

CITATION: *Abdat & Anor v General Manager,
Darwin Correctional Centre & Anor*
[2025] NTSC 13

PARTIES: ABDAT, Latifah

and

TAYLOR, Mesiah

v

GENERAL MANAGER, DARWIN
CORRECTIONAL CENTRE

and

NORTHERN TERRITORY OF
AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising
Territory jurisdiction

FILE NO: 2025-00523-SC

DELIVERED: 5 March 2025

HEARING DATE: 5 March 2025

JUDGMENT OF: Grant CJ

CATCHWORDS:

ADMINISTRATIVE LAW – Remedies – Habeas corpus

Application for writ of habeas corpus for release of second plaintiff from prison – Whether remand unlawful – Application dismissed.

Criminal Code 1983 (NT) s 361(4), s 334(1)

Bail Act 1982 (NT) s 39

Local Court (Criminal Procedure) Act 1928 (NT) s 60(1)

Australian Communist Party v Commonwealth (1951) 83 CLR 1; *Ex parte Besset* (1844) 6 QB 481; *R v Barnardo (Jones's Case)* [1891] 1 QB 194; *R v Clift*; *Ex parte P* [1941] SASR 41; *Raymond v Honey* [1983] 1 AC 1, referred to.

REPRESENTATION:

Counsel:

First and Second Plaintiffs: Self-Represented

First and Second Defendants: M Moloney

Solicitors:

First and Second Plaintiffs: Self-Represented

First and Second Defendants: Solicitor for the Northern Territory

Judgment category classification: C

Judgment ID Number: Gra2501

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Abdat & Anor v General Manager, Darwin
Correctional Centre & Anor [2025] NTSC 13
No. 2025-00523-SC*

BETWEEN:

LATIFAH ABDAT

First Plaintiff

MESIAH TAYLOR

Second Plaintiff

AND:

**GENERAL MANAGER, DARWIN
CORRECTIONAL CENTRE**

First Defendant

**NORTHERN TERRITORY OF
AUSTRALIA**

Second Defendant

CORAM: GRANT CJ

REASONS FOR DECISION

(Delivered *ex tempore* on 5 March 2025)

- [1] This is an application by the plaintiffs for the issue of a writ of habeas corpus for the release of the second plaintiff from prison. The first plaintiff is the mother of the second plaintiff. The second plaintiff is presently remanded in custody at the Darwin Correctional Centre.

- [2] The history of this matter is as follows. By an indictment dated 5 March 2023, the second plaintiff was charged with supplying a commercial quantity of cannabis in an indigenous community and possessing less than a trafficable quantity of cannabis.
- [3] On 10 August 2023, the matter was listed for trial in the Supreme Court commencing on 27 May 2024. At that same time the matter was listed for a first pre-trial hearing at 9 am on 22 August 2023. When the matter came on for the pre-trial hearing there was no appearance by the second plaintiff. The prosecutor advised the presiding judge that a Local Court warrant had issued for the arrest of the second plaintiff for a failure to appear before that Court. The matter was adjourned on the understanding that the prosecution would make contact with the Supreme Court once the second plaintiff had been apprehended on the Local Court warrant.
- [4] On 28 November 2023, the matter came back before the Supreme Court for a further pre-trial hearing. There was again no appearance by or on behalf of the second plaintiff on that occasion. The matter was listed for further pre-trial hearing at 9 am on 12 January 2024. That pre-trial hearing date was subsequently vacated and relisted at 9 am on 27 March 2024. In the meantime, the second plaintiff had been arrested on the warrant issued by the Local Court. On 28 February 2024, the second plaintiff was granted further bail by the Local Court to appear on 6 March 2024 subject to various conditions involving an exclusion

zone and the consumption of dangerous drugs. The Supreme Court proceeding was relisted for pre-trial hearing at 9 am on 27 March 2024.

[5] As matters transpired, on 6 March 2024 the second plaintiff failed to appear before the Local Court in accordance with his bail undertaking. As a consequence, the Local Court issued another warrant for his arrest. Perhaps unsurprisingly in those circumstances, the second plaintiff also failed to appear at the pre-trial hearing in the Supreme Court on 27 March 2024. The pre-trial hearing was adjourned to 3 May 2024, which was approximately three weeks before the second plaintiff's jury trial in the Supreme Court was scheduled to commence.

[6] On 3 May 2024, there was no appearance by the second plaintiff at the pre-trial hearing. The pre-trial hearing was adjourned to 9:15 am on 15 May 2024, which was approximately two weeks before the jury trial was scheduled to commence. There was again no appearance by the second plaintiff at that time. At the scheduled commencement of the trial on 27 May 2024 there was again no appearance by the second plaintiff. The trial had to be vacated by reason of that failure to appear and, for the first time, the Supreme Court issued a warrant for the arrest of the second plaintiff.

[7] The second plaintiff was not located by police until 19 February 2025, when they were called to a domestic dispute at Knuckey's Camp in which the second plaintiff was involved. He was arrested at that time

on the outstanding arrest warrants which had been issued by both the Supreme Court and the Local Court. He was not at that stage arrested in relation to any allegation of aggravated assault or domestic violence offending concerning the incident which took place at Knuckey's Camp on the morning of 19 February 2025. It was that incident which had brought the second plaintiff to the attention of police at that time. However, the second plaintiff was subsequently charged with aggravated assault in relation to that incident.

[8] On 21 February 2025, the second plaintiff was brought before the Supreme Court in relation to his arrest on the warrant which had issued for his apprehension on 27 May 2024 for failing to appear for his jury trial. The second plaintiff made an application for bail at that time. For reasons which are quite obvious given the history of the matter, that application was refused and the matter was referred to the criminal call over on 6 March 2025 to allow the listing of either a fresh trial date or a plea date.

[9] As matters presently stand, the second plaintiff is subject to charges on five separate files. First, he is charged with the drug offences already described which have been committed to the Supreme Court. He is also charged with breaches of bail in the Local Court on two separate files. He is also charged with possession and supply of drugs in the Local Court. Finally, he is also charged with one count of aggravated assault

in the Local Court arising out of the incident which led to his location and arrest on the morning of 19 February 2025.

[10] The application for the writ of habeas corpus asserts that the second plaintiff's remand in custody is unlawful. That contention is essentially put on the basis that the second plaintiff was the victim rather than the perpetrator of an assault on the morning of 19 February 2025.

[11] The writ of habeas corpus will issue for the purpose of bringing some person into the presence of the Court or a Judge, so that the Court or a Judge may make an order with regard to the release or continuing detention of that person. The procedure is generally used for the purpose of bringing up persons whose liberty is alleged to be interfered with other than in accordance with the law: see *R v Barnardo (Jones's Case)* [1891] 1 QB 194 at 204. Unless there is statutory authority for the arrest and detention of the person detained, that person is entitled to a writ of habeas corpus to obtain his or her freedom: see *Ex parte Besset* (1844) 6 QB 481. That is because a prisoner retains all of his or her personal rights and remedies, except insofar as the law deprives the prisoner of them: see *Raymond v Honey* [1983] 1 AC 1 at 10.

[12] To justify arrest and detention, there must be a statute or subordinate legislation which authorises that action and effectively abrogates or suspends the right to habeas corpus: see *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 at 195; *R v Clift*; *Ex parte P* [1941]

SASR 41 at 46. It is only if the detention is found to be *ultra vires* that habeas corpus may be granted. The onus is on the applicant for a writ of habeas corpus to establish on the balance of probabilities that the detention is beyond power or otherwise unlawful. There is a presumption that the warrants of remand are regular, and it is incumbent on the plaintiffs to adduce evidence to rebut the presumption that they were issued within power.

[13] Section 361(4) of the *Criminal Code 1983* (NT) provides that if an accused person absents himself or herself from trial without leave, the court may direct a warrant to be issued for his or her arrest. Accordingly, the warrant for the arrest of the second plaintiff on 27 May 2024 for failing to attend his trial was issued in pursuance of that statutory authority, and police were authorised to arrest the second plaintiff in accordance with that warrant.

[14] Section 334(1) of the *Criminal Code* provides that once a person has been committed for trial on indictment before the Supreme Court, the Court may, if it thinks fit, remand the accused person until the date of trial. Accordingly, the remand of the second plaintiff in custody on 21 February 2025 was ordered in pursuance of that statutory authority. Moreover, remanding the second plaintiff in custody was the only order which might properly and appropriately have been made in circumstances where he had previously failed to attend for trial and had

repeatedly failed to appear in the Local Court in accordance with his bail undertakings.

[15] For those reasons, the second plaintiff's remand in custody under the orders made by the Supreme Court is lawful and there is no proper basis for the issue of a writ of habeas corpus. The question whether or not police had authority to arrest and detain the second plaintiff in relation to the allegations of aggravated assault arising out of the incident on 19 February 2025 is not an issue which arises on this application. That is because he was lawfully arrested in the execution of the warrant of apprehension issued by the Supreme Court, and lawfully remanded by the Supreme Court following that arrest.

[16] Even were that not so, the second plaintiff was also lawfully arrested by police on 19 February 2025 in the execution of the warrant of apprehension issued by the Local Court on 6 March 2024. Section 39 of the *Bail Act 1982* (NT) provides that where a person fails to appear before a court in accordance with the person's bail undertaking, the court may issue a warrant for the person's arrest. The warrant of apprehension was issued by the Local Court in pursuance of that statutory authority, and police were authorised to arrest the second plaintiff in accordance with that warrant.

[17] Following the second plaintiff's arrest on the warrant, he was remanded in custody by the Local Court on 21 February 2025 in

relation to the charges outstanding in that court. On 3 March 2025, the remand on the breach of bail files was continued. The second plaintiff is at this stage remanded on the drug and aggravated assault charges until 14 April 2025. Section 60(1) of the *Local Court (Criminal Procedure) Act 1928* (NT) provides that where a defendant is apprehended under a warrant the court may remand the defendant from time to time. The second plaintiff is at this stage also lawfully remanded in pursuance of that statutory authority.

[18] The application for a writ of habeas corpus and/or the release of the second plaintiff is dismissed.
