The High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. 278B/2012

BETWEEN:
Rupeni Naisoro
First plaintiff
AND
Sainivalati Ramuwai
Second plaintiff
AND
The Commissioner of Police
First defendant
AND
Attorney General of Fiji
Second defendant

COUNSEL: Mr S. Valenitabua for the first plaintiff
Mr A.Vakaloloma for the second plaintiff
Ms S. Ali with Ms Pranjivan for the defendants
Date of hearing: 23rd and 24th August,2016
Date of Judgment: 27th October, 2016

Judgment

1. In these proceedings filed against the Commissioner of Police, as first defendant and the Attorney General, as second defendant, the first and second plaintiffs allege that they were tortured by assault and battery by officers of the first defendant, until they admitted to the murder of "*Navneet Narayan* " and sign a confession. The plaintiffs claim that they were wrongly charged with murder, remanded, convicted by the High Court and sentenced to life imprisonment.The plaintiffs appealed and were granted bail pending appeal, after "*Timoci Ravurabota*" confessed to the murder of "*Navneet Narayan*". The plaintiffs allege that they were maliciously prosecuted resulting in their false imprisonment, until they were acquitted by the FCA. The plaintiffs claim general, special, aggravated and exemplary damages for assault, battery, malicious prosecution and false imprisonment.

2. The defendants, in their statement of defence deny the allegations of torture and assault and state that the plaintiffs voluntarily confessed to the murder, as was categorically determined in the Trial within Trial in the murder criminal trial against the plaintiffs . The plaintiffs were appropriately charged based on the strength of the evidence before the first defendant. The charges were analysed by the DPP and the plaintiffs were remanded. The Presiding Judge provided a Summing Up. The court found that the plaintiffs were guilty of murder and sentenced them to life imprisonment. The defendants states that the plaintiffs were properly accused, prosecuted and convicted by the High Court.

The hearing

3. At the commencement of the hearing, Ms Ali, counsel for the defendants moved that the following issues as contained in the summons filed by the defendants on 19th August,2016, be tried as preliminary issues:

> *Whether the first cause of action raised by the 1st and 2nd plaintiffs ('Plaintiffs') are res judicata considering the trial within a trial ruling in State vs Ramuwai & Naisoro Criminal Action No. HAC 033J of 2005 (16 May 2007)?*
>
> *Whether it is lawful for the Plaintiffs to bring an action against the Defendants for false imprisonment when the imprisonment arose out of the Plaintiffs' conviction in State vs Ramuwai & Naisoro Criminal Action No. HAC 033 of 2005 (16 May 2007)?*
>
> *Whether the Plaintiffs can hold the Defendants liable for malicious prosecution based only on the Court of Appeal's sentiments in Ramuwai & Naisoro vs the State (Criminal Appeal Nos. AAU81 of 2007 and AAU81 of 2008)?*

Mr Valenitabua,counsel for the first plaintiff objected to the summons.

I declined the summons for the following reasons. In ***State vs Senivalati Ramuwai & Rupeni Naisoro***, (HAC 033J of 2005 of 16 May,2007) the plaintiffs were found guilty of murder and convicted. The causes of action pleaded in the case before me are formulated on a trilogy of the torts of assault, malicious prosecution and false imprisonment, which involves issues of fact to be determined. In the circumstances, I was not satisfied that the trial of the preliminary legal issues would be appropriate.

The determination

4. The first and second plaintiffs allege that they were tortured by battery and assaults by officers of the first defendant. The particulars of injuries and pain suffered are stated to be body pains; stiff neck; dislocated shoulders; fractured ribs; bloodied nose and saliva; throbbing migraines, headaches; and internal bleeding.

The first plaintiff

5. The first plaintiff,(PW1) in his evidence in chief said that he was sworn at, punched, assaulted and threatened at the Nausori Police Station. He was forced to admit to the murder of "*Navneet Narayan* ".He suffered fractured ribs and body pains. He was taken to a Doctor, who prepared a medical report. The Doctor did not examine him.

6. In cross-examination, it was put to the first plaintiff that he was not beaten nor assaulted. He said that he was punched, beaten and verbally abused. He was asked whether he had complained to the Magistrates Court or High Court that he was assaulted, beaten and tortured. He said that he told the Doctor and his lawyer that he had fractured ribs. He had a lawyer after his arrest, in the proceedings in the Magistrates' Court and High Court. It transpired that he was able to walk, albeit he had fractured ribs. The first plaintiff was not re-examined.

The second plaintiff

7. The second plaintiff,(PW2) in his evidence in chief said that he was sworn at, punched and assaulted, until he admitted to the murder. A Police Officer hit his head. He had a head injury. He was unconscious for 5 minutes. He tried to tell the Doctor, but the Doctor was not concerned. His ribs were punched by officers of the first defendant from Korovou to Nasinu Police Station. The first plaintiff and he were taken to the Nausori hospital. The first plaintiff had many injuries on his body. The Doctor examined them in the presence of a Police Officer. No medicines were given to them.

8. The second plaintiff said that he did not have time to tell the Magistrate of the pain he suffered, as a result of the torture and assaults. He has a stroke on one side of his body as a result of his head injury. His head was scanned at Suva hospital. He obtained an X ray. He is now a patient of Korovou hospital.

9. In cross-examination, he admitted that if his ribs were broken, he would have difficulty in walking and breathing. It transpired that he had made no complaint to the Magistrate. He said that he complained to the Corrections Officer, but no report was produced, in that regard. He said that his lawyer, Ms Vaniqi informed the High Court of his injuries.

10. It was put to him that he had no evidence of the injuries alleged. His answer was that the Doctor did not write anything. Ms Ali asked PW2, if he had any medical report to confirm that he had a stroke or receipts for medical treatment. The answer was in the negative.

11. In re-examination, PW2 said that his right side experienced a mild stroke.

12. DW1(Vijay Nand, Investigating Officer, Nausori Police Station) testified. I reproduce an extract of his evidence in chief:

> Q *In regard to the two plaintiffs, why did you make the decision to arrest them?*
>
> *A* *The Director CID,Divisional Crime Officer & other Senior Officers made the decisions to lay charges against the two plaintiffs.*
>
> *Q* *What happened after they were arrested?*
>
> *A* *Their rights were given to them,to retain counsel, to engage Legal Aid Lawyers, to get members of their families, the Religious Counsellor & Social Workers to be present*
>
> *Q* *You interviewed the Plaintiffs ?*
>
> *A* *No, other officers did it.*
>
> *Q.* *Are you aware being the Investigating Officer of any allegation of assault that Plaintiffs were beaten up during the interview process?*
>
> *A* *No. I did not receive any complaints from the two suspects, before, during or after the interview.*

Q	*What is the procedure to be followed if they were assaulted. Who do they complain to?*
A	*a) To Police Station.* *b) Then when produced in custody to Magistrate.* *c) If remanded to the Police Officer.* *d) Complain to their lawyers & family members.*
Q	*The first plaintiff was represented by a lawyer ?*
A.	*Yes.*
Q.	*Are you aware that if his lawyer complained at any time of injury caused to the first plaintiff?*
A	*There was no complaint....*
Q	*During the investigation process, if the plaintiff had suffered from fractured ribs what would the Police have done? Would he be able to walk?*
A	*If he complained about fractured ribs, a Report would have been lodged & the plaintiff would have been taken to hospital.*

13. In cross-examination,DW1 said that a complaint was not made at a Police Station nor to the Magistrates Court. In re-examination, he said that before the plaintiffs were taken to the Nausori Magistrates' Court, they spoke to a Justice of Peace in a special room, as was the procedure adopted when persons are charged in serious cases.

14. The first plaintiff testified that he had legal representation after his arrest, at the time he had medical attention and when he was produced to the Magistrate and the High Court. As put to the first plaintiff, in cross-examination, if he had been assaulted, his lawyer would have informed the Magistrates Court or High Court.

15. The second plaintiff, in cross-examination said that the first plaintiff's face *was "swollen"*, when he was taken to the Magistrates' Court. When he was asked if the Magistrate commented on the first plaintiff's injuries, PW2 said that by that time the swelling had faded.

16. On a review of the evidence as a whole, I do not accept that the first and second plaintiffs were tortured and assaulted. There was no evidence produced in the form of a medical report nor a complaint made to the Justice of Peace nor by their lawyers to the Magistrates' Court or the High Court.

17. Mr Valentitabua, in his closing submissions, has referred to the following passage from the judgment of Marshall JA acquitting the plaintiffs:

> *..it is clear that Senivalati Ramuwai and Rupeni (Niudamu) Naisoro are not persons who would confess and sign statements in respect of crimes that they did not commit unless under extreme pressure.*

18. On a reading of the judgment, it is evident that Marshall JA opined so, on the responses he received to the questions he posed to the first and second plaintiffs. But officers of the first defendant were not heard. The judgment states that he heard "*new evidence*" from "*Timoci Ravurabota*" and the first and second plaintiffs.

19. The second cause of action is for malicious prosecution.

20. The statement of claim alleges that their signed caution interview statements and/ or confessions were a result of "*doctoring of statements*", where the scenarios of the investigators of the first defendant were put into the plaintiff's statements in place of what the plaintiffs said about their movements on 29th April,2005, the date of the murder of Navneet Narayan. The first defendant's investigators pressured and assaulted Moape Kadavu, who was declared hostile at trial.

21. The defendants deny the contentions and state that the issues were categorically determined in the Trial within Trial in the murder criminal trial against the plaintiffs. Shameem J in her Ruling on Trial within a Trial of 20th April,2007,held that she was satisfied beyond reasonable doubt that;(a) there was no assault and no complaint of assault to the doctor, the Justice of Peace and the Magistrate and, (b) the confessions of both accused were voluntary and obtained without oppression or breaches of constitutional rights.

22. The 4 requirements a plaintiff has to establish to succeed in an action for malicious prosecution were succinctly stated by Gleeson CJ, Gummow, Kirby, Hayne, Haydon and Crennan JJ in ***A v New South Wales,***[2007]HCA 10 as cited by Mr Valentitabua, in his closing submissions as follows:

    (1) that proceedings of the kind to which the tort applies(generally, as in this case, criminal proceedings) were initiated against the plaintiff by the defendant;
    (2) that the proceedings terminated in favour of the plaintiff;
    (3) that the defendant, in initiating or maintaining proceedings acted maliciously; and
    (4) that the defendant acted without reasonable and probable cause.

23. The four essentials are required to be "*expressly*" pleaded in in an action for malicious prosecution :***Halsburys Laws of England,*** (4th edn),Vol.45, para.1368 as referred to by Mr Vakalaoma, counsel for the second plaintiff in his closing submissions.

24. In the present case, the first two requirements, viz., that the plaintiffs were prosecuted and acquitted by the FCA are pleaded and not in dispute.

25. I find that the statement of claim does not contain the third and fourth requirements itemized above. The statement of claim states that once the FCA accepted that "*Timoci Ravurabota*" committed the murder, "***then facts put forward as true and the evidence at trial of the 1st Defendant's investigators are exposed as false which tantamount to malicious prosecution***".(emphasis added)

26. Be that as it may, I proceed to consider whether the proceedings against the plaintiffs were initiated by the first defendant without reasonable and probable cause and maliciously. The question is whether the first defendant honestly believed in the guilt of the plaintiffs.

27. The relevant Agreed facts provide:

> ***The 1st Defendant was reliably informed by Moape Kadavu that he met the 1st Plaintiff on 29th April 2005 at 11pm. Moape also stated that he and the 2nd Plaintiff had stabbed Navneet Narayan.*** *This had caused the 1st Defendant to locate and interview the 1st Plaintiff in order to substantiate such information.*
>
> ***The 2nd Plaintiff's arrest was due to the reliable information provided to the 1st Defendant by Moape Kadavu that he met the 1st Plaintiff, and that the 1st Plaintiff told him that he and the 2nd Plaintiff had stabbed Navneet Kumar.*** *This had caused the 1st Defendant to locate and interview the 2nd Plaintiff in order to substantiate such information.*
>
> ***The Police's suspicion against the Plaintiffs, their respective arrest, detention, caution-interview, charge, prosecution and conviction were solely based on information provided to the 1st Defendant's officers by one Moape Kadavu that the Plaintiffs had stabbed Navneet Kumar.*** (emphasis added)

28. The plaintiffs accept that the first defendant was reliably informed by Moape Kadavu that the first plaintiff had told him that he and the second plaintiff had stabbed Navneet Narayan.

29. The following passage from the judgment in ***A v New South Wales,*** (*supra*) touches on instances where a prosecutor acts on information provided by third parties:

> ***In cases where the prosecutor acted on material provided by third parties, a relevant question in an action for malicious prosecution will be whether the prosecutor is shown not to have honestly concluded that the material was such as to warrant setting the processes of the criminal law in motion***. .. *In particular, if the prosecutor was shown to be of the view that the charge would likely fail at committal, or would likely be abandoned by the Director of Public Prosecutions, if or when that officer became involved in the prosecution, absence of reasonable and probable cause would be demonstrated.* ***But unless the prosecutor is shown either not to have honestly***

> ***formed the view that there was a proper case for prosecution, or to have formed that view on an insufficient basis, the element of absence of reasonable and probable cause is not established.***(emphasis added)

30. The reasoning of Singh J in ***Bachu v Commissioner of Prisons***,(HBC 369 of 2003) as cited by Ms Ali in her closing submissions is also apposite. He said that "..***all the police needed was honest belief in the guilt of the accused based on reasonable ground. In preventing and investigating crime, quick decisions have to be made. At this stage of investigation, the police are not delicately trying to assess whether there is proof beyond doubt. The police need to have a reasonable suspicion that a crime has been committed. Reasonable suspicion can even be based upon evidence which later may be found inadmissible in a court of law*". (emphasis added)

31. In an action for malicious prosecution, the plaintiffs are also required to prove malice on the part of the defendant. The plaintiffs have not pleaded malice.

32. On the question of what constitutes "*malice*", the judgment in ***A v. New South Wales,***(*supra*)provides:

> *It is an element that focuses upon the dominant purpose of the prosecutor and requires the identification of a purpose other than the proper invocation of the criminal law.*

33. The defendants, in their statement of defence state that the Director of Public Prosecutions was responsible for the prosecution. A murder criminal hearing and a Trial within Trial was held. The Presiding Judge provided a summing up for the assessors. The Court found the plaintiffs guilty of murder.

34. On that point, I would refer to the case of ***Riches v DPP,*** [1973]2 All ER 935 at pg 938 where Davies LJ adopted with great force the following words of Russel LJ in the unreported case of ***Wenlock v Shimwell***, which dealt with the question of reasonable and probable cause:

> *I may perhaps add this, that I cannot see how an allegation of prosecution without reasonable and probable cause and with malice really can stand any chance of success when you find that the view that the Director of Public Prosecutions presumably had of the evidence seems to have been shared by the committing magistrate, by the judge who allowed the matter to go to the jury and by the 12 jurymen.*

35. In concluding this part of my judgment, I would reproduce the following excerpts from the judgment of Marshall JA, which contains the essence of his conclusions on the new evidence that came to light on appeal:

> *In my opinion it is a case it is a case where this Court should conclude not on the basis that with the new evidence there might have been a reasonable doubt in the tribunal of fact as to the guilt of Senivalati Ramuwai and Rupeni Naisoro,* ***but that beyond any reasonable doubt there two appellants are innocent and the victims of a miscarriage of justice. I believe this would be the view of the Learned High Court Judge and the Assessors who heard the case in 2007 if they had heard the new evidence as well as the evidence then adduced before them...***
>
> ***Those responsible for the investigation and prosecution of the cases against Senivalati Ramuwai and Rupeni Naisoro in 2005 are in a difficult position. If Timoci had not come forward it could never be proven that someone other than Senivalati and Rupeni was solely responsible for killing Navneet Kumar.*** (emphasis added)

36. The words I have emphasised uphold that there was a proper case for prosecution, as determined in the Trial within Trial.

37. In my judgment, the plaintiffs have failed to establish lack of reasonable or probable cause or malice on the part of the defendants.

38. On the cause of action of false imprisonment, the statement of claim states that the plaintiffs were falsely imprisoned from 3rd May,2005, to 23rd March,2012, the date of release ordered by the FCA.

39. The closing submissions of the defendants points out that the plaintiffs were remanded, pursuant to orders made by a judicial officer. It is also submitted that plaintiffs were on bail pending trial and on appeal, as was admitted by the plaintiffs in cross-examination. The plaintiff admitted that they were not in prison for seven years.

40. It is trite law that a cause of action does not lie from a custodial sentence overturned by an appellate Court.

41. Ms Ali, in her closing submissions cites the case of ***Maharaj v Attorney-General of Trinidad and Tobago* (No. 2),**[1978] 2 All ER 670. In that case, the appellant had been committed to prison by the High Court for committal for contempt of Court. The appellant applied to another High Court seeking redress for alleged contravention of his right not be deprived of liberty except by due process of law. Lord Diplock at page 679 stated:

> *..no human right or fundamental freedom...is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to, then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair.*

42. Reference was also made to the case of ***Setevano v the Attorney-General,*** (HBC119 of 1995)where the plaintiff claimed damages from the Attorney-General for false imprisonment and malicious prosecution after a successful appeal to the Court of Appeal against his conviction for manslaughter pursuant to a High Court trial. In the course of his judgment, Fatiaki J(as he then was) cited the above passage from the judgment of Lord Diplock and said:

> ***The fact that the learned trial judge was subsequently held by the Court of Appeal in Criminal Appeal No. 14 of 1989, to have misdirected himself in the exercise of his statutory power to differ from the opinions of the assessors does not, under any conceivable circumstance give rise to a "cause of action"sufficient to support or maintain "a civil proceedings against the state".*** (emphasis added).

43. In my judgment, the first and second plaintiffs' action for false imprisonment fails, as does their claims of torture, assault and malicious prosecution.

44. ***Orders***

(a) I decline the action filed by the first and second plaintiffs.

(b) In the circumstances of this case, I make no order as to costs.

A.L.B. Brito-Mutunayagam
JUDGE
27th October, 2016