

JAMES SATISH BACHU and Anor v COMMISSIONER OF POLICE and Anor (ABU0020 of 2004S)

COURT OF APPEAL — CIVIL JURISDICTION

5 PENLINGTON, SCOTT and WOOD JJA

9, 11 November 2004

10 **Practice and procedure — appeal — statement of claim — police misconduct — general and exemplary damages — High Court Rules O 18 rr 18(1)(a), 18(1)(b) — Police Act.**

15 In September 2003, the Appellants filed several complaints against the accused. They reported to the police that they had been the victims of robbery with violence, criminal trespass, breaking and entry and forced eviction by the accused but the police did not apprehend and charge them in all the complaints filed by them. The Appellants argued that the police’s failure to apprehend and charge the accused amounted to abuse of the Appellants’ human and constitutional rights. Thus, they sought general and exemplary damages.

20 In response, the Respondents filed a summons to strike out the Appellants’ proceedings on the grounds that there was no reasonable cause of action and that they were scandalous, frivolous or vexatious. On 19 March 2002, the Appellants’ action was struck out on the ground that it disclosed no reasonable cause of action. The Appellants appealed against that decision.

25 **Held** — Based on the facts of the case, the Appellants failed to establish sufficient relationship of proximity where the police would owe the complainant a duty of care. Based on the case of *Hill v Chief Constable of West Yorkshire* [1998] 2 All ER 238; [1989] AC 53 which was the settled authority for the proposition that while there was a general duty imposed on the police to enforce criminal law, an action for damages was not an appropriate vehicle for investigating the efficiency of the police force. The police are immune from actions against their duties with respect to investigation and suppression of crimes. The human and constitutional rights of the Appellants were not infringed.

30 Appeal dismissed.

Cases referred to

35 *Costello v Chief Constable of the Northumbria Police* [1999] 1 All ER 550; (1999) 11 Admin LR 81; *Hill v Chief Constable of West Yorkshire* [1989] AC 53; [1988] 2 All ER 238; *Knightsley v Johns* [1982] 1 WLR 349; [1982] 1 All ER 851, cited.

First Appellant in person

40 *K. T. Keteca and J. Raikadroka* for the Respondents

Penlington, Scott and Wood JJA. In September 2003 the Appellants as Plaintiffs in person commenced proceedings against the Respondents.

45 In their statement of claim they said that they had been the victims of robbery with violence, criminal trespass, breaking and entry and forced eviction. Each of these crimes was reported to the police however:

the police failed to perform their duty in accordance with the rules and regulations set out in the Police Act. They have failed to apprehend and charge the accused in all the mentioned complaints lodged with police ...

50 As a result of the “irresponsibility, negligence and corruption of the police” the Appellants have suffered “loss of income, loss of business, pain and distress and public humiliation and defamation”.

According to para 2 of the statement of claim the misconduct of the police amounted to abuse of the Appellants' human and constitutional rights. They sought general and exemplary damages.

On 6 January 2004 the Respondents filed a summons to strike out the Appellants' proceedings on the grounds that they disclosed no reasonable cause of action and that they were scandalous, frivolous or vexatious (see RHC O18 r 18(1)(a) and (b)).

The Acting Assistant Superintendent of Police in charge of the police district at Nasinu where all the matters of complaint had occurred filed an affidavit in support of the summons. The superintendent explained that each of the complaints lodged by the Appellants had been investigated. He exhibited five copies of report books and copies of two charges laid. Of the other complaints, two were still open for investigation while three had been classed as trivial.

The superintendent also averred that a complaint by the Appellants to the Police Professional Standard Department had been formally investigated and "the matter was taken to Court". The parties subsequently reconciled and the court proceedings were terminated.

The supporting affidavit was not answered by the Appellants but on 1 March 2004 when the matter came on for hearing they told the court (Singh J) that they were ready to argue the application.

On 19 March 2002 the Appellants' action was struck out on the ground that it disclosed no reasonable cause of action. The Appellants have appealed against that decision.

As will be seen from the High Court's decision the principal ground for upholding the Respondents' application was that the court applied *Hill v Chief Constable of West Yorkshire* [1989] AC 53; [1988] 2 All ER 238 which is settled authority for the proposition that while there is a general duty imposed on the police to enforce the criminal law an action for damages is not an appropriate vehicle for investigating the efficiency of the police force. Furthermore, as a matter of public policy the police are ordinarily immune from actions for negligence in respect of their activities in the investigation and suppression of crime.

That is not to say that in exceptional circumstances a police officer may not be held by reason of a sufficient relationship of proximity to owe the complainant a duty of care (*Knightley v Johns* [1982] 1 WLR 349; [1982] 1 All ER 851 and *Costello v Chief Constable of the Northumbria Police* [1999] 1 All ER 550; (1999) 11 Admin LR 81) however the High Court found that on the facts of the present case as emerging and as emerged from the affidavit evidence the Appellants had not established such a relationship. We agree.

The High Court also referred to the Appellants' claim that their human and constitutional rights had been infringed. Having considered the provisions of the Constitution upon which the Appellants relied, the High Court concluded that no infringement of these provisions had been revealed. We also agree with that conclusion.

The first Appellant told us that he felt very much let down by the failure of the police adequately to investigate the matters reported by him. Before commencing proceedings in the High Court he had complained to the Police Professional Standards Department and to the Ombudsman but had received satisfaction from neither. While it is clear to us that the High Court correctly applied the law it is important that aggrieved members of the public can be confident that their complaints will be carefully and promptly investigated.

The appeal will be dismissed. There will be no order as to costs.

Appeal dismissed.

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