

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 205 OF 2018

BETWEEN : **RAJESH KUMAR SINGH** of Korovuto, Nadi
PLAINTIFF

AND : **THE COMMISIONER OF POLICE**
1ST DEFENDANT

AND : **THE ATTORNEY GENERAL OF FIJI**
2ND DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. M. Kumar, for the Plaintiff
Mr. S. Kant, for the Defendants

DATE OF SUBMISSION: Filed on 7th November, 2023 by the Plaintiff
(Supplementary) Filed on 8th November, 2023 by the Plaintiff
Filed on 8th November, 2023 by the Defendants

DATE OF TRIAL : 12th October, 2023

DATE OF JUDGMENT : 28th March, 2024

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff, through his Solicitors on 10th September 2018, filed his Writ of Summons and the Statement of Claim against the Defendants seeking the following reliefs.
 - A) *General and exemplary damages for pain and suffering.*
 - B) *Loss of income for a period of three weeks from the date of assault in that sum of \$750.00 (Seven Hundred and Fifty Dollars).*
 - C) *General damages for wrongful confinement.*
 - D) *Punitive damages for unwarranted brutish conduct by the disciplined forces.*
 - E) *Costs on a Solicitor/Client indemnity basis.*
 - F) *Any other relief which in the opinion of this Honourable Court in just and expedient.*

B. PLEADINGS:

2. In the Statement of Claim, among other things, the Plaintiff states; **THAT**

1. *He is a Forty-Eight Years (48) years old Male, Van Driver, was at all material times, asleep at his home in Korovuto, Nadi.*
 2. *THE Defendants servants and/ or agents, namely, Police Officers from the Nadi Police Station on the 2nd day of April 2018 at about 12;00 am without a warrant forced themselves into the Plaintiff's House and there **did assault** and brutally dragged the Plaintiff from his house and load him to a Vehicle.*
 3. *THE Defendants further **assaulted** the Plaintiff outside the House and dragged him barefoot on the hard ground.*
 4. *As a result of aforesaid **assault**, the Plaintiff suffered injuries.*
 5. *Particulars of injuries are **Superficial laceration** on the left leg, left Toe, **Abrasions** on left 4th finger, right forearm, right leg, **Abrasion** on nasal bridge and general pain all over.*
 6. *THE Defendants Officers after having **assaulted** the plaintiff escorted him to the Nadi Police station and did there lock him up in the cell.*
 7. *The Plaintiff's request for medical attention was refused by the defendants' officers and the Plaintiff continued to bleed from his injuries.*
 8. *THE Plaintiff was released the following morning without being interviewed and without being charged.*
 9. *By reason of the Defendants brutal and unlawful conduct the plaintiff suffered loss and damages and continues to have mental trauma. (Above emphasis are mine)*
3. The 1st and 2nd Defendants in their Statement of Defence, by strongly denying the contents in paragraphs 1,2,3,4(1) to 4 (iv) and 5 (inclusive) of the claims', inter alia, stated **THAT:**
- a. On 2nd April 2018 at 7.30 pm, a complaint was received by the Nadi Police Station against the Plaintiff for swearing at the complainant and one other person.
 - b. Upon investigation of the complaint by police officers, the plaintiff was discovered at his residence in an intoxicated state, swearing at his neighbors and attempting to instigate a fight.
 - c. The plaintiff was instructed by the police officers to refrain from his conduct and to return to his residence.
 - d. However, after leaving the plaintiff's residence, the police were again prompted by the plaintiff's neighbours that the plaintiff continued, in his intoxicated state, swearing at his neighbours and attempting to instigate a fight,

- e. As such at about 10.20 pm, the plaintiff was brought into the Nadi police station, where he pleaded with the complainant Sunil Sharma to withdraw the complaint and it was accordingly withdrawn.
- f. Due to the Plaintiff's intoxicated state and his refusal to comply with police officers' instructions, it was necessary to keep the Plaintiff in custody till he recovers, and subsequently he was released early next morning. The allegation of assault is refuted by the Defendants.

C. ISSUES:

- 4. As per the PTC minutes, parties have recorded 2 admitted facts as to the Plaintiff's age being 48 years at the time material to the incident and that he was arrested by the Defendants (Police Officers) on 2nd April 2018 from inside of his residence. Parties also recorded 17 issues, which do not warrant reproduction.
- 5. However, the main issues that need adjudication can be summarized as follows, answering of which, in my view, would dispose this matter finally and effectively.
 - a. Whether the Plaintiff was causing nuisance in his neighborhood on 2nd April 2018?
 - b. Whether a Police complaint was made against the Plaintiff on 2nd April 2018?
 - c. Whether the Plaintiff adhered to the instructions of the Police officers during his arrest?
 - d. Whether the Plaintiff was assaulted by the Police and brutally dragged out of his house?
 - e. Whether the injuries and pain described in paragraph 4 of the SOC were caused due to the alleged assault and/ or pushing by the Police?
 - f. If not, how he sustained injuries described in the Medical Report and paragraph 4 of the SOC?
 - g. Whether the Plaintiff was unlawfully confined or locked up at the Police station?

D. TRIAL:

- 6. At the one-day trial held before me on 12th October 2023, the Plaintiff, **PW-1 Rajesh Kumar Singh**, and his wife, **PW-2. Anjini Devi Chand**, gave evidence to substantiate the Plaintiff's claim. On behalf of the Defendants, **DW-1, Sgt. Kini Viliame Naaika, DW-2, Acting Corporal 4113 Jale Nawai, DW-3, Sgt. Mere Sekovina, DW-4, Acting Corporal 3872 Deepak**, gave lengthy evidence and were subjected to cross examination.
- 7. On behalf of the Plaintiff, no documents were marked in corroboration of his oral evidence to substantiate his claim, while on behalf of the Defendants, annexures "DEx-1" to "DEx-6" were marked in support of their Defence, through the respective witnesses. Though, the Medical Examination Report of the Plaintiff was the only document relied on by the Plaintiff's solicitors, it was not marked at the trial, except for referring to it.

8. Both parties have filed their respective written submissions as aforesaid

E. **ANALYSIS:**

9. The first and foremost incident that led the Police to intervene, though not averred in the Statement of claim, has come out through the plaintiff's own evidence in chief, where he says that on the day of the incident, it was he who asked the complainant **Sunil Kumar, (Advisory Counselor)**, while he was on the Road, about his not helping the plaintiff when they were affected during the floods.

10. He states further, that Sunil Kumar, without talking (responding) to him called the Police, who came and told him not to say anything to him (Sunil Kumar) as he is the advisory counsellor and accordingly, he agreed and then the Police went back. He adds further, then again at around 9.30 pm when he was asleep at his home, the Police entered his House, lifted him up by his belt, pushed him towards and down the steps, when there were cracked bottles on the floor, which, according to him, hurt his leg and his nose was broken causing to bleed.

11. When, his evidence in chief is carefully analyzed, in the light of the answers given by him under cross examination, the evidence of his wife "PW-2", the relevant averments in his statement of claim and particularly, the Defence evidence, it is abundantly clear that the foundation for the whole episode was laid by none other than the Plaintiff, seemingly under the influence of Liquor.

12. Plaintiff, tacitly, admits that it was he who initiated the incident, by inquiring from Mr. Sharma about not helping during the floods and Mr. Sharma was not responding to him. If the plaintiff was only and merely inquiring from Mr. Sunil Sharma about not giving any assistance during the floods, and if Mr. Sharma was not responding or talking back to him, as he states in his evidence, and if not for the alleged act of swearing at Mr. Sunil Sharma, which he initially agreed with the Police not to repeat, there need not have been any need for Mr. Sunil Sharma to call and complain to the Police, not only once, but twice finally causing the Police to come for the 2nd time around 9:30.

13. The making of the first complaint to the Police by Mr. Sunil Sharma, over the phone on 2nd April 2018, has been substantiated by marking the relevant portion of the record as "DEx-3" and "DEx4" through the Defence witness "DW-3". However, the initial arrival of the Police and giving advice to the Plaintiff not to swear again at the Complainant Mr. Sharma and accordingly Police went back without taking any further action, are not disputed by the Plaintiff.

14. What is in dispute is, as to what made the Police to come back for the 2nd time around 9:30 pm, what really happened and how it happened during the second visit by the Police. The Police officers, who went for the duty in relation to the 2nd incident on the day in question, and the other Officers, who attended for relevant duties at the Nadi Police Station, have

given clear and convincing evidence by marking the relevant statements, contents of which corroborate their oral evidence. The Defence evidence has withstood the lengthy cross examination by the Plaintiff's Counsel.

15. The Plaintiff's allegation of assault on him at his house and subsequently at the Nadi Police station, as averred in paragraphs 1 to 5 of his SOC, was not substantiated by his own evidence or that of his wife PW-2. The PW-2, did not utter a word about any assault on her husband at their house, except for repeatedly saying that he was dragged.
16. Even the Plaintiff, in his examination in chief or under cross examination did not come out with the allegation of assault, except for saying that he was pushed and dragged. In his Statement to the Police made on 3rd April 2018, which was the subsequent day of the incident, the Plaintiff did not complain about the alleged assault. The allegation of assault in his Statement of Claim is only an afterthought. At the beginning of his cross examination, he admitted that he had an argument with Sunil Sharma and during further cross examination accepted that he was initially warned by the Police Officer Kini not to swear, and he acted accordingly. Vide page 9 of the transcript.
17. When it was put to him under cross examination by the Defence Counsel, to the effect that after Police officers' leaving, he again started swearing and when they came back and tried to accompany him to the Police Station, he resisted the move, he gave an evasive answer by saying that he was sleeping at that time, which appears to be a total lie. (Vide page 10 of the Transcript).
18. When specific questions were put to him under further cross examination that he was not assaulted by the Police Officers, he did not deny it, instead stated that he was dragged and held by color and the belt that he was wearing. He admitted that he was not punched, but was held with the belt, dragged and that was how he got hurt. (Vide page 11 of the Transcript).
19. Under further cross examination in page 12 of the transcript when he was asked whether he was locked in the Cell, his response was that he was sitting in the charge room. (Vide the last question and answer in page 12).
20. When he was asked whether he was assaulted at the Police station, his answer was "No **my lord**". (Vide page 13). His wife (PW-2) also confirmed the initial incidents narrated by the Plaintiff, and said that he was lying on the ground and was pulled by the belt and dragged. Under her cross examination, she admitted that her husband was advised by the Police initially, and when she was asked "**So why do you think Sunil had to call Police on Rajes?** Her prompt answer was "**For the second time Rajesh was also saying that when I call you during flood times, you don't come and what is the reason for you to come and drink**". (Vide page -19)
21. The above answer by the PW-2, clearly shows that after the Police advised him and left subsequent to the first incident, it was the Plaintiff who caused the 2nd episode of the incident by continuously shouting and swearing, which eventually caused the police to

come again and arrest him. The position advanced by the Plaintiff and his wife PW-2 that the Plaintiff went to sleep after the 1st incident is a lie and cannot be accepted. He could not have possibly gone to sleep that early at his living room, with empty and broken bottles around him.

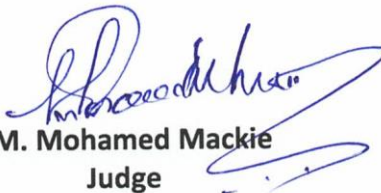
22. PW-2 under her cross examination in page 20, when she was asked “**Does he generally drink**”, her prompt answer was affirmative with no reservations. The Police officer PW-1 Kini was asked anything else he observed at the scene, his answer was “He **was drinking beer, sitting down on the porch**.” (Vide page 26.) This officer has also confirmed that he held the Plaintiff’s hand while other officer lifted his leg as he resisted.
23. This officer has given justification for arresting and taking him to the Police Station, considering his safety and that of the community as there was possibility for him to go again and create problem, and he would not have arrested if the Plaintiff was sober. Under his cross examination too, DW-1, has confirmed in page 32, that the Plaintiff was drinking beer with the Glass and beer in front of him. This witness also elaborated on his power under section 17 (3) to enter a place without a warrant if a person causing fear.
24. DW 2, who is the next Police Officer took part in the arrest of the Plaintiff, has given evidence confirming that of the DW-1 and stated that the Plaintiff was drunk and talking in very high tone. Despite the PW-1 – Kini had warned him to reduce his voice, still he was talking at a high tone on which K.ini told the Plaintiff that he needs be at the Police Station for him to calm down. However, as the complainant Sunil Sharma, had withdrawn the complaint, he was released early next morning.
25. A pertinent point to be observed is that his allegation of assault by the Police officers is not supported by the Doctor’s observations made in the Medical Report, where under the findings, the doctor describes only about **laceration** and **abrasions**, which are averred in paragraph 14 of the Statement of Claim. It is obvious, that these **abrasions** and **lacerations** are more compatible with the admitted incident of dragging, but surely not with an incident of assault as alleged by the Plaintiff.
26. On consideration of the total oral and documentary evidence adduced by both the parties, the most safest conclusion that can be arrived at is that due to the resistance offered by the Plaintiff under the influence of Liquor at the time of the 2nd incident, the Police had to use their minimal power to arrest him, wherein they had to drag him to the Vehicle.
27. In my view had the Plaintiff been sober and corporative with the Police in the discharge of their duties, this unfortunate incident and the resultant injuries (lacerations & Abrasions) could very well have been avoided. In my view, the said injuries were nothing, but voluntarily assumed by the Plaintiff by his unruly conduct under influence of liquor and resistance of the duties of the Police Officers.
28. Thus, for the reasons stated above, this Court is of the firm view that the Plaintiff’s action should fail and has to be dismissed.

29. I am also of the view, that it is justifiable for this Court to order the Plaintiff to pay a reasonable cost to the state on account of this unwarranted litigation that caused the state to suffer in terms of money and precious time.

F. FINAL ORDERS:

- a. The Plaintiff's action fails.
- b. The Plaintiff's Writ of Summon and the Statement of claim struck out and the action is hereby dismissed.
- c. The Plaintiff shall pay the 2nd Defendant a sum of \$ 400.00 (Four Hundred) in 28 days being the summarily assessed costs.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 28th day of March, 2024.

SOLICITORS:

For the Plaintiff:

Messrs. Fazilat Shah Legal, Barristers & Solicitors

For the Defendant:

Attorney General's Chambers