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**IN THE SEYCHELLES COURT OF APPEAL**

**WILLY CHARLES**

**APPELLANT**

**versus**

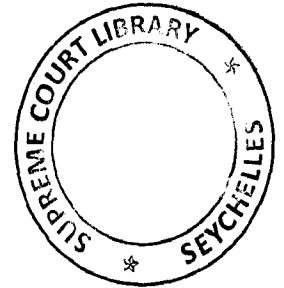
**THE ATTORNEY GENERAL**

**RESPONDENT**

Civil Appeal No: 11 of 2001

[Before: *Ayoola, P., Silungwe & De Silva, JJA*]

Mr. F. Ally for the Appellant  
Mr. R. Govinden for the Respondent



**JUDGMENT OF THE COURT**

*(Delivered by Silungwe, JA)*

When this appeal was allowed, we said then that we would give our reasons later. We now do so.

The appellant had brought a Petition before the Constitutional Court alleging contraventions of articles 16, 18 (2) (b), 18 (3) (4) and (5) of the Constitution; and seeking the following orders:

- (a) declaring the arrest and detention of the Petitioner unconstitutional;
- (b) declaring the acts of assaults and torture unconstitutional;
- (c) giving compensation to the Petitioner under Articles 18 (10) and 46 (1) with Article 56 (5) (d) of the Constitution in the sum of SR150,000;
- (d) granting such other orders or writs as may be appropriate to enforce the Constitution.

The Petition was based on an allegation that the Petitioner had been unlawfully arrested and detained by the police on November 11, 1998, and further that he had on that same day been taken away by an unknown soldier of

the Seychelles Defence Forces and detained at Grand Police Army Camp for four days until November 15 when he was released at about 17.30 hours. Further it was alleged that during the detention he had repeatedly been assaulted and tortured by soldiers.

The Petition was decided on the pleadings, supported by oral argument by learned Counsel on both sides. The Court dismissed allegations of assault and torture but upheld the allegations that the appellant had been detained in custody from 09.30 hours on November 11, until 17.30 hours on November 15, 1998 without being brought before a Judge or Magistrate in contravention of Article 18 (5) of the Constitution. It was further noted that the respondent had violated the appellant's right to liberty, in terms of Article 18 (1) of the Constitution. These latter findings were based on the respondent's averment admitting violation of Article 18 (5) of the Constitution. The appellant was then awarded a sum of SR10,000.00.

The appeal was against the whole Judgment.

After a careful consideration of the appeal on its merits, we found no basis for disturbing the Constitutional Court's findings on allegations of assault and torture. We were of the view that the only issue of substance concerned the quantum of damages.

Mr. Ally contended on behalf of the appellant that the damages that had been awarded to the appellant were derisory in the circumstances of the case and urged the Court to increase the amount of damages. He argued that the Constitutional Court had failed to take into account the fact that the appellant had been detained in a former high security prison on no reasonable suspicion at all; and that he had been detained incommunicado by the army for a period of over four days without reasonable cause or suspicion.

Mr. Govinden contended, however, that the quantum of damages awarded was fair for the reason that, in constitutional compensations, the object is only to repair the infringement of a respective right only.

The award of damages was clearly founded on a consideration of principles applicable to damages awarded under Public Law as opposed to those

awarded under Private Law. The Constitutional Court relied, inter alia, on its Judgment in **Darrel Green v The S.L.A.** (Constitutional Case No.3 of 1997) – unreported - in which the following observations were made.

*“This Court is not the proper forum to consider evidence and grant delictual damages. Hence an aggrieved person should decide between bringing a delictual action to obtain compensation, or file a constitutional case to establish the contravention of a fundamental right and obtain a <sup>SOLATIUM</sup> ~~solution~~ where ~~RECESS~~ <sup>RECESS</sup> is granted. He cannot have both. When Article 46 (5) provides for the awarding of any damages for the purpose of compensating the person concerned for any damages suffered; the framers of the Constitution would not have contemplated the granting of damages based on delictual principles in Private Law, which falls under the original jurisdiction of the Supreme Court ...”*

Article 46 (5) (d) of the Constitution provides that:

*“46 (5) (d) upon hearing of an application under Clause (1) the Constitutional Court may –  
(e) award any damages for the purpose of compensating the person concerned for any damages suffered.”*

In our view, the view of Article 46 (5) (1) is both straight forward and unambiguous, hence the ordinary meaning must be attached to the provisions of that article with the result that there is no limitation on the amount of damages available under the said Article. In the circumstances, we are satisfied that the amount of damages was not properly decided. In any event, the quantum was too low for the constitutional violations in this case. The case of **Eric Derjacques v The Commissioner of Police**, SCA 17 of 1995 is distinguishable from the present case in that there, the appellant who had been detained for 26 hours (and should have been brought before a Magistrate’s Court within 24 hours of his

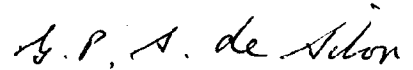
detention) was awarded SR.10,000.00 in 1995. The appellant in the present case had been detained in custody for four days.

The foregoing are the reasons that weighed on our minds in varying the award of damages from SR.10,000 to SR.20,000.



**E. O AYoola**  
**PRESIDENT**

**A. M. SILUNGWE**  
**JUSTICE OF APPEAL**



**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this

day of **April** 2002.