

**ALIFERETI YAYA v ATTORNEY-GENERAL and Anor (HBM066 of 2004)**

HIGH COURT — MISCELLANEOUS JURISDICTION

5 PATHIK J

23 February 2007

10 **Constitutional law — constitutional redress — right to privacy — application for damages for breach of constitutional rights — Applicant’s name was included in a list along with hardened criminals — media labelled Applicant as a wanted criminal — whether Commissioner of Police acted ultra vires of Police Act — Constitution ss 25, 28(1), 29(1), 37(1), 41 — Police Act ss 5, 18, 19, 20, 21, 22, 23, 24, 25, 26.**

15 The then Police Commissioner published a list of the “10 most wanted men”, which included the Applicant’s name, in television and daily newspapers. The list was also announced in radio bulletins. The Applicant filed an application for constitutional redress claiming that there was a breach of privacy when the police included his name along with other hardened criminals in articles published in the media labelling him as a wanted criminal. The Applicant further claimed that he suffered immeasurable embarrassment and humiliation. The Respondent alleged that the then Police Commissioner’s action did not  
20 constitute a breach of privacy. At issue was whether s 37 of the Bill of Rights provisions gave the Applicant the right to apply for constitutional redress in the circumstances.

25 **Held** — (1) The Police Commissioner’s conduct placed the Applicant in a very dim light in the eyes of the public before he was even arrested or charged. This undignified treatment of an innocent member of the public on the part of the Commissioner of Police is not allowed by law as the Constitution under s 37(1) protects peoples’ rights. Members of the disciplined forces should not forget that they are dealing with human beings who have their dignity and name to protect from such ruthless conduct by defaming them in the media, for example, tv in this case before trial.

30 (2) The manner in which the Commissioner of Police publicised the name with a photograph in the media condemned the Applicant already and convicted him without him having been arrested or charged. This is contrary to s 28(1) of the Constitution. Under the circumstances, the Applicant is entitled to an award of compensation for Bill of Rights breaches.

Application granted.

35 **Cases referred to**

*Audie Pickering v State* HAM 007 of 2001; *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199; 185 ALR 1; 54 IPR 161; [2001] HCA 63; *Basu v West Bengal* (1997) 2 LRCI; *Christopher Hapimana Ben Taunoa and Ors v Her Majesty’s Attorney-General for NZ (on behalf of the Department of Corrections) and Ors* Civil Action 2002 485-742; *Govell v UK* [1997] EHRLR 438; *Hosking v Runting* [2003] 3 NZLR 385; *Khan v UK* (2000) 8 BHRC 310; 31 EHRR 1016; *R v Dymont* [1988] 2 SCR 417; *S v Makwanyane and Anor* [1995] 6 BCLR 665; [1995] 3 SA 391; *Simpson v Attorney-General (Baigent’s case)* [1994] 3 NZLR 667, cited.

45 *Christopher Harder v Proceedings Commissioner* [2000] NZCA 129; *Dhirendra Nadan and Anor v State* [2005] HAA0085; [2005] FJHC 224; *Hewitson v United Kingdom* ECHR 27/5/2003; *Manga v Attorney-General* (1999) 5 HRNZ 177; [2000] 2 NZLR 65; [1999] NZAR 506; (1999) 17 CRNZ 18; *Peck v United Kingdom* [2003] ECHR 44647/98; *Proceeding Commissioner, Fiji Human Rights v Commissioner of Police and Attorney-General of Fiji* [2006] ABU0003/2006S; [2006] FJCA 75; *Sailasa Naba and Ors v State* [2012] HAC001; 50 [2001] FJHC 127; *Taito Rarasea v State* [2000] HAA027; [2000] FJHC 146, considered.

*Hellewell v Chief Constable of Derbyshire* [1995] 4 All ER 473; [1995] 1 WLR 804, distinguished.

The Applicant in person

5 S. Sharma for the Respondents

N. Billimoria for the Human Rights Commission as amicus curiae

10 **Pathik J.** This is an application by way of motion dated 5 April 2005 by Alifereti Yaya (hereinafter referred to as the Applicant) claiming the following orders and/or reliefs: —

15 A Declaration that the Applicant’s right to personal privacy pursuant to section 37(1) of the Constitution was breached by the Commissioner of Police, the agent and/or servant of the Respondents on the 27th of August 2003, when the said Commissioner caused the Applicant’s image and personal details to be broadcast on TV as part of a list of “10 most wanted persons”.

A further Declaration that the above breach has caused humiliation, distress and loss of dignity to the Applicant.

An order for General damages for humiliation, loss of dignity and injury to the feelings of the Applicant as a result of the breach by the Respondents.

20 Any other orders that this Honourable Court may deem fit to grant in the circumstances.

The application was supported by an affidavit.

It took sometimes before the application was finally heard by the court as there were difficulties in representation.

25 The application was heard and I have very helpful written submissions from the parties as well as a very comprehensive written submission from the Human Rights Commission as “amicus curiae”.

### **Background**

30 The Applicant lodged an application for constitutional redress (the application) in the High Court by a letter dated 31 August 2004. The Fiji Human Rights Commission (the commission) received a notice through the High Court served on it on 24 September 2004 to appear as amicus curiae on this application.

35 On 13 October 2004 the commission was requested by the court to draft a notice of motion and an affidavit to put the application of the Applicant properly before the court.

The court released the commission from further attendance but was later served with a further notice pertaining to this matter on 19 May 2005 to assist the court again as amicus curiae.

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### **Chronology of events re application**

The affidavit of the Applicant was filed in court on 30 March 2005 and a notice of motion filed on 5 April 2005.

45 On 8 June 2005 the State filed an affidavit in reply deposed by the Commissioner of Police of the Fiji Police Force.

On 19 July 2005 the Legal Aid Commission (the LAC) filed its submission on behalf of the Applicant.

50 On 13 October 2005 the Applicant notified the court that the Legal Aid Commission filed its submission without the consent of the Applicant. The LAC sought leave of the court to withdraw from this matter. Leave was granted and the LAC declined any further representation to the Applicant.

On 13 October 2005 the Applicant was also granted leave to reply to the affidavit filed on 8 June 2005 by the State as the first Respondent.

On 4 November 2005 the Applicant was released on compulsory supervision order (CSO) by the prison authorities and is now located at the Nabua Police Station.

### Facts

The facts (as stated by the Applicant) are that on August 20003, a list of “10 most wanted persons” was issued and advertised by the police department, and the list of names was first shown on television — Fiji TV, on news time at 6 pm. The list which included the Applicant’s name [Alivereti Yaya] was shown again and again over few days.

The list of “10 wanted persons” by police was also published in the daily newspaper and read out in the radio news bulletin on Thursday 28 August 2003 and over the next few days.

The article and advertisement was done locally, both in the Fiji TV and local newspaper under the directive of the Commissioner of Police.

The Applicant maintains that such act injured him and caused unbearable pain and suffering.

### 20 Nature of application

The Applicant alleges in his redress application that his *right to privacy*, guaranteed under s 37(1) of the Constitution, was breached by the police when, under the directions of the Commissioner of Police, his name along with other hardened criminals was published in the newspaper, broadcast over the television news and the radio. The news articles in the media labelled the Applicant as a wanted criminal for various robberies with violence.

The name of the Applicant appeared first in all instances out of the nine most wanted men on television, radio and newspaper.

The Applicant alleges that he has suffered immeasurable embarrassment and humiliation and has been mentally distressed.

The Applicant alleges that he was innocent *at the time* the list was released especially when he was not arrested, charged or brought before a court of law. He says that at the relevant time he was not on bail and did not have any pending charges or breached any bail conditions for any particular offence.

### Constitutional redress provision

Section 41 of the Constitution is the *enforcement provision* for an Applicant aggrieved by the breach or likely breach of any rights under Ch 4 which is the Bill of Rights provision of the Constitution to apply to the High Court for redress. It provides: —

- (1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.
- (2) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.
- (3) The High Court has original jurisdiction:
  - (a) to hear and determine application under subsection (1); and
  - (b) to determine questions that are referred to it under subsection (5);

and may make such orders and give such directions as it considers appropriate.

- (4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made to it under this section if it considers that an adequate alternative remedy is available to the person concerned.

5 (5)–(10) ...

### Issues

The issues for court's determination are whether the:

- 10 the then Commissioner of Police (now terminated) is responsible for heavily relying on his investigation team in reaching the conclusion in declaring the Applicant a suspect *in the media*, thus justifying limits to the right to privacy under the Bill of Rights.

Commissioner of Police acted in a manner, which unreasonable or unwarranted or excessive in maintaining the right to privacy of the Applicant;

- 15 Circumstances of the present case, ie media release, strikes a fair balance between the relevant interests, namely the Applicant's right to private life as fundamental under the Bill of Rights, on the one hand, and the prevention of disorder and crime, on the other; advertisement breached right to privacy of the Applicant guarantees any protection under the Bill of rights in the redress application before the Court.

### 20 Consideration of the issues

I shall now consider whether s 37 of the Bill of Rights provisions gives the Applicant the right to apply for constitutional redress in the circumstances of his case.

- 25 The human rights issue before the court is whether the right to privacy applies to the Applicant who has been declared a *suspect* based on the reports provided to the Commissioner of Police from his criminal investigations team and further whose name has been published in all the forms of media around Fiji.

Section 37 — Right to Privacy of the 1997 Constitution stipulates:

- 30 (1) Every person has the right to personal privacy, including the right to privacy of personal communications.  
 (2) The right set out in subsection (1) may be made subject to such limitations prescribed by law as are reasonable and justifiable in a free and democratic society.

- 35 The right to privacy has "limitations prescribed by law". Limitation applies only when this is reasonable and justifiable in a free and democratic society.

- Section 37 does not expressly state the limitations nor does it expressly state any form of disclosure of information about an identifiable individual that is necessary for the maintenance of the law. Legislation has yet to be enacted which  
 40 regulates or prohibits the specific forms of interference with privacy thus leaving it for the courts to determine what is excessive or unreasonable interference with privacy as stipulated under s 37(2) of the Constitution.

- At this point it is important to highlight the case of *Dhirendra Nadan and Anor v State* [2005] HAA0085; [2005] FJHC 224 (*Nadan*) where Winter J stated  
 45 that:

the burden of proving the need for limitation of a right rests with the party asserting limitations as illustrated in the case of *S v Makwanyane and Anor* [1995] 6 BCLR 665 at 707; [1995] 3 SA 391.

- 50 The Police Act sets out the framework for police officers and its department, and in particular s 5 provides the objectives of the Act as follows:

The Force shall be employed in and throughout Fiji for the maintenance of Law and order ... the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged ...

Furthermore s 7 of the Police Act grants *general powers* to the *Commissioner* for the execution of the Police duties and its departments in Fiji.

Section 21(1) of Ch 4 (Bill of Rights) provides:

21 — (1) This Chapter binds:

- (a) the legislative, executive and judiciary branches of government at all levels: central, divisional and local; and
- (b) all persons performing the functions of any public office.

### Conventions — The right to privacy

In interpreting the meaning of the provisions of the Bill of Rights and in particular s 37 — *right to privacy*, reference is made to related *international conventions and judicial commentaries* made on them. The international covenants and public international law documents are applicable to this case and are “relevant public international law”, pursuant to s 43(2) of the Constitution which provides:

43. (2) In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public internal law applicable to the protection of the rights set out in this Chapter.

In International Human Rights law the *right to privacy* is protected under:

- art 8 of the European Convention Human Rights;
- art 12 of the Universal Declaration of Human Rights;
- art 17 of the International Covenant on Civil and Political Rights.

Winter J at 13 in *Nadan* (above) went on further elaborate that:

The judiciary is the guardian of this constitution and I must in interpreting its provisions bear all these conditions in mind. The primary duty of a judge when considering such constitutional provisions must be to give them a wide and purposive interpretation to ensure that under this supreme law there is only ever a legitimate exercise of governmental power and unremitting protection of individual rights and liberties.

Article 8 of the European Convention states as follows:

Everyone has the right to respect for his private and family life, his home and his correspondence;

There shall be no interference by a public authority with the exercise of this right except such as is in *accordance with the law* and is necessary in a *democratic society* in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

A number of English cases have carefully taken into account the competing rights under the European Convention.

### The English courts and European Court of Human Rights

In *Hosking v Runting* [2003] 3 NZLR 385 at 404–5 (*Hosking*), Randerson J cited and considered the case of *Peck v United Kingdom* [2003] ECHR 44647/98 where this case was taken from the High Court of United Kingdom to the European Court:

The former court argued that the publication of the photographs was justified given: the public interest in the protection of the life and property of citizens and the need to combat crime. *This position was overturned* by the latter court at para [76] and held that in determining whether the disclosure was “necessary in a democratic society”; it would  
 5 consider whether the reasons adduced to justify the disclosure were “relevant and sufficient” and whether the measures were “proportionate to the legitimate aims pursued”.

Upon a careful reading of the affidavit of the Commissioner of Police in response to the Applicant’s affidavit, I am not at all convinced with the reasons advanced  
 10 for advertising in the manner he did. His actions do not fulfil the requirements of the abovementioned quotation from *Hosking* case.

The European Court in *Hosking* (above) responded on the scope of Art 8 and observed that the article also protects:

15 A right to identify and personal development, and the right to establish and develop relationships with other human beings and the outside world and it may include activities of a professional or business nature. There is therefore a zone of interaction of a person with others even in a public context.

In the case of *Govell v UK* [1997] EHRLR 438 at [61]–[62], that the phrase “in accordance with the law” not only requires compliance with domestic law but  
 20 also relates to the *equality of that law*, requiring it to be compatible with the *rule of law*.

An earlier decision of the European Court of Human Rights in *Khan v United Kingdom* [2000] 8 BHRC 310 at 317; 31 EHRR 1016 held that the interference  
 25 (use of covert listening devices) cannot be considered to be “in accordance of the law” as required by Art 8(2) of the Convention. Accordingly there had been a violation of Art 8(2). The court is therefore not required to determine whether the interference was “necessary in a democratic society” for one of the aims enumerated in Art 8(2).

30 In *Hewitson v United Kingdom* ECHR 27/5/2003:

The applicant was arrested on suspicion of drugs trafficking and taken into custody. Whilst he was in custody, a listening device was installed in his garage. The prosecution relied on the evidence obtained via this device. The Court held that the installation of the device amounted to a violation of his right to respect for his private life.

35 The court in this case found that the findings of violation constituted a *sufficient just satisfaction* for any non-pecuniary damage caused to the Applicant under Art 1 of the European Convention. It provides as follows:

40 If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford *just satisfaction* to the injured party.

In considering the European Convention, it is also important to examine the scope of privacy in other jurisdictions, especially the test to apply and how  
 45 privacy is encapsulated under broad terms.

### **In Australia**

Gleeson CJ in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199 at 226; 185 ALR 1 at 13; 54 IPR 161 at 173; [2001]  
 50 HCA 63 at [42] offered the test for what may be interpreted to be private as follows:

The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private.

## 5 In New Zealand

Tipping J supporting the majority decision in the case of *Christopher Harder v Proceedings Commissioner* [2000] NZCA 129 made the following remarks:

10 An unqualified approach to what constitutes “information about an identifiable individual” will lead readily to breaches of one or more of the information privacy principles. The provisions of section 14 (a) of the Privacy Act 1993 NZ requires the Commissioner, and implicitly others involved in the administration of the Act, to have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way. Those concepts are thus relevant to the scope of the definition of personal information.

## In North America

20 In the United States of Williams L Posser in his article entitled “Privacy” ((1960) 48 *Cal LR* 383) deliberated on the laws of privacy as follows:

- Intrusion upon the plaintiff’s seclusion or solitude, or into his private affairs;
- Public disclosure of embarrassing private facts about the plaintiff;
- Publicity which places the plaintiff in a false light I the public eye;
- 25 Appropriation for the defendant’s advantage, of the plaintiffs’ name or likeness.

## In Canada

In Canada the Charta of Rights and Freedoms does not include any specific right to privacy other than that inherent in s 8, the *right to be secure against*  
30 *unreasonable search and seizure*. That provision has been interpreted broadly, “so as to secure the citizen’s right to a reasonable expectation of privacy against government encroachments” as illustrated in *R v Dyment* [1988] 2 SCR 417 at 426. Dickson CJ at 427–8 went on to state:

35 ... for a constitutional document enshrined at the time when, Westin tells us, society has come to realize that privacy is at the heart of liberty in a modern state. Grounded in man’s physical and moral autonomy, privacy is essential for the well-being of the individual. For this reasons alone, it is worthy of constitutional protection, but it also has profound significance for the public order. The restraints imposed on government to pry into the lives of the citizens go to the essence of a democratic state.

40 Although the cases identified above did not address *disclosure of information about a suspect* the court did find the direct application of the conventions. Other relevant provisions of the conventions on privacy are applicable to the current case and can also be taken into account and given effect. These are highlighted as follows:

45 Article 12 of the Universal Declaration of Human Rights states as follows:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

50 Article 17 of the International Covenant on Civil and Political and Political Rights is in similar terms.

I hold that arms of government at all levels should ensure that every citizen *innocent or a suspect* has his or her *right to privacy* equally protected under the *Conventions* as has been the trend illustrated by various authorities in other jurisdiction.

## 5 Conclusion

In the outcome, on the authorities referred to hereabove I find that on the facts of this case, upholding the Applicant's submissions, that there has been a breach of the provisions of the said s 37(1) of the Constitution on the part of the State/Respondent.

10 The Applicant has alleged and it is not in dispute that on August 2003, a list of "10 most wanted person" was issued and advertised by the police department, and the list of names was first shown on television — Fiji TV, on news time at 6 pm. The list which included the Applicant's name (Alifereti Yaya) was shown again and again over few days.

15 The list of "10 wanted persons" by police was also published in the daily newspaper and read out in the radio news bulletin on Thursday 28 August 2003.

The article and advertisement was done locally, both in the Fiji TV and local newspaper under the directive of the Commissioner of Police.

20 The Applicant said that such act injured him and gave him unbearable pain and suffering.

The Applicant says that he was surprised and ashamed after realizing his name was included with the "10 wanted persons", published or advertised in the Fiji TV programme and published in the local newspapers. I find that this action on the part of the Fiji Police was with the concurrence of the then Commissioner of Police (Mr Andrew Hughes — now sacked by the interim administration). Just to give a clearer picture of the Applicant's position at the time of advertisement, he was a free man but subsequently surrendered himself for the offence for which he was wanted and pleaded guilty and dealt with by the court.

25 In this case there was a very extensive publication more or less throughout Fiji. In the case of *Hellewell v Chief Constable of Derbyshire* [1995] 4 All ER 473; [1995] 1 WLR 804 (*Hellewell*) it was held that:

30 the police in disclosing the plaintiff's photograph, had acted entirely in good faith for the prevention and detention of crime and *had distributed it only to person who had reasonable need to make use of it*, and that accordingly, since the Chief Constable was bound to succeed in establishing a public interest defence if the matter went to trial, the claim would be struck out.

The present case can be *distinguished* from *Hellewell* where the "distribution" was confined "only to person who had reasonable need to use them", whereas here it was advertised to all and sundry.

40 I find that Police Standing Orders No 23 of April 1970 which was produced does not assist the Commissioner of Police as here there was no need to advertise to the whole world so to say the name and photograph of a person who in law is regarded as innocent until found guilty; he was not arrested but was only a suspect. A limited circulation to those concerned would not have breached the Bill of Rights provision.

45 The Police Commissioner's conduct in this case in my considered view put the Plaintiff in very dim light in the eyes of the public before he was even arrested or charged. This undignified treatment of an innocent member of the public on the part of the Commissioner of Police will not be allowed by law as our Constitution under s 37(1) protects peoples' rights; members of the disciplined forces should not forget that they are dealing with human beings who have their

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dignity and name to protect from such ruthless conduct by defaming them in the media for example tv in this case *before trial*.

The Applicant I find has rightly submitted that the action of the Commissioner of Police in publicly publishing and advertising his name has ‘intruded into his privacy’ in breach of ss 27(1)(f) and 37(1) of the Constitution.

The said s 27(1)(f) provides that:

27 (1) Every person who is arrested and detained has the right:

(a)–(e) ...

(f) to be treated with respect for his or her inherent dignity

10 An individual’s rights are clearly stated in a number of our High Court judgments as mentioned hereunder.

In *Audie Pickering v State* HAM 007 of 2001, although it examined s 25 of the Constitution, Shameem J emphasised on the rights of prisoners that the rights are an “absolute unqualified right”. In my view this should apply to a suspect as well.

15 Also the following statement by a former Judge Ratu Joni Madraiwiwi in the case of *Taito Rarasea v State* [2000] HAA027; [2000] FJHC 146 is worth bearing in mind:

20 The constitution must be approached with the understanding that any treatment or punishment that impinges upon the inherent dignity of the *individual* will contravene the provision. (emphasis mine)

In *Sailasa Naba and Ors v State* [2012] HAC001; [2001] FJHC 127 Prakash AJA stated as follows which I consider relevant although the present case is of a suspect:

25 The basic tenet of all human rights instruments dealing with prisoners clearly reaffirm the principle that prisoners retain fundamental rights. The classification of a person as a prisoner, convicted/un-convicted or otherwise, does not derogate fundamental human right attached to all human beings.

30 The Commissioner of Police, whose appointment is a constitutional one under s 146(1)(f) of the 1997 Constitution, is bound by s 37(1) of the Constitution. Even under the Police Act he is bound to comply with the said s 37 of the Constitution.

35 The limitations, I agree, to the right of privacy as set out in s 37(2) may apply in certain cases, however, such limitation imposed on the right to privacy must be by law and not done arbitrarily.

The manner in which the Commissioner of Police publicised the name with a photograph in the media has condemned the Applicant already and convicted him without him having been arrested or charged. This contrary to s 28(1) of the Constitution which provides, inter alia:

40 28 — (1) Every person charge with an offence has the right:

(a) to be presumed innocent until proven guilty according to law: ...

45 At the time of the publication the Applicant *was a free and an innocent person in the eyes of the law*. Furthermore the Commissioner of Police breached the Applicant’s constitutional right under s 27(3)(b) by not taking him before a court of law within 48 hours. He was detained by police for 93 hours before appearing in court.

### Damages

50 The Applicant seeks damages for breaches of his constitutional rights. In the circumstances of his case no doubt he is entitled to it as liability has been established.

The law and principles applicable to damages for breach of rights under Ch 4 (Bill of Rights) of the Constitution have been dealt with at length by the Court of Appeal in *Proceeding Commissioner, Fiji Human Rights v Commissioner of Police and Attorney-General of Fiji* [2006] ABU0003/2006S; [2006] FJCA 75  
 5 (*Proceeding Commissioner*).

There at 9 it is stated, referring to cases, that the “preponderance of opinion favours the public law remedy” approach and the fact that the remedy is also *discretionary* supports this view.

10 Also in *Manga v Attorney-General* (1999) 5 HRNZ 177; [2000] 2 NZLR 65; [1999] NZAR 506; (1999) 17 CRNZ 18 Hammond J stated at NZLR 81 and NZAR 524 that:

cases based upon violation of the Bill of Rights are about vindications of statutory policies which are not ‘just private; they have overarching public dimensions.

15 The functions and duties of Ppolice are stated in ss 5 and 18–26 of the Police Act. It is accepted that it is their duty, inter alia, to detect and suppress crime. “However their powers of detention, arrest, questioning and charging those in respect of whom reasonable cause for suspicion exists, must be exercised within  
 20 the framework of the Bill of Rights and any legislation permitted under the Constitution”. (*Proceeding Commissioner’s* case above at 11.)

Here the Police Commissioner acted ultra vires the provisions of the Police Act for the rights guaranteed under the Constitution have to be protected “according to the procedure established by the law by placing such reasonable restrictions  
 25 (on those rights) as permitted by law” (*Basu v West Bengal* (1997) 2 LRCD).

On compensation I refer to the New Zealand High Court, Wellington case of *Christopher Hapimana Ben Taunoa and Ors v Her Majesty’s Attorney-General for NZ (on behalf of the Department of Corrections) and Ors* Civil Action 2002  
 30 485-742. There Young J makes reference to certain cases on compensation and stated at 12:

[14] The Court of Appeal in *Simpson v Attorney-General (Baigent’s case)* [1994] 3 NZLR 667 dealt with compensation for Bill of Rights breach, firstly in considering remedy Casey J at 692 said:

35 I am satisfied that the propose and intention of the Bill of Rights Act is that there be an adequate public law remedy for infringement obtainable through the Courts ...

And in considering quantum of monetary awards Cook P said at 678:

40 As to the level of compensation, it would be premature at this state to say more than that, in addition to any physical damage, intangible harm such as distress and injured feelings may be compensated for; the gravity of the breach and the need to emphasise the importance of the arrirmed rights and to deter breaches are also proper considerations; but extravagant awards are  
 45 to be avoided.

And Hardie Boys J at 703:

In the assessment of the compensation, the emphasis must be on the compensatory and not the punitive element. The objective is to affirm the right, not punish the transgressor. I agree with the observations of the  
 50 President as to quantum ...

One cannot deny the fact that just as those members of the society who are in prison are entitled to minimum standard of treatment, the Applicant, a suspect in this case needs to be treated in such a way that his rights enshrined in the Constitution are not breached as has happened in this case.

5 **Conclusion**

I am satisfied that in the circumstances of the Applicant an award of compensation for Bill of Rights breaches here is appropriate.

10 Assessing a figure for compensation is not easy. In the case of a Bill of Rights breach I think I should consider the extent of wrong and the harm done in assessing compensation.

15 The Applicant for the above reasons succeeds in his claim for violation of his rights under ss 25, 28(1), 29(1) and 37(1) of the Constitution when the commissioner’s publication in the media was unreasonable and not justified in a free and democratic society.

The Applicant is entitled to declarations sought in the motion and I assess compensation in the sum of \$4000 (four thousand dollars) against the Attorney-General and judgment is entered accordingly with no order for costs.

20 *Application granted.*

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