

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CIVIL SUIT NO. 355 OF 1998

BETWEEN:

CALVERT ROBERTS

Plaintiff

and

THE ATTORNEY GENERAL OF
SAINT VINCENT AND THE GRENADINES

Defendant

Appearances:

Mira Commissiong for the Plaintiff
Jaundy Martin for the Defendant

2001: June 2, 27
July 24
September 17

JUDGMENT

[1] WEBSTER, J. (*acting*). This is a claim by the Plaintiff for damages for:

- (a) false imprisonment arising out of the arrest and subsequent imprisonment of the Plaintiff by Police Corporal Kenneth John on September 24, 1997;
- (b) violation of the Plaintiff's right to personal freedom guaranteed by section 3 of the Constitution of Saint Vincent and the Grenadines.

FACTS

[2] The Plaintiff is a former employee of Karib Cable TV. On September 24, 1997 he was driving his employer's motor vehicle TB 909 along Murray's Road in Kingstown, St. Vincent, when he was stopped by Corporal John because he did not appear to the

Corporal to be controlling the vehicle properly. In response to questions about his driving permit the Plaintiff told Corporal John that he only had a P&R permit, and did not have a T licence to drive the vehicle. Further, that he had told his employers that he did not have the required T licence, but they still gave him the vehicle to drive. Corporal John then told the Plaintiff that he was arresting him for driving the vehicle without being the holder of a driving permit to drive that class of vehicle, and for using the vehicle without there being in force in relation to such use a policy of insurance with respect to third party risks. The Plaintiff then drove the vehicle to his work place at Frenches Gate escorted by Corporal John. I do not accept that the Plaintiff refused to leave the vehicle, turned it around, and drove away so that Corporal John had to chase him. There was no mention of the chase in the pleadings nor in Corporal John's witness statement filed on June 8, 2001, and he was not convincing when he was giving this part of his evidence.

[3] Corporal John then escorted the Plaintiff on foot from his work place to the Central Police Station and charged him with the offence of driving a vehicle without the required class of driving permit, and for using the vehicle without there being in force in relation to such use a policy of insurance with respect to third party risks.

[4] The Plaintiff was then locked in a cell at the Central Police Station at about 9:30 a.m., and taken to the Kingstown Magistrates Court at approximately 11 a.m. He pleaded guilty to both charges and was fined \$250.00 for driving without the required permit and reprimanded and discharged on the insurance charge.

[5] On August 28, 1998 the Plaintiff initiated these proceedings by filing a generally indorsed Writ of Summons seeking the relief set out in paragraph 1 above.

FALSE IMPRISONMENT

[6] The Plaintiff's first claim is for damages for false imprisonment. False imprisonment is the complete deprivation of a person's liberty for any time, however short, without lawful excuse (Clerk & Lindsell on Torts 16th edition paragraphs 17-18). The action for false imprisonment is one of the forms of trespass to the person and therefore it is not

necessary to prove actual damage - Bullen and Leake and Jacobs' Precedents of Pleadings 12th edition page 428.

[7] The tort arises in this case from the arrest of the Plaintiff on Murray's Road on the 24th September, 1997, and his subsequent imprisonment at the Central Police Station for approximately 1½ hours. There is no question that his liberty was completely restrained from the time he was arrested on Murray's Road, and so the only issue is whether the arrest was lawful. Both sides agree that the burden of proving the lawfulness of the arrest rests squarely on the Defendant.

[8] The Constitution of St. Vincent and the Grenadines guarantees to everyone who falls under its protection the right to personal freedom. Section 3 of the Constitution provides that-

“No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases that is to say

(a)

(b)

(c)

(d)

(e) upon reasonable suspicion of his having committed or being about to commit, a criminal offence.”

It is immediately apparent that the right to personal freedom is not unlimited, and a person can be denied his freedom if he is reasonably suspected of having committed, or being about to commit, a criminal offence. The power to arrest a suspected person and thus deprive him of his freedom can be exercised by a police officer with or without a warrant. The Plaintiff was arrested without a warrant and so we are concerned in this case with police powers of arrest without a warrant. Both the Common Law and statute authorise the police to arrest without a warrant, but they must act within the confines of the statutory provisions or common law rules, otherwise the arrest will be unlawful.

- [9] The Defendant is relying on the statutory power of arrest conferred by Section 30 of the Criminal Procedure Act, Cap. 125 which provides that-

“Any police officer may without an order from a Magistrate and without a warrant arrest-

(a)

(b) any person who commits in his presence any offence punishable by imprisonment.”

In order to comply with section 30 the Defendant must prove that Corporal John arrested the Plaintiff for committing an offence that is punishable by imprisonment.

- [10] Corporal John arrested the Plaintiff on suspicion of committing two offences, viz: driving a vehicle without a permit to drive that class of vehicle contrary to section 28(1) of the Motor Vehicles and Road Traffic Act, Cap. 355; and using a vehicle without there being in force in relation to such use a policy of insurance with respect to third party risks contrary to section 3(1) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap. 356. The Defendant did not plead any other basis for arresting the Plaintiff, and, following the decision in *Dumbell v Roberts and Others* [1944] 1 All E.R. 326, no other basis was considered by the Court.

- [11] At the trial the Defendant did not rely on the offence of driving without the required permit as a basis for the arrest. The Defendant sought to justify the arrest of the Plaintiff by reference to the offence of using the vehicle without insurance contrary to Section 3 of the Motor Vehicle Insurance (Third Party Risks) Act which reads-

“3(1) Subject to the provisions of the Act no person shall use, or cause or permit any person to use, a motor vehicle on a public road unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance, or such security, in respect of third party risks as complies with the requirements of this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable to a fine of seven hundred and fifty dollars and to imprisonment for six months...” (emphasis added).

[12] On the face of it the Plaintiff was arrested for committing an offence punishable with imprisonment. He freely admitted to Corporal John that he did not have the correct licence to drive the vehicle, and he was told that he was being arrested for driving without the proper licence and driving without insurance. However, Learned Counsel for the Plaintiff invited the Court to look at section 3 as a whole to determine if, on the facts of this case, the Plaintiff was arrested for an offence that is punishable with imprisonment. In this regard subsection (6) of section 2 is relevant. Subsection (6) provides-

“A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves that the vehicle did not belong to him and was not in his possession under a contract of hire or loan, that he was using the vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance or security as complied with the requirements of the Act.”

[13] Counsel for the Plaintiff relied heavily on this subsection and submitted that if the Plaintiff can prove the various elements in the subsection he cannot be convicted of an offence under section 3. If he cannot be convicted he is not guilty of the offence and therefore he was not arrested for an offence punishable with imprisonment. Counsel further submitted that there was ample evidence that the Plaintiff was driving his employer's vehicle, not his own vehicle or a hired or borrowed vehicle. Corporal John was therefore put on notice that the Plaintiff was driving his employer's vehicle, and he should have asked the Plaintiff if he understood that because he did not have the proper licence to drive the vehicle that he was not insured and was therefore in contravention of the Motor Vehicles Insurance (Third Party Risks) Act. I do not agree.

[14] The power of arrest without a warrant conferred on police officers by section 30 of the Criminal Procedure Act is to arrest any person who commits an offence punishable with imprisonment in the presence of the police officer. The Plaintiff was arrested for committing an offence under section 3 (2) of the Motor Vehicle Insurance (Third Party Risks) Act. A person who is convicted of an offence under section 3 is liable to be imprisoned for six (6) months. The offence is therefore one that is punishable with imprisonment. What subsection (6) does is to provide a defence to a person charged with

an offence under the section if he satisfies the various requirements of the subsection. The mere fact that a statutory defence is available does not change the character of the offence from one punishable by imprisonment to an offence not so punishable, and a police officer's authority to make an arrest is not lost because a defence is available to and subsequently vindicates the arrested person. The police officer's job is to detect and investigate crime. The determination whether there are grounds to suspect a person of committing a crime has been placed within his purview - the determination whether the person suspected of committing the crime is or is not guilty is within the purview of the court.

- [15] Corporal John's role on the morning of the 24th September, 1997 was to determine whether there was reasonable grounds for suspecting that the Plaintiff had committed an arrestable offence, that is, one punishable with imprisonment. In doing this he had to consider all the facts, including any obvious defence that was available to the Plaintiff. The situation that he had to deal with was one where he observed the Plaintiff driving in a manner that he thought was dangerous to the public. He stopped the Plaintiff who told him that he did not have a proper licence to drive the vehicle, and that he had told his employers but they still gave him the vehicle to drive. Counsel for the Plaintiff urged the Court not to accept this evidence. However, it was pleaded by the Defendant and not specifically denied by the Plaintiff in his Reply. It was repeated in Corporal John's witness statement, and again during his evidence in chief. It was not suggested to him in cross-examination that the Plaintiff did not make the statement. I therefore find that the statement was made and it indicates that the Plaintiff was aware that he did not have the proper licence to drive the vehicle, and also that his use of the vehicle was not insured.

- [16] It is also significant that the Plaintiff pleaded guilty to the insurance charge later in the day, and admitted in cross-examination during this trial that-

"I was driving illegally that morning. I was not insured to drive the vehicle"

At no stage did he plead or say that he thought that he was insured. His conduct throughout is inconsistent with any such position.

[17] In short, the Plaintiff was caught driving a vehicle without the proper licence and insurance and he admitted that he should not have been driving the vehicle but was required to do so by his employers. It was reasonable for Corporal John to suspect that the Plaintiff had committed an offence punishable with imprisonment and that he knew that he had committed the offence. The Plaintiff's subsequent conduct of pleading guilty to the offence and then confirming during his evidence at this trial that he was not insured, confirms the reasonableness of Corporal John's suspicion that the Plaintiff's use of the vehicle was not insured, and therefore that he had committed an offence punishable with imprisonment.

[18] I therefore find that Corporal John had authority to arrest the Plaintiff at Murray's Road on the morning of September 24, 1997, and the only remaining issue is whether he should have arrested the Plaintiff. This arises because section 30 of the Criminal Procedure Act, by the use of the words "*may...arrest*", gives the arresting officer a discretion whether or not to arrest, even when the conditions of the section have been satisfied. Counsel in the case were not asked to address the Court on this issue and so what follows is without the benefit of their input.

[19] The equivalent UK provision to our section 30 is section 24 of the Police and Criminal Evidence Act, 1984 which replaced section 2(4) of the Criminal Law Act, 1967. Section 2(4) reads-

"Where a constable, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without a warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence"

This is substantially the same as our section 30 and was considered by the House of Lords in *Mohammed-Holgate v. Duke* [1984] A.C. 437. At page 443 Lord Diplock had this to say about the statutory power to arrest without a warrant on reasonable suspicion –

"So the condition precedent to Detective Constable Offin's power to take the appellant into custody and the power of the other constables at Southsea Police Station to detain

her in custody was fulfilled; and since the wording of the subsection under which he acted is 'may arrest without warrant,' this left him with an executive discretion whether to arrest her or not. Since this is an executive discretion expressly conferred by statute upon a public officer, the constable making the arrest, the lawfulness of the way in which he has exercised it in a particular case cannot be questioned in any court of law except upon the principles laid down by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. -v- Wednesbury Corporation* [1948] 1 K.B. 223, that have become too familiar to call for repetitious citation. The *Wednesbury* principles, as they are usually referred to, are applicable to determining the lawfulness of the statutory discretion of a constable under section 2(4) of the Criminal Law Act 1967, not only in proceedings for judicial review but also for the purpose of founding a cause of action at common law for that species of trespass to the person known as false imprisonment, for which the action in the instant case is brought."

This passage confirms that an arresting officer is not obliged to make an arrest even when the conditions for making an arrest without a warrant exist. He should take the additional step of deciding whether it is necessary to arrest the offender. No doubt this final decision is necessary because the arrest of a person is such a serious step having the effect of denying the arrested person his constitutionally guaranteed freedom. However, the decision to effect the arrest is the exercise of an executive discretion conferred by statute and the Court will only interfere with the exercise of the discretion if there is a breach of the *Wednesbury* Principles.

[20] Briefly, the principles laid down in *Wednesbury* are that a court will not interfere with a public authority's exercise of a discretion given to it unless the authority–

- (a) exercised the discretion *mala fides*;
- (b) disregarded relevant considerations in coming to its decision;
- (c) took irrelevant considerations into account when coming to its decision,
- or
- (d) came to a decision that no reasonable authority in its position could possibly come to.

If the authority (in this case the police) come to a decision in any of the these ways, it is considered to have acted unreasonably, permitting the court to interfere with the decision. There is no evidence to suggest that the Corporal John acted *mala fides* in arresting the Plaintiff, nor that he was motivated by any irrelevant consideration, or did not take into account any relevant consideration. Constable John did what was required of him in effecting an arrest without a warrant for an offence that is punishable with imprisonment – he took the Plaintiff to the police station, charged him, and arranged for him to be taken to the Magistrates Court within three hours of the arrest. There is nothing in the evidence to suggest to the Court that any of the Wednesbury Principles was breached.

- [21] In all the circumstances I find that the arrest of the Plaintiff on the morning of September 24, 1997 was not unlawful and the claim for damages for false imprisonment fails.

BREACH OF CONSTITUTION

- [22] It follows from the finding that the Plaintiff was lawfully arrested on suspicion of committing an offence punishable with imprisonment that his right of personal freedom guaranteed by section 3 of the Constitution was not breached, and this claim also fails.

ORDER

- [22] The order of this Court is that the Plaintiff's claim is dismissed with costs of \$750.00 to the Defendant.

Paul Webster
High Court Judge (Ag.)