

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

CASE NUMBER: HBC 37 of 2018

BETWEEN: PITA DABOBO

PLAINTIFF

AND: D/CPL 3138 GYAN SINGH, DC 3490 AISEA FRANCIS,
DC 3452 JOSEFA VOSAIRA AND A/ASP MARGARET
MARSHALL, DC 3252 JONE DRAUNA

1st DEFENDANTS

AND: COMMISSIONER OF POLICE

2nd DEFENDANT

AND: ATTORNEY GENERAL OF FIJI

3rd DEFENDANT

Appearances: Mr. A. Sen (Initially) and Mr. A. K. Singh (for Continuation of proceedings) for the Plaintiff.

Mr. Prakash (Initially) and Mr. J. Mainavolau (for Continuation of proceedings) for all the Defendants

Date/Place of Judgment: Friday 11 August 2023 at Suva.

Coram: The Hon. Madam Justice Anjala Wati.

JUDGMENT

A. Catchwords:

CIVIL LAW - TORT - Assault and Battery - Unlawful Arrest and Imprisonment - Plaintiff arrested for murder - Subsequently charged and remanded by the Court - Later two other persons confess to the same crime - Plaintiff then released on bail - Nolle prosequi entered later- Plaintiff discharged - Makes claim against the defendants - Has the plaintiff established through his evidence on the balance of probability

the allegations of assault and battery – Was there reasonable suspicion that a crime has been committed by the plaintiff based on which the plaintiff was arrested – Was his remand unlawful.

B. Cases:

1. *Siuta Seru and Asaeli Raboleca v. The State - Criminal Appeal No. AAU 145 of 2016.*

C. Legislation:

1. *Criminal Procedure Act 2009: ss. 18 and 49.*
 2. *Limitation Act 1972: s. 4.*
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The Claim

1. The plaintiff Pita Dabobo has filed a claim for assault, battery, unlawful arrest and unlawful imprisonment against all the defendants.
2. Pita Dabobo was arrested and charged for the murder of one Babu Ram from Naqilinomoto, Bua on 19 August 2012.
3. Upon being charged, he was remanded in custody for approximately 11 months. Later, two others namely Siuta Seru and Asaeli Raboleca were charged, convicted and sentenced for the murder of Babu Ram.
4. Pita Dabobo was bailed out after 11 months of remand. In August 2014, the Director of Public Prosecutions ("**DPP**") withdrew the charges against Pita Dabobo. He therefore, brings these claims against the defendants.
5. The parties agree that from 19 to 20 August 2012, Pita Dabobo was assisting the 1st defendants and other police officers in conducting investigations relating to the death of Babu Ram.
6. Pita Dabobo says that on the afternoon of 20 August 2012, on the advice of Acting Assistant Superintendent of Police Margaret Marshall he was arrested from the crime scene and was handed over to the 1st defendants for interrogation. He claims that in the

course of the interrogation at the crime scene, he was severely assaulted by the 1st defendants and other police officers and was forced to confess to the offence of murdering Babu Ram. He states the particulars of assault and battery as follows:

- *Punching on various parts of the body, ear, head, chest, etc.*
- *Making him lie on hard surface and crushing him with the boots.*
- *Pressing his fingers under the hard ground with boots.*
- *Severely kicking him on the stomach.*
- *Stepping on his back and hitting him on the knees.*
- *Subjugated by the defendants and made powerless, exhausted, shattered and confused.*

7. The Plaintiff avers that at 9.45 am on 21st August 2012, his clothing's were seized at Nabouwalu Police Station. Around 6pm on 21st August 2012, the plaintiff says that he was arrested by one of the 1st defendants and escorted to Labasa Police Station.
8. The plaintiff contends that since he was arrested at Nabouwalu, he was taken to Nabouwalu Police Station and was further threatened and questioned. He was thereafter escorted to Labasa Police Station.
9. It is claimed that prior to the plaintiff being taken to Nabouwalu Police Station, he was not accorded any access to legal representation or to any family member and was continuously threatened to confess to the killing of Babu Ram and continued to be worn out, powerless, weak-kneed, and defeated.
10. That on 21st August 2012 at about 8.50pm, the plaintiff says that he brought to Labasa Police Station and was kept in custody under the conditions as described above. At about 9pm on 21st August 2012, his interview started and at 9.25pm, the interview was suspended to be continued the next day. At about 8.05am on 22nd August 2012, the interview was resumed.

11. On 23rd August 2012, at about 3.15pm, the plaintiff says that he was taken by the 1st defendants for reconstruction of the crime scene at Naqilinomoto Bua under the same conditions.
12. That on 24th August 2012 at about 8.55am, the interview recommenced and ended at 10am. His bail application by his solicitor was refused.
13. That on 25 August 2012 the plaintiff was produced at Labasa Magistrates Court on the charge of Murder and was remanded to Vaturekuka Prison until when he was released. The plaintiff says that he was detained in the prison for 11 months after which he was released. After his release from prison, the plaintiff says that had to report to Police Station on every Saturday for two years.
14. The plaintiff further claims that Police Internal Investigations Unit instituted investigations through CID Officers on his assault, battery and incarceration. It is alleged that the CID Officers doing investigations against Police brutality did so corruptly and dishonestly and refused to provide any report to the Commissioner of Police or internal affairs for the 1st defendants to be charged of any offence.
15. The plaintiff says that the 1st defendants were at all material times under the direction and control of the 2nd defendant in the performance or purported performance of their functions. The 2nd defendant owed a duty of care to him to make sure that full rights were accorded to him and that he was not unnecessarily detained. The plaintiff claims that the 1st and 2nd defendants were actuated by malevolence or spite towards him.
16. The plaintiff says that he was wrongfully imprisoned and deprived of his liberty and the defendants are liable to the plaintiff in respect of such imprisonment, assault and battery.

17. He also claims that his arrest and detention was unlawful and malicious when he had not committed any offence known to law and was falsely imprisoned and therefore is entitled for damages for unlawful imprisonment for 11 months.
18. The plaintiff says that he was unlawfully imprisoned and deprived of his liberty. He alleges that he was greatly injured in his credit, character and reputation, and he suffered considerable mental and bodily pain and anguish. He says that he was put to considerable trouble, inconvenience, anxiety and expense, and he has been greatly injured in his business. He contends that he has thereby suffered loss and damage which the defendants should be liable to pay.
19. The plaintiff says that the defendants ought to pay exemplary damages. It is contended that the conduct of the defendants were repugnant of all professional obligations and was an outright abuse by them of their powers to undermine the plaintiff's rights and entitlements, sexual orientation, fundamental human rights against persecution and his Constitutional rights.

The Defence

20. The defendants deny all the allegations of assault, battery, unlawful arrest, and unlawful imprisonment. The defendants contend that the plaintiff was arrested on 21 August 2012 for the murder of Babu Ram for investigations and caution interview. His clothes were seized from Nabouwalu as it had blood stains on it from the crime scene. The plaintiff had thereafter admitted to the killing of Babu Ram when interviewed by the Police at Nabouwalu.
21. The defendants say that the plaintiff was provided all his constitutional rights at the time of the arrest, interview, charge and detention. He was ordered to be remanded by the Court when he was charged.

22. The defendants also plead that the plaintiff's claim is statute barred under s. 4 (1) (a) and 4 (1) (i) of the Limitation Act 1971.

Evidence, Law and Analysis

23. I will deal with the claims of the Plaintiff under each head. Before I do that I must deal with the defence of limitation. It is argued that the plaintiff's claim is time barred under s.4 (1) (a) and 4 (1) (i) of the Limitation Act 1971.

A. Limitation Act: Is the claim time barred?

24. Section 4 of the Limitation Act 1971 reads as follows:

"4(1) The following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say-

(a) actions founded on simple contract or on tort;

(b) actions to enforce a recognisance;

(c) actions to enforce an award, where the submission is not by an instrument under seal;

(d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture, provided that-

(i) in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to 6 years there were substituted a reference to 3 years; and

(ii) nothing in this subsection shall be taken to refer to any action to which section 6 applies".

25. The plaintiff's claim is in tort and not in negligence or breach of duty under a contract or law. The time period for the bringing of the claim in tort is 6 years and not 3 years as contended by Mr. Prakash for the defendants. Babu Ram was murdered on 19 August 2012. All the allegations against the police officers are after 20 August 2012.

26. On a very simple calculation, the claim would be time barred by 19 August 2018. The claim was filed on 16 August 2018, within the time limitation. The defence of time limitation thus is not available to the defendants.

B. Unlawful Arrest

27. I will start off with s.18 of the Criminal Procedure Act 2009. It states that any police officer may, without an order from a Magistrate and without a warrant, arrest any person whom the officer suspects on reasonable grounds of having committed an indictable offence (whether or not the offence is triable summarily).

28. Pita Dabobo was arrested for murder of Babu Ram. Murder is an indictable offence. As long as there were reasonable grounds to suspect that Pita Dabobo had murdered Babu Ram, he could be arrested without a warrant and without an order of a Magistrate.

29. It is not disputed that the DPP had entered a nolle prosequi in the criminal case of Pita Dabobo. The entry of nolle prosequi does not mean that the police did not have reasonable grounds to suspect that Pita Dabobo had murdered Babu Ram.

30. The circumstances in which the nolle prosequi was entered is clear. Whilst Pita Dabobo was in remand for the charge of murder, two other persons by the name of Siuta Seru and Asaeli Raboleca confessed to murdering of Babu Ram. These two persons are related to Pita Dabobo by blood and marriage. This fact transpired in the evidence before me.

31. For reasons best known to the DPP, the charges against Pita Dabobo were withdrawn. This does not mean that Pita Dabobo is acquitted of the allegations of murder: s.49 (2) (a) and (3) of the Criminal Procedure Act 2009.

32. Let me reflect on the evidence which the police had with them that led the DCO Mr. Khushi Ram to order the arrest of Babu Ram.

33. I find from the evidence of A/ASP Margaret Marshall that there was enough evidence which gave rise to reasonable suspicion that Pita Dabobo had killed Babu Ram. He was close to Babu Ram and his family. He used to frequent his house. He was the one who first saw the dead body of Babu Ram. He said that he was a witness to the crime scene. He told the police officers that early morning of 19 August 2012 that he got up at about 5 o'clock. Then he left for Babu Ram's place to buy tobacco. He had been buying tobacco from Babu Ram from before to sell.
34. He informed the police that upon reaching Babu Ram's house he called out to Babu Ram saying "*tamana tamana*". Babu Ram did not respond but an intruder with masks came out of the living room and chased him with a knife. Pita Dabobo said that he fled the scene to go to one Moti's place to call for help.
35. Margaret Marshall testified that when she inspected the crime scene, it was revealed that the body of Babu Ram was lying next to the living room door from where Pita Dabobo alleged the intruder came out and tried to attack him with a knife. The scene was well protected and undisturbed. The living room door was locked from inside with a tower bolt properly intact.
36. Margaret Marshall testified that if a person came out of that door he would be carrying out bloodied foot prints from where Babu Ram was lying. The door itself, if opened would have disturbed the pool of blood near Babu Ram's head. There will be a clear indication of the door being opened.
37. Margaret Marshall continued that she took pictures of the crime scene. When Pita was a witness, he confirmed the door through which the suspects ran out and during the reconstruction of the crime scene he again confirmed that same door through which the suspects had run out. It was the blue door in the pictures that Pita had pointed. That is the living room door. The pictures were tendered in evidence and marked as Defendant's Exhibit 6.

38. Assistant Superintendent of Police Margaret Marshall said that based on the contradictions, it was suspected that Pita Dabobo had murdered Babu Ram. He was therefore arrested on 21 August 2012 at around 6pm.
39. I find from the evidence of Margaret Marshall that there was good evidentiary basis to give rise to reasonable suspicion that it was Pita Dabobo who had committed the murder of Babu Ram to cause his arrest for further investigations. His initial arrest was fully justified based on his story that he was chased by the suspect who had killed Babu Ram.
40. Pita Dabobo was the first man at the crime scene. He told the police from Nabouwalu, Police Constable Savou, that he saw the suspect run out of the living room door and chase him. If the suspect had ran out of the living room door, there is no way that that door would be securely closed from inside. There would also be bloodied foot prints leaving the living room to outside. The crime scene did not correlate with what Pita Dabobo had told the police. It was therefore, highly justifiable that he be treated as a suspect and be arrested for the crime.
41. Pita Dabobo did not at all give evidence on his claim that there was no evidence to cause reasonable suspicion for him to be arrested by the police. He did not justify to me why his statement to the police officers did not contradict the crime scene for him to be suspected.
42. Mr. A. K. Singh kept insisting with Officer Gyan Singh that Kamal Singh had told Officer Gyan Singh at the time of his interview on 21 August 2012 that Pita Dabobo had told him that the suspect had ran out of the kitchen door. Mr. A. K. Singh insisted in cross-examination of Officer Gyan Singh that if he told this to Margaret Marshall, she would not have found that Pita Dabobo's story had contradicted the crime scene because the kitchen door was open at the time the 1st responder Police Constable Savou from Nabouwalu Police Station had arrived at the crime scene.

43. Kamal Singh's statement appears at pages 32-35 of the Disclosure Booklet. His statement does not at all indicate that Pita Dabobo told him that the suspects had ran out of the kitchen door. Kamal Singh in his statement said that Pita Dabobo had told him that food was scattered in the kitchen and when he called out "*tamana tamana*" the suspects ran out of the house.
44. Mr. A. K. Singh had been putting wrong and unfair line of questioning to Gyan Singh which led Gyan Singh to agree that Kamal Singh told him that the suspects had ran out of the kitchen door. Even if that is what was told to Gyan Singh, Margaret Marshall was reconciling the crime scene with what Pita had told her. She was also concerned as to why there were no bloodied foot prints showing someone walking away from where Babu Ram's body lay in a pool of blood to the kitchen and out of it. This undisturbed blood itself gave rise to reasonable suspicion that Pita Dabobo was lying, had concocted a story and was misleading the investigation team.
45. Pita Dabobo in his entire evidence in chief did not clarify this aspect. He did not say which door the suspects chased him from. He did not dispute that he did not tell the police officers that the suspects had chased him out of the living room door. He never addressed or talked about there not being reasonable suspicion to arrest him. All he bases his claim on is the *nolle prosequi*. The two men who later confessed to the crime were arrested. Pita Dabobo is related to the two convicts. These convicts had come forward and admitted their acts of murder. Later they went onto challenge their confession in court that they were assaulted by the police.
46. If these two came on their own to admit the murder and later challenged their admission, it bothers me hugely as to whether Pita Dabobo can be exonerated due to their admissions only. Would it not have been proper to try him together with the other two?
47. The police officers are hugely aggrieved. They still believe Pita Dabobo should have been tried together with the other two as it could be a ploy by the two to see Pita out

and use the same technique of challenging their confession to impeach the caution interview. One must not forget that one of their grounds of appeal to the Court of Appeal was that Pita Dabobo was assaulted and since he is a free man they should also be set free as they too were assaulted: *Siuta Seru and Asaeli Raboleca v. The State Criminal Appeal No. AAU 145 of 2016: Page 6, Para 2.*

48. Pita Dabobo was not an immunity witness. He still went to give evidence in the other two convicts' case and talked about his assault. It was not necessary that he give evidence of his assault as he was not challenging his confession statement. In the trial of the two convicts, he informed the court that the internal investigations by the police had revealed that he was assaulted and therefore the DPP had to withdraw the charge. When the charges were withdrawn, no reasons were given. Usually that is the practice.
49. The police officers gave evidence that there was no internal investigation on them regarding the assault on Pita Dabobo. That evidence was not contradicted by Pita. I am therefore surprised that Pita Dabobo gives evidence of his assault in a forum where there was no opportunity for the defendants to respond to the allegations as they were not part of the investigation of the two convicts. His evidence on assault could also be seen as lending help to the two others thus justifying the police officers concerns as to why Pita Dabobo was not prosecuted.
50. I cannot help but find from Pita Dabobo's demeanour and deportment that he is using the nolle prosequi to gain financial advantage. All throughout the evidence, he chose to answer questions when it suited him, otherwise he would reply by saying he does not know or that he cannot recall. His dishonesty was very apparent from his conduct.

C. Assault and Battery

51. Pita Dabobo and his two witnesses testified that Police Officer Gyan Singh and others whose names he does not know assaulted him at Babu Ram's compound that made him extremely sick, feeble and unhealthy. He claims that he has lost his hearing and his

fingers are broken. I do not believe Pita Dabobo and his witnesses for very many reasons which I will identify.

52. Pita Dabobo does not even know the names of the other police officers who assaulted him except for Gyan Singh whom he named. It became very clear in the evidence that his son in law Ravuama Ririca, an ex-police officer supplied these names to him.

53. Ravuama Ririca is a disgruntled person. He was once being investigated by the 1st Defendants for allegedly having stolen property in his possession due to which he had to leave work from Fiji Police Force. When his father-in-law Pita Dabobo needed names of persons to sue, Ravuama Ririca supplied these names not out of any genuine reasons but out of spite and malice.

54. An example of Ririca's spite is by mentioning Officer Jone Drauna's name. Pita Dabobo explicitly indicated in his evidence in chief that Jone Drauna did not assault him. Pita Dabobo did say that Jone Drauna was present when he was being assaulted. Pita Dabobo also said that Margaret Marshall did not assault him. He also did not ever indicate that Officer Aisea Francis assaulted him.

55. I can understand that Margaret Marshall's name was included in the writ because she had informed DCO Mr. Khusi Ram the basis for her reasonable suspicion which caused him to order the arrest. I however do not understand why Officer Jone Drauna was included. He is neither said to have assaulted him nor has he been alleged to have given any instructions to arrest him. It clarifies that everyone who was part of investigating Pita Dabobo's son in law got to be sued to give the son in law a chance to express his grievance in that way.

56. Pita Dabobo alleges that when he was assaulted there were a lot of people around. The vicinity was Babu Ram's compound. He said that he was kicked, punched and stomped up for almost half an hour by several policemen. It is very difficult to believe that police officers would be assaulting suspects in public where they can be witnessed and

photographed. When the alleged assault happened, DCO Mr. Khusi Ram was also there. His evidence on this has not been challenged. How could it be possible for these officers to assault Pita Dabobo under the watchful eye of their Superior and the kind of assault that is alleged would never be permitted or ignored because DCO Khusi Ram would never want a fatality under his supervision. It is more probable than not that the allegation is all made up. I am of the firm view that Pita Dabobo and his witnesses are concocting the story of assault to find a case against the police officers.

57. Kamal Singh and Amuk Prasad clearly appeared to be witnesses who had to gain from their false story. They are very close to Pita Dabobo. Their demeanour was such that I found that to be repeating what they had been told to say in Court. Kamal Singh said that Pita Dabobo was assaulted on Monday and Amuk Prasad said that he was assaulted on Tuesday after lunch. There versions are inconsistent. A/ASP Marshall had concluded her views by 4.10pm on 21 August 2012. Pita Dabobo was arrested on the same day at 6.00pm. How can he be assaulted on Monday 20 August 2012 or even at lunch time on 21 August 2012 when Margaret Marshall was still coming to a final finding on who the suspect could be?

58. In addition to that, Amuk Prasad stated that Pita Dabobo's hands were in good function before the arrest and got injured after the arrest. This evidence is contradicted by the evidence of Pita Dabobo's wife (I will refer to this later) and the police officers whom I believe. They saw Pita Dabobo with that clenched hand at the time of the investigation and before his arrest. They saw him limping and that he was short of hearing.

59. Pita Dabobo said that the extensive assault made him deaf. It also left him weak and he had broken fingers. The police officers Josefa Vosaira, Gyan Singh, Aisea Francis and Margaret Marshall testified that Pita Dabobo already had hearing problems and that his hand was already clenched.

60. I believe the police officers evidence. Under continuous questioning from the defence counsel, Pita Dabobo's wife finally admitted that Pita Dabobo did have problems with

his hand prior to the arrest. Initially this was denied by her. That was also denied by Pita Dabobo. I find that Pita Dabobo and his wife are using his pre-existing medical condition to find a case against the police officers.

61. If the plaintiff Pita Dabobo was so badly assaulted, it would be apparent to the Magistrate when he was produced in Court on 25 August 2012. He would not be able to walk to the accused stand. Even if it was not apparent, Pita Dabobo had a right to complain about the assault. In the cross-examination Pita Dabobo clearly stated that he did not complain to the Magistrate because he did not know anything about the law. He did not know he could do that. In the next breath, in the re-direct examination he says that he knew he could complain but was scared that he would be assaulted again. Pita Dabobo was remanded on that day to be taken to Vaturekuka Prisons. How can he fear being assaulted by the police officers again? His explanation is neither acceptable nor genuine.
62. At the prison he did not complain to anyone again. Why? I find he did not have any assault to complain about or injuries to show. I also accept the evidence of Officer Gyan Singh that the Prisons would not accept a medically unfit person due to assault. They would not want to accept responsibility of taking injured remandees.
63. Further, if Pita Dabobo was so weak, injured and sick as a result of the assault, he would have sought medical attention when he came out on bail. He only seeks medical attention in the year 2020 after the filing of the claim thus fortifying my view that his claim for assault and battery is concocted.
64. If Pita was assaulted the way he claims by a group of police officers for half an hour, he would barely be able to sit, give the interview for 4 days, eat and sleep. He will not be able to stand the physical injuries. Yet he sits throughout the interview for 4 days and even signs all the pages of the interview. How did he sign if his fingers were broken? He would not be able to use a pen and sign the way he did in the caution interview.

65. Pita Dabobo also relied on the findings of Madigan J, that he was assaulted. His Lordships findings do not bind me. How did his Lordship arrive at that conclusion without hearing the police officers alleged to have assaulted him? His Lordship arrives at that finding in the case of 2 others who were later charged for the murder of Babu Ram. These police officers were not even heard on the issue of assault. I find his Lordship's findings without the benefit of full evidence.

D. Unlawful Imprisonment

66. Pita Dabobo was in remand as a result of the charge. He was not granted bail by the court. There is no question of unlawful imprisonment. There was, I repeat, reasonable suspicion to arrest him leading to him being interviewed under caution and be charged.

67. During the caution interview he was given all his constitutional rights including being fed and rested properly. The caution interview bears that out. Pita has agreed by signing the caution interviews that all these rights were provided to him. I have no reason to believe that he was mistreated and that his constitutional rights were not provided to him. Officer Aisea Francis, whose evidence I believe clearly indicated that all his rights were duly provided to him.

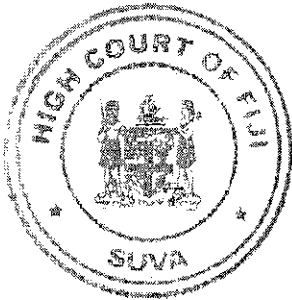
68. The caution interview shows he confessed to the murder that led him to be charged. The court then remanded him on the charge. That cannot be unlawful imprisonment. It is another matter that the DPP later withdrew the charges. This does not mean that his remand becomes unlawful. The charge was based on sound evidence and admission of the offence.

Final Orders

69. I dismiss the plaintiff's claim.

70. I order the plaintiff's estate to pay costs to the defendants in the sum of \$6,500.00 as I find that this case was designed out of spite and motive to gain financial advantage only arising out of the nolle prosequi filed by the DPP.

71. The above sum is to be paid within 21 days.



Anjala Wati

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Hon. Madam Justice Anjala Wati

Judge

11.08.2023

To:

1. **A. K. Singh Lawyers for the Plaintiff.**
2. **Attorney General's Chambers for the 1st, 2nd & 3rd Defendants.**
3. **File: Labasa HBC 37 of 2018.**