STANLEY KAIPUA -v- ATTORNEY GENERAL, KIM WANGA

High Court of Solomon Islands
(Awich, Commissioner)
Civil case No. 65 of 1995
Hearing: 6 November 1995
Ruling: 13 November 1995

A. Radclyffe for Plaintiff
Attorney General for Defendant

Awich, Commissioner: The plaintiff Stanley Kaipua brought action against Attorney General, representing Solomon Islands Police, as first defendant and Kim Wanga as second defendant claiming $9,000 being value of his vehicle No.7103 and $6,300, being lost income from running it as a taxi. The basis of the claim was that the second defendant took the plaintiffs' vehicle on the night of 26 March 1994 and crashed it against a coconut tree. It was alleged that at the time, the plaintiff was in police custody on a criminal charge, not related to this claim and his vehicle was taken into Police possession. He did not authorise the second defendant nor the police to take the vehicle. The second defendant was a special constable. The claim was founded in the main on negligence, the plaintiff pleading that the police owed him duty of care for his property taken from him at the time he was detained and that duty continued when he was in police cell. There was alternative based on conversion of the vehicle by the second defendant, and that the first defendant was vicariously liable because the second defendant was a special police constable.

The first defendant admitted in paragraph 5, that it owed duty of care, "to take reasonable precautions," to prevent loss or damage to belongings of the plaintiff while he was detained. The admission was of law, in the circumstances of this case it was correct. He, however, contended that the vehicle was never taken into the custody of the police, because the plaintiff had given it to Wanga thereby relieving the first defendant of duty of care. It was also contended that, "it was reasonable to assume that the second defendant who was not on duty would not convert the plaintiff's car ....." By that I take it that the first defendant meant that it was not reasonably foreseeable that an off duty special constable would convert the vehicle of the plaintiff.

It is for the plaintiff to establish the facts it sought to rely on, namely that on detaining the plaintiff, the police took custody of his vehicle or neglected to do so, and that because of that, the second defendant was able to have possession of the vehicle with the result that it crashed. That Wanga took the vehicle and damaged it in accident is common ground.

The plaintiff testified, stating that he handed over keys for his vehicle to the police when he was being admitted into cell. The next day his vehicle was not at the Police station. He was led to where it had met accident and got badly damaged. His case was therefore that on those facts the police must be taken to have been negligent. It appears the plaintiff sought to rely on res ipso Loquitur as evidence led on his behalf did not particularise how the keys got to Wanga. Gaps in that testimony would appear to be filled by the testimony of Wanga, himself a defendant, in as far as he stated that he obtained the car keys from Sgt Mataki whose full name was subsequently given as Andrew Matakifenua, the officer in charge of the police officers on duty, by

telling him a lie. Wanga made two divergent statements to the police about the incident, and while he seems to give detailed account of the search of the plaintiff on being admitted to cell, he conveniently goes off to drink water when it comes to the details of what he saw in the plaintiff's bag. I don't consider his testimony reliable to found or support a case. The plaintiff's own testimony would appear detailed and free following so that it may be relied upon. Important questions remain unanswered though in regard to his testimony. He spoke about having $200 at the time of his arrest and detention, he does not claim that he handed it over to the police, he said he locked it in the car, which was parked outside at a point where there was no light. It is hard to believe that he thought that the money was more safe there than being handed to the police and recorded as did the first suspect, admitted before him and the third suspect admitted after him. Why was he so casual about such substantial sum of money, or was it because he had made his own arrangement to sufficiently take care of it and he believed that arrangement was better than giving the money to the police? Secondly, in his statement to the police dated 27th March 1994, exhibit No. D1, he stated:

> *"At Central police station officers did not listen to my story, but just ordered me to go into the cell. At that time, a special constable came to me and took my keys. The taxi key was also in the bunch of the key(sic). After that I did went (sic) and slept in the cell".*

One cannot be sure whether he meant Special Constable Wanga or one referred to as Sam or the other referred to as John. I am however, sure that at that stage, if the keys were not being given by the plaintiff, Kaipua to that special constable in a private arrangement between Kaipua and that special constable, Mr Kaipua would have mentioned to police the $200.00 he locked away in the car, to have it recorded and ensure its safety. He did not mention in his testimony that the money got lost nor where he collected it from after his release from cell. Moreover there was no mention as to whether the special constable was or appeared to be on duty.

In the end I am not able to say that the plaintiff adduced sufficient evidence to prove the facts it sought to rely on to assert duty of care and its breach or conversion and vicarious conversion. On the evidence, I would dismiss the main claim based on negligence and the alternative claim based on conversion.

The first defendant did not do better either. No intelligible answer was given by his witness to the question why the police who already had plaintiff under arrest allowed him to get into a private chat at police station unattended, and to give away his vehicle privately. There is no explanation why the records for the other two suspects showed great details of personal belongings such as analysis of money found on them, their wearing apparel and comb. In the case of the plaintiff nothing was recorded as found on him, not even his wearing apparel was recorded. Witnesses for the defendant denied the presence of a special constable by the name of John. On the page of the cell book exhibit D2C where particulars of the third suspect Patterson Pedini is recorded, a signature that seems to include letter J appears in the space provided for the police officer recording to sign. The signatures on the first two pages 2A and 2B appear to be the same and are different from that on D2C.

There is however a third aspect to this case. The plaintiff stated among other facts, in its claim at paragraph 2 thus:

> *".....The plaintiff was taken into the police station where he was searched by the police officers and his personal effects including the keys of the said taxi were taken from him. The plaintiff was placed in a cell where he remained that night."*

The first defendant in his defence filed on 5th April 1995 admitted the contents of that paragraph 2 of the plaintiff's claim in these words:

> *"1. Paragraphs 1 and 2 of the Plaintiff's Statement of Claim is admitted."*

Despite that admission by the pleading the first defendant conducted his case as if he had withdrawn that admission. He should have in the first place done so or at least had it amended; it was open for him to do so, he did not. He is bound by the admission to the effect that the police searched the plaintiff and took his keys from him. It follows that Wanga must be taken to have obtained the keys from the police. In the circumstances it could only have been negligent of the police to have given away the keys, the belonging of a detainee, without him authorising, with the result that the plaintiff's vehicle was taken and crashed. The first defendant is liable to the plaintiff in negligence and must be answerable for the resulting losses according to the principle of damages in negligence cases. The difficulty that Attorney General faced could have been discovered and corrected if parties had recourse to Order 35 dealing with settlement and framing of issues. In settling issues of facts and or law , parties would have discovered the rather anomalous admission and had it corrected before or during the trial. I urge counsel to make frequent use of Order 35, its use certainly shortens trials.

I shall add that in the end the trial has not produced useful proof or disproof. The plaintiff needed only to have proceeded to apply for judgment in terms of Order 34 rule 6 on the admission made by the first defendant.

The second defendant admitted liability in conversion. there is no need to enter judgment in the alternative, otherwise judgment would have been entered accordingly.

It was settled before trial that the court hears the question of liability and adjourns the question of damages or value sine die. I so adjourn that question sine die. Costs will also be decided at the close of that trial.

Dated at Honiara this 13 day of November 1995.

(Sam Awich)
COMMISSIONER