

**Evenor v The Government of The Republic Of Seychelles
(2001) SLR 146**

Antony DERJACQUES for the Plaintiff
Caroline HOAREAU for the Defendant

Judgment delivered on 31 May 2001 by:

PERERA J: This is an action in delict in respect of an alleged unlawful arrest and detention. The Plaintiff avers that on 23 September 1998 around 9.20 a.m he was working at the New Port in Victoria, when "*several unknown officers of the State House Security Unit*" arrived and arrested him. He further avers that he was taken to the Grand Anse Police Army Camp at Police Point, and detained there. The Defendant denies any arrest and detention by itself or its Agents.

The Plaintiff testified that three persons came in a white Peugeot car and asked whether they could take him to the gate of the New Port. He agreed and got in, but they drove past the gate and took him to the Grand Police Army Camp and left him near the gate there. At the Army Camp he was taken by Army Officers, to Major Robert Ernesta who questioned him. Thereafter he was detained in a cell up to 6 pm on 25 September 1998, a period of 2 days and 9 hours. He was then taken to Anse Royale, and he went home. The Plaintiff further testified that he identified the three persons who took him to the Grand Police Camp as Marcel Rachel, Danny Alcindor and one Marengo, who were attached to the State House Security Unit.

In the meantime, on 24 September 1998, an application for a Writ of Habeas Corpus was filed under his name as petitioner in the Supreme Court for his release, and that application was registered as C.S. 294/98. (*exhibit P1 and P1a*) A supporting affidavit was filed by his brother Sady Evenor. He was released the next day before the Court made any order on that application. He was not subsequently charged for committing any offence after his release.

Sady Evenor, the brother of the Plaintiff testified that when he heard that Paul had been arrested, he instructed Mr Derjacques, Attorney at-Law to file a Habeas Corpus application. He stated that he paid for that application, and for the present action. He further stated that the Plaintiff was released on 25 September 1998 and hence the Habeas Corpus application was not proceeded with.

Rommel Cafrine testified that he was working with the Plaintiff at the New Port at the time the Plaintiff was taken away by three persons who came there in a car. He identified one person as Marc Rachel who is in the State House Security Unit. He heard Rachel calling the Plaintiff but did not hear any other conversation. Later in the day he met the Plaintiff's brother Sady Evenor and he informed him about the incident. He also told his employer Mr Dingwall.

As regards the defence case, Major Robert Ernesta of the SP.F testified that from August to October in 1998 there was a joint Army and Police operation to deal with crime in the country. He stated that the Army Officers assisted the Police Officers who were in command, but never arrested anybody. He denied seeing the Plaintiff or interviewing him on any matter during that period. He also denied that he was detained at the Grand Police Prison.

Sub-Inspector Sonny Legaie testified that during the joint operations of the Police and the Army, he received instructions from the Commissioner of Police. All arrests were done by Police Officers, and not by Army Officers. He categorically denied that the Plaintiff was arrested by him or any other Police Officer under his command. He stated that he was stationed at the Grand Police for about three months and he saw Major Ernesta coming there. But he did not see him bringing anyone for detention during that period.

Corporal Marc Rachel testified that he was a member of the SPDF, attached to the State House Security Unit. He stated had never been ordered by any Superior Officer to arrest anyone. He denied going to the New Port to arrest anyone. He knew the Plaintiff while both of them were studying at the NYS. He stated that if he had arrested him, he would certainly have remembered. He further stated that he had never taken part in any joint operation with the Army Officers.

Danny Alcindor another member of the SPDF attached to the State House Security Unit denied that he ever was engaged in any joint operation with the Army to arrest persons. He also stated that he had never seen nor known the Plaintiff. He too denied going to the New Port to make any arrest.

Jamie Marengo, also an SPDF Officer, attached to State House Security Unit denied making any arrests. During the joint operation he too denied knowing the Plaintiff in the case. He however recalled a white-coloured Peugeot car S2936 being used by the State House Security Unit. He never drove it, as he had no license. He did not even get a lift in that car.

In paragraph 2 of the plaint, the Plaintiff averred that "several unknown officers of the said Security Unit (State House Unit) acting during the course of their duties arrested and imprisoned the Plaintiff at the Grand Anse Police Camp" on 23 September 1998 around 9.20 a.m. The Defendants, the Government of Seychelles is therefore sued in a vicarious capacity as the employer of these "*unknown officers*".

However on 24 May 2000, the Plaintiff in his testimony before this Court named Major Robert Ernesta as the Officer in charge of the Grand Anse Police, and Corp Marc Rachel, Corp Danny Alcindor and Corp Jamie Marengo as the three persons who came in a white car to the New Port to arrest him. Learned Counsel for the Republic thereupon sought an adjournment to obtain further instructions. Subsequently, she filed a praecipe for summons on the three named officers on 21 September 2000. Their evidence was heard on 5 October 2000.

Learned State Counsel submitted that it was common knowledge in the country that at around the time the Plaintiff claims to have been arrested and detained, a few people were arrested by Police Officers assisted by Army Officers in a joint operation, and that gave an opportunity for those people who could not get in touch with their relatives "to assume" that they had been arrested and were being detained. It was further submitted that the Plaintiff had gone off somewhere for two days and fabricated a story of arrest and detention. As regards the filing of the habeas corpus application, it was submitted that it was filed by relatives who assumed that he had been arrested.

With respect, these submissions are outside the averments in the defence. They are purely speculative and are unsupported by the evidence in the case either directly or inferentially. Article 18(10) of the Constitution provides that -

A person who has been unlawfully arrested or detained has a right to receive compensation from the person who unlawfully arrested or detained that person or from any other person or authority. Including the State, on whose behalf or in the course of whose employment the unlawful arrest or detention was made or from both of them.

On a balance of probabilities, I accept the Plaintiff's case that he was arrested on 23 September 1998 around 9.20 a.m at the New Port by Officers acting on behalf of the State and detained until 6 p.m on 25 September 1998 without being produced before a Court of Law within 24 hours of such arrest as required by Section 100(1) of the Criminal Procedure Code and Article 18(5) of the Constitution.

As was held in the case of *Samanthilaka v Perera* (1990) 1 Sri Lanka Law Rep. 318:

The State necessarily Acts through its servants, agencies and institutions. But it is the liability of the State and not that of its servants, agents or institutions that is in issue. It is not a question of vicarious liability. It is the liability of the State itself.

In the instant case, the unlawful period of incarceration was 2 days and 9 hours (57 hours). In the case of *Gerard Canaya v The Government of Seychelles* CS 42 of 1999, this Court inter alia awarded R5000 for an unlawful arrest and detention for 18 hours. In the case of *Noella Lajoie v The Government of Seychelles* (Constitutional case no. 1 of 1999), the Court awarded R5000 for an unlawful detention for 38¹/₂ hours. Article 1149(2) of the Civil Code provides that-

Damages shall also be recoverable for any injury to or loss of rights of personality. These include rights which cannot be measured in money such as pain and suffering, and aesthetic loss and the loss of any of the amenities of life.

Arrest and detention for no lawful reason, causes loss of rights of personality of the

arrestee. In a delictual action he would be entitled to moral damages for fear and emotional stress as well as for loss of personality. The Plaintiff's claim of R200,000 is however grossly exaggerated. On a consideration of previous awards and the circumstances of the present case, I award a global sum of R20,000.

Judgment is accordingly entered in favour of the Plaintiff in a sum of R20,000 together with interest and costs.

Record: Civil Side No 357 of 1998