

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC 342 of 2015

BETWEEN : JAYS HOLDING LIMITED

1ST PLAINTIFF

AND : JAG RAM

2ND PLAINTIFF

AND : SUNITA

3RD PLAINTIFF

AND : THE CONTROLLER OF CUSTOMS

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. I. Fa (Snr) for the plaintiffs
Mr. E. Qalo with Mr. E. Eterika for the defendant

Date of Hearing : 8 & 9 November 2023

Date of Judgment : 12 February 2024

JUDGMENT

DAMAGES

Damage to goods seized by defendant – Whether seizure and detention unlawful – Malicious prosecution – False imprisonment

The following case is referred to in this judgment:

a. *Radha Naran Patel v Secretary of State for the Home Department [2014] EWHC 501 (Admin)*

1. The plaintiffs filed action against the defendant *inter alia* for unlawfully seizing and detaining the goods of the first plaintiff, issuing a departure prohibition order against the second plaintiff and seizing the foreign currencies and passport of the third plaintiff. The first plaintiff is involved in the business of importing goods for the wholesale and retail markets. The second plaintiff is the managing director and shareholder of the first plaintiff, while the third plaintiff is a shareholder of the first plaintiff.
2. The plaintiffs state that the defendant seized goods worth \$8,144,856.80 and \$1,271,616.00 on separate occasions. These included compact discs (CD), digital versatile disks (DVD) and different brands of liquor.
3. The plaintiffs claim that when the defendant returned the seized goods they were damaged and could no longer be sold, resulting in losses to the plaintiffs. The plaintiffs state that the goods were damaged whilst in the custody of the defendant. The plaintiffs' action is for the recovery of damages as a result of the defendant's action. The plaintiffs say the defendant failed to comply with a High Court order to release the goods, and unlawfully detained them for a longer period. They sought damages for failure to comply with the court order, for pain and suffering that the second and third plaintiffs endured because of the defendant's actions, and for the unlawful imposition of the departure prohibition order on the second plaintiff. The defendant denied the plaintiffs' claim and asked that the action be dismissed.
4. The defendant filed a summons to strike out on 14 October 2016 under order 18, rule 18 (1) (a) (b) and (d) of the High Court Rules 1988 supported by the affidavit

of Selema Rokodurucoco, team leader customs and compliance with the Fiji Revenue and Customs Authority. Master V D Sharma (as he then was) dismissed the defendant's strike out application by his order dated 17 July 2018. Thereafter, the action was entered for trial. Subsequently, the plaintiffs filed an amended statement of claim on 27 January 2020, and pleaded malicious prosecution and false imprisonment as further causes of action. The rest of the averments in the original statement of claim were retained. The defendant filed its amended statement of defence on 3 February 2020, denying the plaintiffs' claims and sought dismissal of the action. The plaintiffs filed a very brief reply to the amended statement of defence. Thereafter, the plaintiffs sought leave to amend paragraphs 5 and 13 of the amended statement of claim, which was allowed. The defendant had no objection to the amendment. The second amended statement of claim was filed on 12 June 2020.

5. On 6 August 2013, the defendant conducted a search on the first plaintiff's motor vehicle bearing registration number HC 347 and seized \$7255 in Fijian currency, assorted liquor and blank DVDs. On the same day another search was carried out on the first plaintiff's vehicle registration number FX 834 and the defendant seized five ANZ bank cheques and a BSP bank cheque, blank DVDs and assorted liquor. At the plaintiff's warehouse at Waila Road, the defendant seized assorted liquor, assorted CDs and DVDs and empty cartons and DVD. On the same day, the defendant seized currencies from the third plaintiff in the following amounts: 88,270.00 Australian dollars, 1,550.00 US dollars and 250 Fijian dollars. These were equivalent to \$144,182.00 Fijian dollars. The third plaintiff's passport was also seized.
6. The plaintiffs' main claim concerns damage to the seized goods. These include DVD s and liquor. The second plaintiff, Mr. Ram said that the defendant returned goods between 15 June and 17 July 2015, and gave details of the DVD s, liquor and currency notes that were returned. During trial, the goods were placed at the first plaintiff's premises at Nasese with the defendant's consent and their photographs were taken and produced as evidence. The defendant's representatives were present at the time photographs were taken. The witness said that many of the items that were seized were not returned.

7. The second plaintiff testified that one Ashneel, a former employee of the first plaintiff, gave a statement on 20 July 2014 that an officer of the defendant offered him money to give evidence against the second plaintiff. His statement is that the officer, Roko, initially offered him \$100,000.00 and then doubled the amount to give false evidence. The statement is witnessed by Mr. Ram. The witness said he complained to the defendant about the matter, but there was no response. Ashneel Prasad did not give evidence. Mr. Ram said the defendant's officers frequently raided his house. He was unable to say why it was so.
8. In cross examination, Mr. Ram insisted that the liquor was genuine, although his interview with the defendant states that he purchased the liquor from a fishing boat, and that these are not genuine products. He states at the interview "I understand that this liquor cannot be auctioned by office but needs to be destroyed. In destroying, FRCS gains nothing, and my company also loses, and cannot gain compensation from my supplier". He denied making this statement, and alleged that the defendant had introduced it. He agreed that the signature at the bottom of the statement belongs to him. He denied that the officer who signed the statement interviewed him. He said although the label has Chinese characters, the liquor is of genuine Johnny Walker brand. He was not aware whether there is an agent for Johnny Walker in Fiji. He said a complaint was made to the defendant regarding the fabrication, but he could not produce documentation in proof. However, the second plaintiff made the same statement in an email dated 7 May 2014 to the defendant.
9. The second plaintiff said that when he sold DVD s, these were returned by customers saying that the goods have scratch marks. A few goods returned notes were produced in proof of the return of DVD s. He was cross examined about signing revenue customs authority receipts confirming that goods were released and received in good order. The defendant relied on the receipts signed by the plaintiffs. What the plaintiffs say is that a large number of items were returned, and it was not possible to have individually checked them. Once the returned goods were checked, the defendant was intimated of the damages. Mr. Ram said the DVD s were tested internally, but the tests took time. Tests were performed

on DVD s randomly as examining the entire lot would have taken several weeks. An employee of the first plaintiff, Jessica Shimmal, gave evidence on the tests that were carried out on the DVD s. In his email dated 7 May 2014, the second plaintiff questions the defendant as to why there is no reference to the 821 cartons of DVD s and the DVD writer in the seizure notice, which, he pointed out, was issued after nine months. The statement to the defendant also contains a reference to the 821 cartons of DVD s.

10. In cross examination, the second plaintiff was asked about a letter dated 14 July 2015 written by Solanki Lawyers to the defendant, in which the law firm says the plaintiffs have received goods and currencies in compliance with the court order. Mr. Ram was of the belief that the letter refers to the goods that the court ordered to be released. He concurred that all the goods in the custody of the defendant was returned.
11. This was followed by a letter dated 16 July 2015 from Solanki Lawyers. The letter referred to the High Court order dated 29 May 2015, and stated that 653 cartons of alcohol was completely destroyed in addition to 20 loose cans. The losses were put at \$69,956.80. Principal customs officer, Mr. Roko said the Woodstock was stored separately from the DVD s. He said he did not check the bottles before returning the goods. They were taken in cartons and returned. In one of its letters, the defendant suggests that it is open to consider the plaintiffs' claim concerning the beverages. The defendant did not provide clear particulars about how it stored the goods belonging to the plaintiffs. While the defendant is entitled to raid and detain goods, where necessary, this must be done with responsibility. The evidence given by the defendant's witnesses were vague and lacking in detail in the measures taken to protect the goods in custody, especially over a longer period. The court is of opinion that the claim of \$69,956.80 can be allowed.
12. The claim in respect of the DVD s came much later. Buvetana Ofati, the defendant's principal customs officer said that photographs were not taken of the goods at the time they were seized about ten years ago. Mr. Roko was the senior customs officer at the investigation branch at the time the first plaintiff's goods

were seized. He was involved in the seizure. He said the seized DVD s were not tested. He was uncertain whether photographs were taken of the seized goods. He said the goods were returned several days after the period of 14 days given by court had expired. He was involved in other cases, and could not give a reason for the delay. The goods, he said, were brought in a truck and returned to the plaintiff. He was involved in returning the goods, but did not ask Mr. Ram to inspect the goods. He was given a form to sign. None of the boxes that were detained were opened. He could not confirm whether photographs were taken of the returned goods or if an inventory was carried out. The recommended process is to prepare an inventory, but the witness had no documents to shown an inventory was carried out.

13. A difficulty that the plaintiffs faces is in their acknowledgment that the goods were received in good order. The plaintiffs' explanation that it was not practically possible to check all items immediately is understandable. Nevertheless, the defendant relies upon the plaintiffs' acknowledgment of the goods. The letters from Solanki Lawyers also make no mention of damage to the DVD s. For these reasons, the court declines to hold with the plaintiffs' claim on the DVD s.
14. Apart from damage to goods, malicious prosecution and false imprisonment are two other grounds on which the defendant is being sued.
15. The plaintiffs say that on 2 September 2014, the defendant instituted criminal case No. 1214/14 against the first and second plaintiffs. They were charged with four counts of possession of smuggled goods and four counts of fraudulent evasion of duty. The plaintiffs say that the second plaintiff was interviewed during the period October 2014 to April 2015 concerning the charges against him, and was questioned regarding his records and business dealings. The criminal case was withdrawn on 15 April 2019.
16. The plaintiffs say that the criminal case against the second plaintiff was instituted maliciously and without reasonable and probable cause. While the criminal case was pending, the plaintiffs state, the defendant carried out several searches to

collect evidence against the plaintiffs. They say that the institution of criminal proceedings resulted in the loss of business and damage to reputation in addition to financial losses in defending against criminal proceedings. The plaintiffs say the second plaintiff was acquitted as it was a baseless complaint. They seek \$50,000.00 as damages for malicious prosecution.

17. The plaintiffs have, however, not established malice on the part of the defendant in filing criminal charges against the second plaintiff. An acquittal does not necessarily mean the prosecution was prompted by malice. The second plaintiff admits that the first plaintiff's premises were seized after search warrants were obtained.
18. A further claim concerns an alleged false imprisonment. The second and third defendants were both detained at the airport. The third plaintiff said that she was unlawfully detained without a charge for 12 hours at Nadi International Airport on 6 March 2014, when she was on her way with her husband to Hong Kong on business. Her foreign currencies and air ticket were confiscated, and she was issued a notice of seizure signed by customs officer Selema Roko in respect of the currencies. The third witness said she was physically searched by a male officer named Navneet Chandra, who gave evidence for the defendant. She was kept in a locked interview room before being released and left on the road alone around 8pm in Nadi without her belongings.
19. The plaintiffs say that in HBC 288 of 2014, court held that the defendant had unlawfully held the goods for more than two months, and ordered their release within 14 days. Mr. Roko's evidence is that he prepared the seizure notice based on the detention notice prepared by Navneet Chandra. The plaintiff referred to the judgment of *Radha Naran Patel v Secretary of State for the Home Department*¹. In that case, the claimant applied for a visitor visa which was denied. She was detained over a period of six days, separated from her family and subject to an enforced removal. The High Court of England & Wales held that the evidence was concocted and detention was unreasonable, irrational and unnecessary.

¹ [2014] EWHC 501 (Admin) [30 July 2014]

20. The defendant's evidence is that the second plaintiff was a person of interest, and they searched him along with the third plaintiff. The currencies were in the possession of the third plaintiff. There is no evidence by the plaintiffs that evidence was concocted, or that the currencies did not belong to them. The seized currencies were undeclared. A seizure notice was issued, the currencies were claimed and they were released after a court order. The claim of false imprisonment, therefore, is not made out.
21. The third plaintiff also gave evidence of the treatment meted to her. She was detained for some 12 hours, her currencies and passport were seized, searched by a male officer and released alone on the street at night without her belongings. The third plaintiff claimed \$20,000.00 as general damages, \$30,000.00 as aggravated damages and \$15,000.00 as aggravated damages for her unlawful detention at the airport, with the total claim amounting to \$65,000.00. The plaintiffs also claimed \$4,400.00 being the value of the air passage to Hong Kong. The third plaintiff claimed damages of \$308,000.00 for the loss of use of the currencies she carried with her.
22. The plaintiffs sought damages for not complying with the High Court and late release of goods, damages for pain and suffering of the second and third plaintiffs, damages for unlawful retention of the third plaintiff's passport, damages for unlawful imposition of the departure prohibition order on the second plaintiff and for continuous and unreasonable raids and seizure of goods not authorized by law.
23. Principal customs officer, Selema Rokoduricoko (known as Selema Roko) denied the allegation of bribe made by the second plaintiff in his testimony. Mr. Roko said he conducted the interview of the second plaintiff, although by a typing error his name was omitted. He agreed that the goods were improperly retained for more than two months.
24. Overall, the defendant did not show sufficient regard for the plaintiffs' seized goods. Even after the High Court gave the defendant 14 days within which to return the goods, the defendant did not comply with the order. The court

considers it reasonable to order the defendant to compensate the first plaintiff by payment of \$15,000.00 as general damages.

25. The plaintiffs complained that a newspaper article made reference to the raids carried out on the first plaintiff, and that this caused damage to the reputation of the plaintiffs. The article does not identify the plaintiffs by name.

ORDER

- A. The first plaintiff is awarded a sum of \$84,956.80 as damages
- B. The defendant is to pay each plaintiff costs summarily assessed in the sum of \$1,500.00 amounting in aggregate to \$4,500.00.

Delivered at **Suva** on this **12th** day of **February, 2024**.



M. Javed Mansoor
Judge