

In the High Court of Fiji
At Labasa
Civil Jurisdiction

Civil Action No. HBC 28 of 2019

Ravindra Kumar Lal
Plaintiff

v

Rajesh Maharaj
First defendant

DC 4555, Rusiate Raivukica
Second defendant

Gyan Singh
Third defendant

Counsel: Mr A. Sen for the plaintiff
Mr A. Prakash for the first, second and third defendants
Date of hearing: 24th and 25th August,2020
Date of Judgment: 7th October,2021

Judgment

1. The first defendant is the Divisional Crimes Officer, Northern (DCO). The second defendant is a Police Officer,(PO) at Savusavu Police Station,(SPS). The third defendant was Station Officer at SPS. The plaintiff, in his statement of claim alleges that the second defendant, on the directions of the first defendant, unlawfully seized his Toyota Hilux Twin Cab vehicle no FB 680,(vehicle) on 7th March,2019, and kept it in the custody of the third defendant. The vehicle is wrongfully detained by the defendants. The plaintiff seeks the release of his vehicle, general, exemplary and special damages for loss of use of the vehicle.

2. The defendants, in their statement of defence state that the vehicle was seized from Pristine Lodge,(the lodge) in Savusavu. The ownership of the vehicle is disputed. The plaintiff has been charged on two counts of conversion in Labasa Magistrates' Court Case no: CF 418 of 2018. The vehicle is held as an exhibit. The plaintiff should make application for release of the vehicle in that case.
3. The plaintiff in his reply states that he is the registered owner of the vehicle. A search warrant was not issued to take possession of the vehicle. The defendants ought to have adopted proper procedures to take possession. The investigations are concluded. The charges were erroneously filed.

4. ***The hearing***

a. PW1,(*the plaintiff*)

PW1,in evidence in chief said that he was a businessman, market vendor and sheep farmer in Savusavu. He purchased the vehicle with a loan of \$20,000.00 from Home Finance and \$15,000.00 of his own money. The vehicle was registered in his name on 17th July,2013. He used the vehicle for farming. On 7th March,2019, he parked his vehicle at the lodge of his friend Shiu Shankar and went to the market. Shankar called and informed him that the Police had come with a document to seize his vehicle. He rushed to the lodge. Shankar said that he thought it was a High Court Order. He told him that he has to abide by the Order and release the vehicle. The Police forcefully told him that they have a High Court Order and asked him to give the key. Shankar gave him the key. He,(*the plaintiff*) gave the key to the Police. They left the document on the table, after the key was given. PO Kamalesh from Labasa and PO Rusiate Raivukica, the second defendant seized his vehicle. When Shankar started reading the document, he found that it was an unsigned letter from the DPP's office to the DCO. PW1 said that he reported the matter to the Police Station. He did not file an application in the criminal case for release of the vehicle.

In 2018, the Police charged him on a count of conversion: that as Director of Balagabay Farms Ltd, he took \$20,000.00 from the account of the company and bought the vehicle. The Memorandum and Articles of Association do not prohibit him,(a shareholder) from taking money from the company. He was charged on the instructions of Immet Morgan.

In an action instituted by Morgan against him in 2015, it was held that the plaintiff was the owner and shareholder of Balagabay Farms Ltd and Morgan has nothing to do with that company.

In cross-examination, the plaintiff said that Shankar gave the key to the Police. As soon as the keys were given, the Police kept the Order and left. He found that it was an unsigned letter. They did not give him the letter until he gave the key. It was put to him that he never asked to see the letter nor go to the station. He said that he did ask, but the Police did not give the letter. He could not recall if he wrote to the Police asking for the release of his vehicle.

In re-examination, he said the Police did not make an application in the High Court under the Proceeds of Crime Act, to seize the vehicle.

b. *PW2*

PW2 (Shiu Shankar) in evidence in chief said that on 7th March, 2019, the second defendant and a PO from Labasa came to his premises and told him that they had come to seize the plaintiff's vehicle. The vehicle was parked at his premises. The Police said that they had a High Court Order, but did not show him the Order. He called the plaintiff and he came to the lodge. Neither of them requested to see the Order. *PW2* said that the keys of the vehicle were in his office. He put the keys on the table. The second defendant took it and drove the vehicle away. The plaintiff then asked him to read the Order. It was an unsigned letter from the DPP. They went to the Police Station. The plaintiff lodged a report. The Police did not release the vehicle. The plaintiff hires his vehicle for more than 4 days a week.

In cross-examination, *PW2* said that the POs were forceful. The plaintiff asked him to get the keys. The POs kept the document and left. When they went to lodge a complaint, the second defendant and PO Kamallesh were at the station. They tried to lodge a complaint.

In re-examination, he said that the Police did not lodge the plaintiff's complaint

c. *DW1, (Rusiata Raivukica, the second defendant)*

DW1, in evidence in chief said that he was a Police Constable at SPS. On 7th March, 2019, Sergeant Kamallesh of the Labasa Police Station asked him to assist him to drive the plaintiff's vehicle. Station Sergeant Vika released him. Sergeant Kamallesh

and he went to the lodge and called out for PW2. PW2 asked them to come up to his office.

After 10 or 5 mts, the plaintiff came to the lodge. Sergeant Kamalesh explained the terms of a document to the plaintiff in Hindustani and gave him the document. The plaintiff read it and gave it back with the keys to Sergeant Kamalesh. DW1 said that he drove the vehicle to SPS. Neither the plaintiff nor PW2 came and met him at the Police Station.

In cross examination, DW1 said that he did not have a search warrant nor a Court Order. He follows protocol and lawful instructions given by his superiors or he would be severely dealt with. It was put to him that the Constitution provides that a person's property cannot be arbitrarily seized. The Police have the power to arrest, search and seize anything in a public place. He heard the plaintiff reading the letter and saw him giving the keys to Sergeant Kamalesh. He did not know the letter was unsigned. He denied that Sergeant Kamalesh and he told the plaintiff that he had a Court Order. He did not shout out for PW2 at the lodge. He also denied that he saw the plaintiff and PW2 at the station and the Police refused to register a complaint.

In re- examination, he said that the plaintiff read the document and gave the keys to Sergeant Kamalesh.

d. DW2, (Sergeant Kamalesh)

DW2, in evidence in chief said that he was stationed at Labasa Police Station in March, 2019. On 7th March, 2019, he received a letter from the first defendant instructing him to seize the plaintiff's vehicle and bring it to SPS. He asked the second defendant to assist him to locate the plaintiff's residence. The second defendant said that the vehicle was parked at the lodge. He went with the second defendant to the lodge and called out to PW2. PW2 asked them to come upstairs. He told him that they came to seize the vehicle. He explained the document in Hindustani. The letter was unsigned.

PW2 called the plaintiff and he came in 10 mts. He gave the DPP's letter to the plaintiff to read. After reading the letter, the plaintiff gave him the vehicle keys. PW2 also read the document. He gave the plaintiff a photocopy of the letter at the Police Station. Neither the plaintiff nor PW2 asked him to return the vehicle. The Station Orderly recorded that the vehicle was brought to the Station. The witness was referred to an

entry in the station diary stating that he requested the second defendant to drop the vehicle for Case no: CF 418/85.

In cross-examination, DW2 said that the first defendant told him to carry out his written instructions. The first defendant, as DCO, was in total control of Labasa and SPS. He did not act on the DPP's unsigned letter. Neither the plaintiff nor PW2 was told that it was a Court Order. The witness said that he was told to seize the vehicle, as it was required as an exhibit in Court. Neither a search warrant nor Court Order was required. The Station diary does not state that it was a Court exhibit. He did not tell the plaintiff or PW2 that the letter stated to seize the vehicle. He showed them the letter and written instructions from the first defendant.

In re-examination, he said that section 15 of the Criminal Procedure Act allows the Police to search and seize items without a search warrant. The vehicle was seized after the plaintiff was charged. He informed the Station Officer that it was brought for the pending investigation and to be produced as an exhibit in Court. The exhibit writer marked it in the register.

e. DW3, (the third defendant)

DW3, in evidence in chief said that he was based at SPS. On 7th March, 2019, he was on sick leave. After the vehicle was driven into the station, he asked the Station Orderly to make an entry in the station diary.

In cross examination, the witness said that he did not check the exhibit register. The Station Sergeant told him that the vehicle was seized by fraud officers of the Labasa Police Station and brought to SPS for safe keeping.

The determination

5. It is an agreed fact that on 7th March, 2019, the first defendant, directed the second defendant to seize and take possession of the plaintiff's vehicle. The defendants did not have a search warrant and showed the plaintiff an unsigned letter from the DPP's office. It is also agreed that the plaintiff has pending charges in Labasa Criminal Case No 418 of 2018.

6. The issues for determination, as recorded at the PTC, read as follows:
- i. *Is the Plaintiff the lawful owner of vehicle registration number FB 680?*
 - ii. *Could the defendants use the criminal proceedings against the plaintiff being criminal case No. 418 of 2019 as the basis of taking possession of motor vehicle...?*
 - iii. *In the event it is yes, what is the proper procedure to be adopted by the defendants to take possession of FB 680 and further was a proper procedure taken?*
 - iv. *Were the actions of the defendants lawful into taking possession of plaintiff's motor vehicle registration No. FB 680?*
 - v. *Was **the** direction by the 1st defendant to the 2nd defendant a lawful direction given in the execution of the duties of the Fiji Police Force?*
 - vi. *Was a direction given by DPP's office to the 1st and 2nd defendants to seize plaintiffs said motor vehicle?*
 - vii. *In the event, yes, was such direction lawful?*
 - viii. *Was the seizure of the said vehicle registration number FB 680 by the Savusavu Police Station lawful?*
 - ix. *Did the defendant police officers have any right in law to take possession of plaintiffs motor vehicle registration No. FB 680?*
 - x. *Was the said letter from Office of DPP valid?*
 - xi. *At the time of the seizure of the said motor vehicle registration No. FB 680 by the Savusavu Police Station, was a search warrant required?*
 - xii. *Has the plaintiff suffered any loss and damages due to the Police seizure of the vehicle?*
 - xiii. *If so, what is the extent of such damages?*
7. The main question for determination is whether the defendants lawfully seized the vehicle.
8. The plaintiff's ownership of the vehicle is disputed.
9. On 13th August, 2018, he was charged on the following count of conversion, viz: “ *while being a Director of **BALAGA BAY FARMS(FIJI) LIMITED**, fraudulently took for his own monies amounting to FJ \$20,000.00, the property of **BALAGA BAY FARMS(FIJI) LIMITED** and used the said monies to purchase vehicle registration FB 680 IN HIS OWN*”

NAME” contrary to section 319 (1)(b) of the Crimes Act,2009. The case is pending in the Magistrates’ Court.

10. DW2 said that on 7th March,2019, he received a letter from the first defendant directing him to seize the vehicle.

11. I am unable to consider the issue on the legality of the directions given in that letter, as the letter was not produced in evidence.

12. DW2 said that he showed the plaintiff an unsigned letter of 4th March,2019, from the DPPs office.

13. The letter of 4th March,2019,, as so far as relevant, reads as follows:

.....
The allegation is that the accused purchased this vehicle by using monies from the Balaga Bay Farms and instead of having it registered under the company’s name, had it registered under his name and used the vehicle for his personal benefit.

As per procedure, the vehicle ought to have been seized and kept in police custody as an exhibit. Unfortunately this has not been done till date....

The vehicle ought to have been seized during investigation stages since it is an item in dispute...

Kindly ensure that the officer investigating the case provides a statement explaining why the vehicle has not been seized till date which is allowing the accused to continue offending...(emphasis added)

14. The letter does not direct the first and second defendants to seize the vehicle. It requests the Police to provide a statement explaining why the vehicle was not seized “till date ” as “per procedure ...during investigation stages”.

15. The defendant relies on section 15 of the Criminal Procedure Act titled “Power of police officer to detain and search”.

16. Section 15(a) empowers the Police to exercise its powers to detain and search a vehicle where there is “**reason to suspect that (it)- a) has been stolen or unlawfully obtained**”;(emphasis added)
17. In my view, in the present case, section 15(a) cannot be relied on as the stage of suspicion had passed when the vehicle was seized. The plaintiff had been charged and the case was pending.
18. Next, it was contended for the defendants that the vehicle was seized in a public place: the lodge and was required as an exhibit.
19. Section 15 (d) provides that a “*police officer may seize any articles in a public place—*
 - a) *which may furnish evidence in regard to the commission of such offence;*
and
 - b) ***where there is a possibility of the articles being removed or dealt with in such a way as to prevent their being available as evidence.***
(emphasis added)
20. It was not contended that there was a possibility that the vehicle would be removed or dismantled.
21. I am not convinced with the argument that the plaintiff voluntarily gave the keys of his vehicle to the second defendant .
22. DW2 said that he showed a document to the plaintiff and PW2 and told them he came to seize the vehicle.
23. I accept the plaintiff and PW2’s evidence that DW2 and the second defendant forcefully asked the plaintiff for the keys. The plaintiff had no alternative, but to give the keys.
24. The defendants also argued that the vehicle was required as an exhibit in the Magistrates’ Court case.
25. Section 12 of the Constitution states as follows:

- i) *Every person has the right to be secure against unreasonable search of his... property and against unreasonable seizure of his ..property*
- ii) ***Search or seizure is not permissible otherwise than under the authority of the law.***(emphasis added)

26. The defendants did not make an application for a restraining order against the vehicle under the Proceeds of Crime Act.

27. In my judgment, the seizure was wrongful.

28. I award the plaintiff damages in a sum of \$ 3000.

29. The plaintiff claims exemplary damages.

30. In *Borron & Mago Islands Estate Limited v Fiji Broadcasting Commission & Newspapers of Fiji Limited*,(Civ. Appeal No. 40/81) Spring JA delivering the judgment of the Court stated:

Exemplary damages are damages which are awarded to punish a defendant and vindicate the strength of the law. In considering whether exemplary damages should be awarded the Court should ask itself whether the sum it proposes to award as compensatory damages, which may include an element of aggravated damages is adequate in all the circumstances for compensating a plaintiff and also for punishing or deterring a defendant. Only if it is inadequate for the latter purpose should the Court consider awarding exemplary damages.(emphasis added)

31. The Court further stated that exemplary or punitive damages are exceptional and awarded only in rare cases.

32. Lord Woolf MR in *Thompson v Comm of Police*, (1998) QB 498 at pg 512 said that the “*fact that the defendant is a chief officer of police also means that here exemplary damages should have a lesser role to play*”.

33. The damages I have awarded on a compensatory basis include an element of punitive damages. In my judgment, the damages awarded is adequate to punish the defendant for their conduct and deter them from repeating it.

34. The plaintiff has been without the use of the vehicle from 7th March,2019. However, he has not taken steps to mitigate his loss. He has not made an application for the release of his vehicle in Magistrates Court Criminal Case No 418 of 2018.

35. In the circumstances, I decline to release the vehicle in these proceedings.

36. The plaintiff, in his statement of claim claims special damages of a sum of \$150.00 per day for loss of use of the vehicle from 7th March,2019. The plaintiff said that he hired PW2's vehicle five to six times a week for his business and paid him \$ 500.00 a week.

37. There is no claim pleaded in respect of hire of a vehicle.

38. Special damages must be pleaded and proved, as Lord Goddard stated in *British Transport Commission v Gourley*, [1956] AC 185.

39. It also transpired that PW2's vehicle was registered as a private vehicle and not as a rental vehicle. The Land Transport Act prohibits the hire of a vehicle, unless it is licensed as a public service vehicle

40. The claim for special damages is declined.

41. The plaintiff has claimed interest.

42. Section 4(3) of the Law Reform (Miscellaneous) (Interest) Act provides that interest is not payable by the State.

43. The claim for interest is declined.

44. **Orders**

- a. The defendants shall pay the plaintiff a sum of \$ 3000.00 as general damages.
- b. The claim for interest is declined
- c. The claim for exemplary damages is declined.
- d. The claim for special damages is declined
- e. I decline to release the vehicle.

f. The defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 750.

A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
7th October, 2021

