LEONG -v- LEONG and IRO

High Court of Solomon Islands
(Ward C.J.)
Civil Case 213 of 1989
Hearing: 12 February, 28, 30 March, 5, 24 April 1990
Judgment: 30 April 1990

A. Nori for the Petitioner
D. Campbell for the Respondent

WARD CJ: On the wife's petition, a decree nisi was ordered on this case on 16th February 1990 and matters of custody and maintenance were adjourned to chambers.

Affidavits of means have been filed and the court has heard some evidence on the means of the parties. The true financial position is difficult to assess.

The wife has no income and denies two transfers of $10,000 to her by the respondent. I am not, on the evidence I have before me, satisfied such money was paid. There are two infant children which are with the petitioner and the respondent offers $150 per month for the two.

The respondent's financial position has been very difficult to assess and impossible to ascertain. I accept the difficulties I have had have stemmed from a basic ignorance of his financial affairs rather than a deliberate attempt by the respondent to hide the facts from the court.

He admits to an income of $36,000 per annum as a salary but he also makes a profit from his gambling amounting to $30,000 so far this year and, it would appear, from the Super Club although the latter is, apparently, a member's club.

The matter has been further complicated by the fact that substantial assets have been transfered by the respondent to

his father by deed of gift made shortly after it was clear the marriage had failed. I do not have to decide whether this was done to try and frustrate any financial settlements on the petitioner because the respondent has told the court that, although the family assets are all in his father's name, that is the Chinese way and the respondent can ask for and expect to be given money he needs. Equally on the death of his father, he will receive all these assets.

I have considered the evidence adduced. I do not recite it here neither can I claim to have reached any satisfactory conclusion about the respondent's financial state. What I am satisfied has been proved is that he lives a very comfortable life style in which he has access to and draws on substantial sums of money.

It would appear that the respondent receives $36,000 gross and I would add a figure of $15000 for his various drawings from his businesses and the benefits of such matters as the vehicles being purchased from AGC. His earnings from gambling are substantial but, I accept, uncertain. I feel, on the figures he has given, an estimated annual profit of $50,000 would be realistic and probably an underestimate. This would give a real income of $100,000 gross in normal terms.

I do not feel it is right to consider his assets as part of the joint income as he clearly brought them into the marriage and the petitioner did not contribute to them. In some circumstance, the petitioner could claim part of such assets but, in this case where the marriage lasted a little over 4 years, it does not arise.

Both counsel agree that this case would be best resolved by a final lump sum payment rather than regular maintenance and I agree. The respondent's assets makes such a settlement possible and a final break is preferable.

The marriage lasted a short time but during that time the petitioner bore two children. I do not accept she took any substantial part in the day to day running of the businesses

but I do accept her contribution to the marriage was to run the house and raise the young children.

I must also take into account, in assessing the lump sum, that there is no matrimonial home and that the wife has custody of the children and no home of her own.

I have, in previous cases, referred to the situation whereby one third is considered as the basis for assessing any maintenance payments. After so short a marriage, I feel that may be too high here. I would consider a figure of one quarter would be more appropriate if I were considering maintenance payments. How is that to be used in assessing a lump sum payment? There is not and cannot be any hard and fast rule. The marriage lasted only a short time but the wife now has no home for herself and the children. The husband continues to live a very comfortable life style and has access to substantial sums of money. The wife is a young and attractive woman and may well be able to remarry but, in the meantime, must provide a home for her children.

A quarter of the assessed income would be $25,000. In view of the short period they were married, I feel that should be multiplied by three to give a figure of $75,000.

I have no evidence of the husband's personal tax position. He may have good reasons for failing to deal with that bearing in mind his income from gambling. I accept, also, he has substantial debts but this seems not to detract from his standard of living.

In all the circumstances, I feel the sum must be ordered free of tax (i.e. any tax due must be met by the respondent).

In order to assist the respondent I shall order payment as follows:

$35,500 to be paid by 1st June 1990

The balance of $37,500 is to accrue interest at 10% per annum and to be paid $18,750 by 1st June 1991 and paid $18,750 by 1st June 1992.

As far as the children are concerned, I feel the sum originally offered was too low. However, it is also clear that, at their present age, costs are not heavy. As they grow older, the petitioner can apply for variation.

Thus I order that custody be awarded to the petitioner with reasonable access to the respondent. The respondent is concerned that he has not been able to obtain reasonable access. If that continues he also must come to the court for an order. Maintenance for the children to be paid at the rate of $250 per month for each child. In addition, the respondent has agreed to pay school fees and I so order. He must pay all school fees including kindergarten.

Thus I summarise my orders:

Custody of both children, Michael and Ann Marie, to the petitioner with reasonable access to the respondent.

Respondent to pay $250 per month for each child; first payment to be on 1st May 1990.

Lump sum payment of $75,000 free of tax to the petitioner to be paid -

$37,500 on or before 1st June 1990.
$18,750 on or before 1st June 1991.
$18,750 on or before 1st June 1992.

10% per annum interest on any money unpaid after 1.6.90.

Costs to petitioner.

(F.G.R. Ward)
CHIEF JUSTICE

PETER HOU -v- THE ATTORNEY GENERAL

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 211 of 1989
Hearing: 27 April 1990
Judgment: 4 May 1990

A. Radclyffe for the Plaintiff
P. Afeau for the Defendant

WARD CJ: This is a claim for damages for wrongful arrest and false imprisonment relating to police investigation of the theft of a chainsaw at Pacific Timbers. The plaintiff was taken by the police on 24th February 1989 from Pacific Timbers to Naha Police Station at approximately 11.00 am and kept there in custody until the next day when, at about 9.00 am, he was remanded in custody by a magistrate. Two weeks later he was released when the case was withdrawn by the police.

As originally pleaded, the plaintiff alleged that he was never informed of the reasons for his arrest and that he was not brought before a magistrate until 27th February. The latter was the result, it appears, of a mistake in the police diary of events and so is no longer pursued. The former point has been conceded by the plaintiff in evidence. He told the court that he was informed of the fact and reason for his arrest.

Thus the case is now only concerned with the reasons for the arrest and detention of the plaintiff. Did the police have good reasons to suspect the accused and had they sufficient evidence then to charge and detain him?

The police witnesses told the court that, after the theft had occurred, they had spoken to the appellant and he had denied the offence. They had also searched his house without success.

The reason he was arrested later was because of information received from an informer; a 'source' as the police called him. He was a man of known criminal character who had been supplying information to the police for some time. He had given information that had led to 16 convictions in the Central Magistrates Court and the police considered him very reliable. They agreed that, in order to protect him, they never intended to call him as a witness so his information was in the nature of a lead only and the police would need to find evidence to support the charge elsewhere. One possible source would be the accused man himself but it was clear that he was determined to maintain his denial of any offence despite a number of interviews.

Section 18 (a) of the Criminal Procedure Code gives a police officer the right to arrest, without a warrant, any person whom he suspects on reasonable grounds of having committed a cognisable offence. Having done so, he must by section 20 take him before a magistrate without unnecessary delay.

Mr Radclyffe for the plaintiff suggests that the police here, knowing, as they did, the character and antecedents of the informer, should not have believed him without some other corroboration and, therefore, on his information alone did not have reasonable grounds for suspecting him.

I am afraid I do not agree. In this case the police had information from a source that had proved reliable previously and this gave them reason to suspect it was true this time. As such they had a right to arrest him and, having done so, the delay in bringing him before a magistrate could not be considered unnecessary.

Having said that, I feel the police have acted badly in this case. The information they had received from their informer simply described the accused near the scene on the night of the offence carrying a bag that appeared heavy. The accused, it should be added, lives in the area.

On such evidence, the police would have been wise to seek some further evidence before arresting the accused man. Arrest is a serious interference with personal liberty. It is not something to be taken lightly and, whilst I accept the police felt they had reasonable grounds for suspicion, they must equally have known that, as the case stood, they had insufficient evidence to take it any further.

Having done so, faced with consistent denials of the offence by the accused and knowing they would not call their informant, they then sought a remand in custody. That was an extraordinary step to take. It is unfortunate the magistrate did not examine the reasons a little more closely.

The grounds given were that the police still needed to interview witnesses and that the property had not been recovered. The first ground means nothing. Why should the fact they still have to interview witnesses require a suspect being kept in custody? If it is claimed he may interfere with those witnesses, that would be a different matter but, in such a case, the magistrate should seek details of the basis of such belief. On the second ground, had the magistrate asked only very basic questions, he would have discovered that the accused's house had already been searched some time before and that there was nothing further to suggest he had the property.

Such a case was clearly one where the accused should have been bailed. As this was a weekend the magistrate had been brought to the Police Station where, I accept, it may be unsatisfactory to enquire properly into the matter. In such a case, the magistrate should never remand a man in custody beyond the next court day so the case may be properly considered.

As a result of the magistrate's decision in this case, the plaintiff spent 2 weeks in custody for an offence the police had to concede they could not start to prove.

This was achieved by the due process of the Criminal Procedure Code and so this action must fail. However that does not avoid the fact that the police sought a remand in custody in such a case and the reasons for that remand leave a suspicion they were hoping, by that, to force a confession out of the accused. Equally, they should, knowing that this man was in custody, have decided before the remand date whether they would ever be able to obtain evidence and withdraw the charge as soon as it became clear they could not.

Claim dismissed. However, I feel the defendants must pay the costs of the plaintiff as it was their action that caused this case.

(F.G.R. Ward)
CHIEF JUSTICE