

AVINASH SINGH (a minor) v JOFILITI TURAGA, COMMISSIONER OF POLICE and Anor

HIGH COURT — CIVIL JURISDICTION

5 BYRNE J

6, 7 August, 4 September, 24 October 2001, 22 February 2002

10 [2002] FJHC 279

Tort — false imprisonment — damages for false imprisonment of student for 3 hours — Examinations Act 1978 (Cap 262A) ss 2, 6 — 1997 Constitution ss 23(1)(e), 26(1), 27(1)(c) — Fiji Institute of Technology Decree 1992 s 17(c).

15 Plaintiff sought damages from defendants for false imprisonment for 3 hours regarding an examination leakage. Defendants denied liability.

Held — Defendants are liable to plaintiff in damages for false imprisonment. They had no reasonable suspicion at all that plaintiff had committed an offence.

Damages awarded.

20 **Cases referred to**

Dumbell v Roberts and Ors [1944] 1 All ER 326, considered.

Eveli Seniloli and Anor v Semi Voliti Civil Appeal No HBA 33/99S; *Mohammed Kasim v Commissioner of Police and Ors* (unreported) HBC No 471/1999, cited.

25 *G.P. Shankar* for the Plaintiff

K.T. Keteca for the Defendants

Judgment

30 **Byrne J.** This is a claim for damages for false imprisonment brought by the Plaintiff who on the 21st of November 1997 was a student aged 17 at the Fiji Institute of Technology.

On that day from 1.15 pm to 4 pm he sat for an examination in Applied Computing Principles fixed to begin at 1.15 pm and finish at 4 pm at the Fiji
35 Institute of Technology. The Plaintiff left the examination room at about 3.30 pm and went with some fellow students and friends to buy some soft drink at a shop near the Samabula Police Station. The Plaintiff was not able to buy any soft drink because he said two policemen in plain clothes walked up to him as he was crossing the road, and showed him their identification cards. They told him that
40 they wished to take him to the Samabula Police Station to question him.

I find as a fact that the two policemen approached the Plaintiff at 3.50 pm and entered the police station with him at about 3.55 pm.

As will appear later in my summary of the evidence the police officers told the Plaintiff that they wanted to question him about the possibility of his having any
45 prior knowledge of the examination paper for which he had just sat. According to the Plaintiff one of the Police Constables, Constable Arvin Singh said: “Do you know whether the exam paper you have just finished?”

The Plaintiff replied, “I have never heard anything about it nor do I know anything about it”.

50 This was the Plaintiff’s version of his initial conversation with the police in the Samabula Police Station and I accept it as true.

The Plaintiff was detained at the police station until 6.10 pm when his father, a former police officer arrived and took him home.

In his statement of claim the Plaintiff states that on the 21st of November 1997 he was under arrest and confined at the police station for 3 hours. He was unlawfully detained and prevented from leaving the police station and was unlawfully interrogated for 3 hours. He claims that by reason of these facts he failed his final examination for the Diploma in Applied Computers and suffered injury to his liberty, feelings, loss of social status, illness and discomfort and loss of reputation. He claims the following special damages:

- 10 (a) Fee for Fiji Institute of Technology — \$485.
- (b) Bus fares for 18 weeks — \$270.
- (c) Meal expenses — \$450.

A total of \$1205.

He also claims that the conduct of the police towards him was arbitrary, oppressive and unconstitutional for which he also claims exemplary damages and costs of these proceedings.

The Defendants deny liability.

The evidence

20 The Plaintiff called only two witnesses, himself and his father. I have already mentioned briefly the circumstances in which the Plaintiff was taken to the police station. The Plaintiff and the two police officers concerned gave different versions of the events immediately on arrival at the police station. According to the Plaintiff a Constable Singh said to the Plaintiff “You will have to come with me to the Police Station”, to which the Plaintiff said, “I do not want to go”. 25 Constable Singh then allegedly said, “If you do not go we will drag you there”. The Plaintiff then says that Constable Singh took his bag and the other officer held his hand and said, “If you do not walk with me we will put you behind bars”. The Plaintiff said he felt scared and that he did not walk with the policemen of his own free choice. The Plaintiff said that the police never told him then why they were taking him to the station. He said his right hand was held right up to his shoulder. On arrival at the police station the policemen took him into a small room upstairs. Constable Singh then opened the Plaintiff’s bag and began to search it. He did not tell the Plaintiff why. He took everything out of the bag and then asked the Plaintiff about the exam paper which he had in his bag. The Plaintiff told him this was the paper he had just finished that day. The Plaintiff said, and I accept, that nobody including the Principal of the Fiji Institute of Technology had asked him whether anyone had leaked the examination paper to him. The Plaintiff denied any knowledge of anyone leaking the paper to him. 35 The Plaintiff then said that the other policeman then went downstairs to get interview paper and said to the Plaintiff, “Now we are going to start interviewing you”. The Plaintiff said that he was not told before the interview began that he had the right to see a lawyer of his choice. This was not denied by the defence.

A record of the interview was tendered in evidence by the Plaintiff. So far as relevant Question 3 reads thus:

45 Detective Constable Singh: “I would like to ask you some questions in relation to the leakage of the Fiji Institute of Technology Examination paper — Computer Principles. I have got reasons to believe that you are somehow involved in this”. He then gave the usual caution to the Plaintiff.

50 There was a break for some 10 minutes when the interview resumed. Questions 12 and 13 and their answers read thus:

Q 12: What would you have to say about the allegation that I have earlier put to you?

A: I am not involved and do not know anything about this.

Q 13: We have got information to suggest that you and one another student was involved in the leakage of the examination paper that was scheduled this afternoon at 1.15 pm.

5

A: I do not know anything about the leakage.

The interview concluded with Question 21 which reads:

Q 21: Have you made this record of interview at your own free will?

A: "No".

10

At about 4.30 pm the Plaintiff was given permission to telephone his father to say he would be late coming home because he was being interviewed. The Plaintiff said that just before this he told the police he wanted to go home but they would not let him. I accept this evidence and the Plaintiff's statements that he was never free to leave the police station until later after his father arrived.

15

The Plaintiff said that he felt embarrassed and afraid. This was the first time he had ever been questioned in a police station. People asked him why he had been taken to the police station. Fellow students also asked him this. He said that he felt so bad that he stopped his courses which would have finished in 1999, went overseas to do correspondence courses in America and Australia and did not return to Fiji until 2 weeks before the trial.

20

He said that as a result of his experience in the police station he could not concentrate on his studies and as a result failed all his examinations. For reasons which I shall give in a moment I do not accept this evidence.

25

The Defendants called Mr Joeli Nabuka, the Academic Services Manager of the Fiji Institute of Technology who said that, contrary to the Plaintiff's evidence that he had failed the Computer Principles paper by only one mark, in fact he had failed by 31 marks. The Plaintiff sat for three other examinations in 1998 and in these his marks were respectively 13 out of 50, nine out of 50 and six out of 50. Mr Nabuka's evidence which I accept was that the Plaintiff was a poor student. I therefore find that the Plaintiff's poor examination results were not due to his experience at the police station on the 27th of November.

30

The Defendants also called Detective Constable Ram Naidu who accompanied Constable Singh on the day in question. He denied that the Plaintiff had been ill-treated by the police either on the way to the police station or in the station. Significantly also in my judgment Constable Naidu said, "I had no reason to believe that a complaint had been received" but he then continued, "Based on my instructions which I believed to be true I carried them out".

35

The last witness called by the defence was Tui Kacivi Mateiwai an Assistant Superintendent of Police who was appointed to investigate a complaint by the Plaintiff about his ill-treatment at the police station. He said that Constable Singh had resigned from the police force and was now in Australia and the officer who authorised the Plaintiff's arrest, the 1st Defendant Jofiliti Turaga had migrated to America. He said that at the end of his investigation he held that the actions of the police were justified in the sense that Jofiliti had received a complaint and it was the duty of the police to investigate the complaint. He agreed in cross-examination that no entry had been made in the record book at the police station and that there was no excuse for this.

40

45

I cannot accept the conclusion of Assistant Superintendent Mateiwai. Although I find contrary to the Plaintiff's allegations that he was not threatened that he would be put behind bars unless he cooperated, nevertheless I am satisfied that

50

the Plaintiff was wrongfully detained at the Samabula Police Station. In my judgment the Defendants committed clear breaches of ss 23(1)(e), 26(1) and 27(1)(c) of the Constitution.

5 Section 23(1)(e) says that a person must not be deprived of personal liberty except if he is reasonably suspected of having committed an offence.

Section 26(1) says that every person has the right of freedom from unreasonable search of his or her person or property and against unreasonable seizure of his or her property.

10 Section 27(1)(c) says that every person who is arrested or detained has the right to consult with a legal practitioner of his or her choice in private in the place where he or she is detained, and to be informed of that right promptly.

It appears from the statement of defence that in arresting the Plaintiff the police regarded themselves as acting under s 6 of the Examinations Act Cap 262 A. That section reads:

15 *No person who, other than in the normal course of any examination, has acquired prior knowledge of any question set therein, shall present himself as a candidate at that examination.*

20 Section 2 of the Act defines “examination” as any examination conducted supervised, arranged or invigilated by any of the authorities listed in the schedule. Those authorities are the Ministry of Education, Ministry of Agriculture, Ministry of Health, University of the South Pacific, Pacific Theological College and the Public Service Commission. It will be noted that there is no mention of the Fiji Institute of Technology which has its own powers of conducting examinations.

25 Section 17(c) of the Fiji Institute of Technology Decree 1992 states that the Director of the Institute shall be responsible for the discipline of the Fiji Institute of Technology, and may suspend from attendance any student and report his action to the council at its next meeting.

30 The Examinations Act has never been amended so as to include examinations conducted by the Fiji Institute of Technology so that it is obvious that even if the Plaintiff had obtained prior knowledge of the examination paper, which I find he did not, this would not have constituted any offence at present known to the law. If the police had bothered to look at the Examinations Act before arresting the Plaintiff they would have realised that he had committed no chargeable offence under the Examinations Act. It follows that he was wrongfully arrested and it also follows that he was falsely imprisoned for I find to be a period of 2 hours 35 40 minutes on the 27th of November 1997.

40 Paragraph 15 of the statement of defence says that the Plaintiff was arrested on reasonable suspicion that he had committed the offence of entering an examination with prior knowledge of the examination contrary to s 6 of the Examinations Act 1978.

45 I find that allegation not proved and that consequently the Defendants are liable to the Plaintiff in damages for false imprisonment. It is abundantly clear, even disregarding s 6, that the Defendants had no reasonable suspicion at all that the Plaintiff had committed an offence.

The law

50 The law on the subject of false imprisonment is now well settled. One of the best statements of it is to be found in *Dumbell v Roberts and Ors* [1944] 1 ALL ER 326 where in separate judgments Scott, Goddard and Luxmoore LJ stated the relevant principles. At 329 Scott LJ said:

The power possessed by constables to arrest without warrant, whether at common law for suspicion of felony, or under statutes for suspicion of various misdemeanours, provided always they have reasonable grounds for their suspicion, is a valuable protection to the community; but the power may easily be abused and become a danger to the community instead of a protection. The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited.

Later he said:

10 The British principle of personal freedom, that every man should be presumed innocent until he is proved guilty, applies also to the police function of arrest in a very modified degree, it is true, but at least to the extent of requiring them to be observant receptive and open-minded and to notice any relevant circumstance which points either way, either to innocence or to guilt.

15 The principles there enunciated are now enshrined in the 1997 Constitution. For reasons best known to themselves or perhaps through ignorance which is no excuse, the arresting officers in this case including their superior the 1st Defendant ignored those principles.

20 Let it be said that the 1997 Constitution did not come into force until the 27th of July 1998, I hasten to add that identical provisions are to be found in the 1990 Constitution.

*25 It is disturbing to note that in three cases in the last 2 years this court has found police officers guilty of false imprisonment and of breaches of the provisions of the Constitution. I refer to HBA No 0033 of 1999 *Epeli Seniloli and Another v Semi Voliti*, unreported judgment of Shameem J of 22nd February of 2000, my own judgment in HBC No 471 of 1999 *Mohammed Kasim v Commissioner of Police and Others*, unreported judgment of 3rd December 2001 and this judgment.*

*30 In this case I am satisfied that the Plaintiff was imprisoned and scared when he was brought without any justification to the Samabula Police Station. In *Seniloli*, Shameem J awarded \$1700 per hour aggravated damages for a boy aged 14 who had been wrongfully imprisoned at the Nadera Police Post for 4 hours. I accept that as reasonable and find that the Plaintiff here was wrongfully imprisoned for 3 hours so that I award him \$5100 aggravated damages under this heading. I also*

35 find the Defendants liable to the Plaintiff in exemplary damages which I assess at \$5000 making a total award of \$10,100. To this will be added special damages of \$1205. There will be interest on the aggravated damages of \$5100 at 4% from the date on which the writ was issued, 18 May 1998 to the date of the judgment \$765 and interest at 2% on the special damages from the 18th of May 1998 to the

40 date of trial, 6th August 2001 \$78.60. There will therefore be a total award of \$12,148.60.

In my judgment this action should never have gone to trial and I therefore award costs of \$2000 against the Defendants. There will be orders accordingly.

45 Damages awarded.