

JOHN CHEDE & OTHERS -v- ATTORNEY GENERAL

High Court of Solomon Islands

(Palmer J.)

Civil Case No.127 of 1991

Hearing: 4 May 1994

(Assessment of Damages) Judgement: 6 May 1994

J. Remobatu for Plaintiff

C. Ashley for the Defendant

PALMER J: By summons dated the 10th February 1994, the Plaintiffs now apply to this court for assessment of damages against the Defendant for unlawful arrest and unlawful detention.

There are not that many cases in this jurisdiction which deal specifically with this question. The two cases cited by Mr Remobatu in this jurisdiction, the case of **Jamakana -v- Attorney General and Another** 1983 SILR 127, and **Jack Malaumou -v- Attorney General**, c.c.51/91, judgement delivered on the 29th April 1991, related to breaches of fundamental rights and freedom of individuals as protected by the Constitution. The right to claim compensation is provided for under section 17 of the Constitution.

The difference with this case is that the Plaintiffs claim here is made for damages in common law for unlawful arrest and false imprisonment. However, an important comparison to be made with the provisions of the Constitution, specifically section 5, is that as a result of the unlawful arrest and unlawful detention, the personal liberty of these Plaintiffs had been deprived. The two previous cases cited therefore are relevant for comparison purposes as to the quantum of damages that should be awarded.

It should be pointed out right from the beginning that it is not a simple task to try and place a dollar value on what I will lump together as non-pecuniary losses. These include injury to liberty, injury to feelings; the indignity, mental suffering, disgrace and humiliation which occurs. In the case of **Jamakana** at page 134, the learned judge, Daly C.J. recognised this problem and commented:

"The assessment of damages in tort, where one is dealing with non-pecuniary or general damages is an attempt to perform the difficult and artificial task of converting into financial terms injury, loss, suffering and deprivation."

An obvious head of damage which the Plaintiffs are entitled to make a claim on is damages for specific pecuniary losses. (*see Halsbury's Laws of England 4th Edition Vol.12, para.1158*).

Under this head of damage, the Plaintiffs have each filed a claim for the number of hours lost which they would have worked had no unlawful arrest and unlawful detention been made against them. John Chede and Johnson Soro have each claimed the loss of 9 hours at hourly rates of \$3.91/hour and \$2.73/hour respectively. Pena Pituru and Terrence Ripoka have each claimed the loss of 3 hours at \$2.73/hour and \$2.43/hour respectively. This head of damage is allowed.

The next head of damage to consider is that of exemplary or punitive damages.

The first case referred to by Mr Remobatu in support of his contention that this Court should consider an award of exemplary damages is the already cited case of Jack Malaumou. At page 5, paragraph (2), the learned Chief Justice stated:

"In this case, the contravention has already occurred and the claim under section 17 is for compensation for that contravention. Whilst this resulted from a number of very unfortunate mistakes, there is no suggestion of malice or a deliberate attempt to circumvent the protective provision of the Constitution. Had there been, I feel this Court may well have to consider awarding compensation that included a punitive or exemplary element but that would be under section 18(2)."

Mr Remobatu seeks to submit that the above statements of his Lordship leave the question open as to whether exemplary damages may be awarded in the case where an element of malice or deliberate act is involved. The distinction to be noted in that case is that the learned Chief Justice felt that he would have the necessary power to consider that question under section 18(2) of the Constitution.

There are two authoritative House of Lords decision on this very question which are important to consider. The first is the case of *Brookes -v- Barnard 1 All E.R. (1964) 367, at page 410*. In his judgment, lord Devlin identified three categories of cases which should assist in the determination of the question, whether exemplary damages should be awarded or not. The first category of cases listed is: *"oppressive, arbitrary or unconstitutional action by the servants of the government."* At paragraph H of the same page, he stated: *"It is true that there is something repugnant about a big man bullying a*

small man and very likely the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not in my opinion punishable by damages."

The second category of cases are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. This is not applicable to this case. The third category also is not relevant in that it relates to those cases in which exemplary damages are expressly authorised by statute.

In the case of *Cassel Co. Ltd -v- Broome (1972) 1 All E.R. 801*, (the second authoritative case), at page 829, per the judgment of Lord Hailsham, the category propounded by Lord Devlin was endorsed and further added to. Lord Hailsham stated that in his view the first category should not be restricted to servants of the government only but should also include the police. This accordingly would bring this case within category one of Lord Devlin's categories.

Should this category be given recognition by this court? I am of the view that it should. The category drawn up by Lord Devlin provides a useful guideline to this court as to when questions of exemplary damages may be awarded. It is not a hard and fast category, and I do not for one moment think that his lordship intended it to be so. It is possible that in certain justifiable cases this court may consider it appropriate to award exemplary damages against arbitrary and outrageous use of executive power by the police, or possibly where as suggested by the learned Chief Justice Ward, in the case of *Jack Malaumou -v- Attorney General (ibid)*, malice or some deliberate act is involved. (see page 5, 2nd para. of the same.)

I have considered the circumstances surrounding the unlawful arrest and the unlawful detention in this case, but I'm unable to bring this case within the exception of allowing exemplary damages to be claimed. Rather it falls squarely in my view within the four walls of Lord Devlin's first category.

I am satisfied this is a case for aggravated damages, but nothing more.

I turn next therefore to the question of the appropriate quantum of damages to be awarded in this case.

Three cases have been cited by learned Counsels by way of comparison purposes in this regard. Two have already been mentioned; namely, *Jamakana's case* and *Jack Malaumou's case*. The third case is the recent High Court case of *Wilson Wong -v- Chin Foot Hap and Attorney General cc134/91*, judgment delivered on the 14th January 1994. That case involved a claim of damages for malicious prosecution. One of the

distinguishing features in that case was the length of time and the manner in which the investigation was conducted. Another factor which the court took into account was that there was evidence to show that the reputation of the Plaintiff as an Area council Member possibly was affected by the prosecution as he lost out in the next Area council Elections. The Plaintiff attributed part of the loss to the vicious rumours that were engendered by the prosecution. In that case, the plaintiff was awarded \$3000.00 for damages.

In Jamakana's case, the Second Respondent, who was the Minister for Employment, Youth and Social Development, had imposed an unlawful order which restricted the movement of the Applicant, so that he was prevented from leaving the country on two separate occasions. The ban in fact lasted for a total of some 8 months, from the 24th of June 1982 to the 11th of March 1983. The learned Chief Justice Daly awarded a total of \$7,000.00; \$5,000.00 against the crown and \$2,000.00 against the Second Respondent in his personal capacity.

In that case, one of the issues Daly C.J. was primarily concerned about was what he considered to be an artificial distinction between the terms 'damages' and 'compensation'; ie. damages under a tortious claim for false imprisonment, and compensation for breach of constitutional rights. Commenting on the judgment of *Lord Diplock in the case of Maharaz -v-A.G. Trinidad and Tobago (No.2) (1978) 2 W.L.R. 902 at page 912 and 913, Daly C.J. stated:*

"I must, with all respect, express a difficulty in following the distinction made in this passage between 'a claim in tort for false imprisonment under which the damages recoverable are at large...' and 'a claim in public law for deprivation of liberty alone.' If the wrong done is exactly the same whether it be called 'false imprisonment' or deprivation of liberty' my own view would be that the assessment in financial terms of the results of that wrong should be the same whether referred to as 'damages' or 'compensation.'"

At page 134 of his Lordship's judgment, in Jamakana's case, he makes a comparison of the factors to be considered in the assessment of damages under tort on one hand, and the factors one considers in the assessment of the quantum of the compensation to be paid for breach of the constitutional provisions, on the other hand and came to the conclusion: *"Indeed, the end purpose is the same; recompense for a wrong and so the method of quantification should, in my view, be the same."*

These comments and observations of the learned Chief Justice are pertinent to the assessment of damages in this particular case, and I do have regard to those two cases on constitutional breaches on the question of quantum.

In *Jack Malaumo -v- Attorney General cc51/91*, judgment delivered on the 29th April 1991, the Applicant was wrongly imprisoned for a total of 39 days. The error arose when the warrant of imprisonment was typed up for signing by a magistrate. Instead of the warrant reading three weeks, it read, three months. The learned Chief Justice Ward recognised that the error resulted from a number of unfortunate mistakes, however, he did not find that there was 'malice or a deliberate attempt to circumvent the protective provision of the Constitution.' Ward CJ, took into account loss in terms of his employment opportunities and reputation and awarded a figure of \$2000.00 as compensation.

Without intending to be dogmatic, I would suggest that a general figure for damages for unlawful arrest and unlawful detention should be around \$200.00 to \$500.00. I do accept that depending on the circumstances of each case that figure may be increased accordingly. The aggravating features, if any should then be considered and the amount increase accordingly.

I take into account the suffering experienced by these Plaintiffs, in terms of the temporary loss of physical comforts for a period of about 20-22 hours; the injury to feelings at being remanded overnight in the cells, and the distress, shame, anger, anxiety, and uncertainty associated with that unlawful detention.

I take into account the officious manner in which the detention was conducted, especially when the police could easily have found out the truth when Mr Luke Kakai, the Operations Manager, turned up personally at the Police Headquarters at Rove to explain, and yet was virtually ignored. Further, reasonable enquiries with the Director of the Water Unit on that evening of the arrest or the morning of the following day would have verified the explanations offered by the Plaintiffs.

On the issue of loss of reputation, I am not satisfied that this has been established. I accept that for a time perhaps, these plaintiffs may have had to endure the taunts of people for the false accusations made against them. However, I am not satisfied that there has been a material loss in terms of employment. So apart from the temporary confusion and perhaps shame experienced by these Plaintiffs, all that was cleared up when it eventually became obvious that the arrest was unlawful and the detention illegal.

Taking all the circumstances together, I am satisfied that damages for each Plaintiff should be assessed at \$1000.00 each. I did point out that each Plaintiff shall also be entitled to the loss of earnings that they would have earned had no unlawful

arrest and unlawful detention been effected. Based on their respective hourly rates, their loss of earnings is as follows:

- (1) John Chede at \$3.91 for 9 hours = \$35.19
- (2) Pena Pituru at \$2.73 for 3 hours= \$ 8.19
- (3) Johnson Soro at \$2.73 for 9 hours= \$24.57
- (4) Terence Ripo at \$2.43 for 3 hours= \$ 7.29

The Plaintiffs are entitled to the above specific damages as well respectively.

The Plaintiffs are also entitled to their costs in this case.

(A.R. Palmer)
JUDGE