed of the reason for his arrest and detention or charged. On his release, he was requested to attend Police Tribunal proceedings on the same day. On 26<sup>th</sup> June 2010, he was interdicted from duty without salary, pending investigation for alleged breach of the Code of Conduct. He was subsequently dismissed effective from 29<sup>th</sup> June, 2010, and reinstated as Corporal on 24<sup>th</sup> January, 2014.

2. The first, second and third defendants in their statement of defence state that the plaintiff was intoxicated at a time he was required for duty. He displayed conduct prejudicial to the good order of the Fiji Police Force. He was fully informed of his breach of good conduct. The defaulter documents were immediately served on him, as soon as he regained sobriety, to attend the Police Tribunal on the same day. He has a record of a prior conviction, while in the employment of the Force and cannot claim that he has an unblemished character. He was lawfully terminated.
3. The plaintiff, in his reply to the defence states that he was informed to attend Tribunal proceedings after 29 hours of detention, without being given sufficient opportunity to prepare his defence. The disclosure of a prior conviction of more than 10 years is prohibited.

*The determination*

4. The case for the plaintiff is that he was unlawfully arrested and detained by the first defendant on 25<sup>th</sup> June, 2010, which was his day off. The defendants state that the plaintiff was found to be under the influence of liquor at a time he was required for duty, in breach of the second defendant's order to report to work.
5. The plaintiff, (PW1) in evidence in chief said that he was the National Project Officer of the Juvenile Bureau Unit, (JBU) from 2009 to 2010. He brokered the negotiation of a Bilateral Agreement between the UNICEF and the Fiji Police in 2009, which resulted in a Memorandum of Understanding between the parties.
6. The meeting on 25<sup>th</sup> June, 2010, concerned the launch of the UNICEF project in Taveuni, as confirmed by PW2, (*Bhagwati Gounder, formerly National Coordinator and Officer in charge of the JBU*). The first meeting held in Suva, in 2009, was attended by the second defendant. On 24 June, 2010, PW2 asked him if he can attend a meeting the next day with the second defendant and UNICEF, even though it was his day off. Otherwise, that she would attend. The plaintiff said that he had asked for a day off, two weeks earlier. The second defendant did not issue a directive to attend the meeting.

7. PW2, in her evidence confirmed that she called the plaintiff on 24 June, 2010, to “remind him” of the meeting. She told him that she would attend, as it was his day off. He had asked for leave, a few weeks before the meeting. She informed Corporal Devika and Ms Salote, the UNICEF representative that she had given him the day off. When she returned to her office after attending the meeting, she was informed that he was arrested. In her letter of 22<sup>nd</sup> March, 2011, to the second defendant, she stated he was on a day off on 25<sup>th</sup> June, 2010, and that she retired in December,2010.
8. In cross-examination, PW2 accepted that it was possible that the first defendant expected the plaintiff to attend the meeting. She informed Ms Salote that the plaintiff was not at the meeting, as he was “*always with (her) and instrumental in making this MOU*”. He attended previous meetings. He played an important role in the UNICEF project, but her presence was sufficient. PW2 said that she has the authority to give a day off. It was an internal arrangement. She agreed that a record has to be kept even of a day off of an officer, as in the event of a national emergency, he has to be deployed.
9. DW1,(*Inspector Randhir Prasad*) said that an officer is required to report to work, when requested by the second defendant. It is a disciplinary offence not to report immediately, as provided in the Police Act. An Officer in Charge is required to inform the Administrative Officer, if an officer is on a day off. The Administrative Officer has to send the number of officers deployed to the National Command Centre. DW1 said that he checked with DW2, if the plaintiff was on a day off.
10. The question as to whether the plaintiff was on a day off and his presence was not required at the meeting does not arise for consideration, as he pleaded guilty to the charge under section 12(37) of the Police Regulations,1965, in that regard. The charge reads:

*In that you on 25/06/10 at Suva, conducted yourself in an unethical manner by failing to honor the appointment at the Commissioner of Police’s office to brief the United Nations visiting group ,an act prejudicial to good order and discipline of the force.*
11. The plaintiff, in mitigation of the charge under section 12(37), pleaded as follows:

*I accept the facts. I neglected in my duty. I lost her contact. I had drinks and hangover.*



12. The issue before me is whether the plaintiff's arrest and detention was lawful.
13. The plaintiff, in evidence in chief said that on the night of 24 June, 2010, (Thursday) he was drinking at home with 5 friends and went to bed after 1 am. On 25 June, 2010, the first defendant and Police Officer Romily arrested him at 9am. The first defendant informed him that the second defendant asked them to arrest him. His de facto wife and two friends from New Zealand were present. The plaintiff said that he was "sure" that he was under "the influence of liquor", but not "drunk".
14. DW1, (*Inspector Randhir Prasad*) said that on 25 June, 2010, the second defendant requested Superintendent of Police Hari Chand, to tell the plaintiff to come and discuss some urgent matters with him. SP Hari Chand then told Corporal Romily and him, (DW1) to go to the plaintiff's residence and bring him to the office. DW1 said he informed SP Hari Chand that he found the plaintiff under the influence of liquor and not in a condition to be taken to the second defendant. He was smelling of liquor, staggering and his eyes were blood shot. He was given a directive by his superior to arrest him. An officer, who is intoxicated at a time he is required to report to work, is guilty of a disciplinary offence. He denied that the plaintiff was still sleeping.
15. DW2, (*Anare Rawaitale*) confirmed that the plaintiff was under the influence of liquor, when he locked him in the cell. He said that his eyes were blood shot and he smelt of liquor. The plaintiff was not fit to perform his duty.
16. DW3, (*Mohamed Talib Khan*) said that a Police Officer is required to act soberly and honestly, while off duty or on duty. If he is found drunk when called for work, he has to be arrested and kept in custody. He has to be locked in the cell, until he gets sober to attend Tribunal proceedings. In the present case, the proceedings were conducted on the 26<sup>th</sup> June, after the plaintiff got sober. Proceedings are not held at night. An officer has the right to appoint a senior gazette officer to represent him, not a lawyer. Prisoners are not allowed food from outside.

17. Section 17(2) of the Police Act, 1965, states that:

*Every Police Officer shall be deemed to be duty at all times and may at any time be detailed for duty in any part of Fiji.* (emphasis added)

18. Section 12 of the Police Regulations provides that:

*Any officer who commits any of the following offences- ..*

*(4) is guilty of drunkenness;..*

*(37) is guilty of any other act, conduct, disorder or neglect to the prejudice of good order or discipline ,*

*shall be guilty of an offense against discipline for the purposes of section 30 of the Act.*

19. Section 30 of the Police Act states that “*any police officer who commits any offense against discipline as may be prescribed under the provision of this Act shall be liable to suffer punishment in accordance with the provisions of the Act...*”

20. Ms Raikaci, counsel for the plaintiff raised the issue of the plaintiff being arrested without a warrant.

21. The answer is contained in section 31, which provides that any “*police officer may arrest without warrant any police officer not being an officer of his own or of higher rank who is accused of any offence under the provisions of this Act*” and “*bring the accused person before a gazetted officer or in the absence of such an officer before the most senior police officer readily accessible who shall cause the case to be heard by a tribunal or court of criminal jurisdiction without delay*”.

22. The Police Code of Conduct, as referred to in the closing submissions filed by Ms Ali, counsel for the defendants, states that all “*employees of the Police Force must at all times conduct themselves soberly and honestly.*”

23. The plaintiff was admittedly under the “*influence of liquor*”, at a time he was required to report to work by the second defendant. He was arrested for drunkenness, on the instructions of the second defendant, as provided in the Police entry of 26<sup>th</sup> June, 2010. He had to be detained until he was sober, to attend Tribunal proceedings.

24. In my judgment, clearly there was justification for the plaintiff's arrest and detention. It follows that his claim for the alleged damages suffered as a result, fails.
25. The plaintiff complains that he was detained with two other detainees in unhealthy, unhygienic and OHS non-compliance conditions in a cell at the Central Police Station, for approximately 29 hours until 26<sup>th</sup> June, 2010. He had to sleep on a cement floor with no mattress, blanket, pillows and ventilation. He was neither interviewed nor informed about his right to a lawyer. He ate lunch, but refused to eat breakfast, because the tea was too cold. The food given was too cold. His wife was not allowed to bring food. She could not visit him.
26. DW3 said that prisoners are not allowed food from outside.
27. I take cognizance of the fact that the plaintiff was provided food. The plaintiff's complaint that it was not hot is untenable.
28. DW2 said that mattresses and blankets were provided. He served the plaintiff lunch in the cell. He received no complaints. It transpired in his evidence that the relevant station diary and notebook contained "NTR", (nothing to report) entries. The plaintiff, in cross examination said that he did not make any complaints.
29. Article 13(1)(f) of the Constitution provides that a person may be detained for a period of 48 hours after arrest. The plaintiff's detention for 29 hours did not entitle him to visitation by his wife.
30. In my judgment, since the plaintiff was admittedly under the influence of liquor, there was no necessity for investigation or calling for his defence, as envisaged in section 32 of the Police Act. As regards legal representation, section 13 of the Police Regulations provides that "*the tribunal may, in its discretion, allow the accused to be assisted by a friend, being a gazetted officer*"...
31. In my judgment, the plaintiff's claims for general, aggravated and exemplary damages are unfounded. The claims are declined.



32. The plaintiff claims special damages for loss of earnings in a sum of \$54,000.00 from 29<sup>th</sup> June, 2010, to 24 January, 2014, until he was reinstated.
33. The second defendant is responsible for the organization and administration of the Police Force, to remove and take disciplinary action against persons in the Forces, in terms of Article 129(5) and (7) of the Constitution of 2013.
34. The plaintiff has not challenged his termination. In any event, he cannot do so in these proceedings.
35. The plaintiff's claim for loss of earnings is misconceived.
36. I decline the plaintiff's claim for special damages.

37. **Orders**

- (a) The plaintiff's action is declined.
- (b) I make no order as to costs.



*A.L.B. Brito-Mutunayagam*  
**A.L.B. Brito-Mutunayagam**  
**Judge**  
15<sup>th</sup> February, 2019