

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-02192

(Formerly H.C.A. S1554 of 2004)

BETWEEN

JULIO ALMANDO READY
(A minor by his next friend Cecelia Lorna Peters) **CLAIMANT**

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO **DEFENDANT**

Before the Honourable Mr. Justice V. Kokaram

Appearances:

Mr. S. Gopaul-Gosine for the Claimant

Mr. C. Sieuchand and Mr. Alsaran instructed by Ms. Sharma for the Defendant

JUDGMENT

1. Introduction:

1.1 At the commencement of this trial counsel for the Claimant abandoned the reliefs sought by the Claimant for damages for negligence and misfeasance in public office, limiting the claim before the Court for determination to an action for damages for false imprisonment.

1.2 On 13th November 2000, Acting Corporal Herbert Gabriel who was attached to the Community Police Unit at the Siparia Police Station, received information that there was a child being kept in a cage at Ready bar, Coora Road, Siparia. The child was the Claimant, Julio Almando Ready (“Julio”) who was at that time 4 years of age. Acting Corporal Gabriel went to the bar together with Police

- Constable Zaid Mohammed where he saw Julio in the kitchen area standing in a locked wooden cage looking through the bars, naked and covered with faeces. The cage was circular in shape and made of wooden bars about three inches apart. At the top of the cage Julio was imprisoned by a circular wooden top attached to hinges with a latch and padlock used to secure the wooden top to the sides of this cage.
- 1.3 Julio's father, Jude Ready was not at home and Acting Corporal Gabriel removed the child from the cage and took him to the police station as he held the view that an offence under the Children's Act Chapter 46:01 ("the Act") was being committed.
 - 1.4 At the station the child was washed off and his clothes were changed. It was at this station that the child was, according to Acting Corporal Gabriel, in a place of safety. What followed thereafter however was a most bizarre and unfortunate sequence of events.
 - 1.5 Acting on the advice of his Senior Superintendent, Acting Corporal Gabriel called the Guardian newspaper and reported the incident with a view to highlighting the plight of Julio. He then asked WPC Claire David to return with him to the bar to take photographs of the conditions under which Julio was being kept for the purposes of prosecuting the father of the child for having committed an offence under the Act. Acting Corporal Gabriel then returned to the bar with Julio in the company of other police officers.
 - 1.6 On arrival at the bar, not surprisingly, media personnel were already on the scene. Acting Corporal Gabriel in the presence of the media directed that Julio be placed back into the cage. The child was returned to the cage, a soiled pamper was placed in the cage, the lid was closed on the child and a lock placed in the latch. The media began taking pictures of the child. In one of the photographs admitted into evidence is a picture of the child in the cage with his arm reaching through the bars. Julio was in this cage for two minutes and was taken out, placed into a police car and taken back to the police station.

- 1.7 Ironically, WPC David was asked by Acting Corporal Gabriel to take a photograph of Julio inside the cage but she refused indicating that it would not be wise to do so.
- 1.8 The child was taken to the San Fernando General Hospital where he was medically examined. Mr. Ready was subsequently charged with the offence of willful ill treatment of the minor, Julio, contrary to section 3(1) of the Act. Indeed the prosecution of Jude Ready was conducted without any pictures of Julio in this cage. The charge was later dismissed by Magistrate Jokhan after considering the evidence of both prosecution and accused.
- 1.9 The child is now the Claimant in these proceedings seeking damages for false imprisonment.
- 1.10 It is contended by the Claimant that the return of the child into the cage by Acting Corporal Gabriel constituted a false imprisonment. The mere deprivation of the child's liberty for no matter how short constitutes an unlawful imprisonment. Unfortunately the Defendant sought to defend this claim by contending that there was nothing wrong in placing the child back into the cage even though he was at the mercy of the media. The Defendant contended that there was no intention by Acting Corporal Gabriel to imprison the child but that he was motivated by the honourable purpose of taking evidence for a prosecution. These submissions however betray a fundamental misunderstanding of the tort of false imprisonment and the implications of the actions of Acting Corporal Gabriel.

2. The Proceedings:

- 2.1 This claim was instituted under the Rules of Supreme Court (1975) and was converted to the Civil Proceedings Rules (1998) by notice dated 3rd July 2007.
- 2.2 In this case no evidence was adduced by the Claimant himself. The only witness statement filed in these proceedings for the Claimant was by his father Jude Ready dated 3rd December 2007. Counsel for the Claimant contended that Mr. Ready's witness statement was merely formal as he recites the agreed facts in the case. Unfortunately the Court does not agree with that proposition. It is accepted

that Mr. Ready was not present at home when the child was taken and returned by the police. He cannot therefore truthfully give an account as to what transpired from his own knowledge. Counsel for the Claimant conceded that the witness statement was superfluous having regard to the agreed bundle of documents filed in this action and the defence which in essence admits the basic facts of this case. The witness statement was accordingly withdrawn by the Claimant.

- 2.3 The Defendant in its Defence filed 27th January 2005 admitted that the officers of the Police Service returned the child to the cage after first removing him from it. In paragraph 7 of its Defence it asserts that the officers were *acting "bona fides in the execution of their duties"*. The Defendant further contends that:

"The said officers on reasonable grounds suspected that an offence under the Children's Act Chapter 46:01...has been committed namely the willful ill treatment of a minor in a manner likely to cause unnecessary suffering or injury to his health and in the honest belief that cogent evidence would be necessary for the prosecution of that offence and without intention to cause harm or injury to the Plaintiff took such steps as were thought necessary to collect such evidence."

- 2.4 In his witness statement Acting Corporal Gabriel stated, *"I honestly believed that Julio's health was at serious risk because of the conditions in which he was being kept. I believed that a photograph of Julio in the cage would be an important part of my evidence."*

- 2.5 In assessing the evidence in this case the Court is not convinced that there were any honourable motives by the police in returning the child to the cage. The alarm bells sounded at least for WPC David who opined that it was not right to take pictures of the child in the cage. The fact that WPC David the official police photographer in the police service did not take any pictures of the child in the cage gives the lie to the explanation preferred by the Defendant that the photograph was necessary for the prosecution of an offence under the Act.

3. The imprisonment of Julio:

- 3.1 The sole issue to be determined in this matter is whether the placing of Julio in the cage constituted a false imprisonment.
- 3.2 It is trite law that interference however slight with a person's elementary civil right to security of the person and self-determination in relation to his own body constitutes a trespass to the person. A false imprisonment is the complete deprivation of liberty for any time however short without lawful excuse.
- 3.3 Clerk and Lindsell on Tort 17th ed. paragraph 12-17 states:
- “ Imprisonment is no other thing but the restraint of a man's liberty whether it be in the open field or in the stocks or in the cage in the streets or in a man's own house, as well as in the common goals and in all the places the party so restrained is said to be a prisoner so long as he hath not his liberty freely to go at all times to all places whither he will without bail of mainprise or otherwise.”*
- 3.4 Julio was the virtual prisoner of the Acting Corporal Gabriel or the other officers present at the bar. The child was in their care and custody from the moment he was removed from the cage and taken to the Siparia Police Station. The police no doubt were discharging their duty under the Act to take the child to a place of safety. However he later was escorted back to the cage and imprisoned there for about two minutes. Acting Corporal Gabriel admits that when he directed the child to be placed in the cage, “he was not free to leave.” It is therefore unrealistic for Acting Corporal Gabriel to assert in his cross-examination that the child was “not restrained.” This certainly could not be true having examined the pictures taken of the child by the media showing Julio holding on to the bars of the cage, the lid closed shut and the lock in the latch. *“The prisoner may be confined within a definite space by being put under lock and key or his movements may simply be constrained at the will of another.”*¹ It is undisputable that Julio was at the mercy of Acting Corporal Gabriel and rather than protect the child he exposed him to the very same elements that the officer knew was unsafe.

¹ Clerk and Lindsell (ibid)

3.5 The Court is satisfied that there was no lawful excuse for the behavior of Acting Corporal Gabriel. I have had the opportunity to observe this witness under cross-examination and his demeanor portrayed someone who was not willing to be entirely frank with the Court. He was deliberately misleading as to his motives for returning the child to the cage. His explanation that he needed a photograph for evidential purposes simply does not make sense. He was reluctant in offering any sensible response to a simple question put to him by Counsel for the Claimant, whether it is a proper practice for the police to return evidence to the scene of a crime. He admitted under cross-examination to having called the media to highlight the “*situation*”. Yet when he arrived at the bar he allowed the media to remain on the compound and made absolutely no objection to them taking photographs of the child in the cage. What is more egregious is that he allowed them to take those photographs when his colleague advised him that it was not wise to do so and when he himself admitted that the cage was not in his view a “*safe place*” for the child.

3.6 Acting Corporal Gabriel acknowledged his duty as a police officer under the Children Act. The Act makes express provision for the protection of children. Section 11 (1) states as follows:

“A constable may take to a place of safety any child or young person in respect of whom an offence under this Part ...has been, or there is reason to believe has been or is likely to be committed.”

Section 87(5) of the Act prohibits the publication of the identification of a child before the Court save with the permission of the Court or in so far as is required by the Act. With these provisions it is unreasonable for Acting Corporal Gabriel to determine firstly the need to return the child to the cage and secondly to cause the media to publish and expose the identification of the child to the nation. In cross-examination he admitted that he “summoned” the media and had no difficulty “in having this entire incident widely publicized.” Indeed the picture of the child together with the story of his conditions appears in two published articles under the headline “Caged” and “Cops rescue boy in cage.” Unfortunately in this

case the “rescuer” has exposed the Defendant to an unnecessary liability where better sense should have prevailed.

- 3.7 Having considered the agreed bundle of documents and the testimony of the Defendant’s sole witness, the conclusion that the Plaintiff was falsely imprisoned by the Defendant is irresistible.

4. Damages:

- 4.1 As observed earlier in this judgment, there was no evidence adduced by the Claimant himself. There is no direct evidence from him as to any injuries he sustained as a result of the false imprisonment. The only medical evidence tendered by the Claimant was a medical report dated 13th November 2000, which states as follows: *“Patient looked well however was mildly dehydrated and mucus membranes pale. He had no acute medical problems requiring admission, however on the advice of medical social worker Ms Rahamut I admitted the patient to the hospital upon request of the accompanying police officer as a place of safety.”*
- 4.2 However this evidence is not helpful to the Court. First, it confirms that there was no serious injury sustained by the child. Second, the report was in fact used by the police in the prosecution of Jude Ready to demonstrate the ill treatment of the child by him. There is no nexus between this medical state, mild as it is, with the false imprisonment by the police of two minutes. Accordingly it is not evidence that the “mild dehydration” is probably the result of the false imprisonment by the Defendant.
- 4.3 It would have been a simple matter to demonstrate with evidence the effect this incident had on the child. Such evidence may include that of a psychiatrist or other medical expert. Although evidence of a Specialist Medical Doctor in psychiatry, Dr Karen Ghany was admitted in the magistrate’s court with regard to the hyperactive state of the child, again there is no nexus between that observation and the imprisonment of the child by the police. The Court cannot cure this

deficiency in the Claimant's evidence. In the absence of any evidence on the question of damages the Court will award nominal damages.

4.4 Counsel for the Claimant submitted that the child suffered a traumatic experience. Further as a result of the action of the Defendant his life was exposed to the public and he will be forever known as the child in the cage.

4.5 Unfortunately neither side cited any authority for the assessment of an appropriate award of damages. Guidance is however obtained from the general statement in Clerk and Lindsell paragraph 12-80:

“Any trespass to the person, however slight, gives a right of action to recover at any rate nominal damages. The defendant may still be liable in trespass for all the consequences flowing from the tort whether or not those consequences are foreseeable. Even where there has been no physical injury, substantial damages may be awarded for indignity discomfort or inconvenience. Where liberty has been interfered with damages is given to vindicate the plaintiffs' rights even though no pecuniary damages have been suffered. In assessing damages for false imprisonment the judge is entitled to consider any evidence that the defendant was persisting in the charge originally made in bringing about the false imprisonment.”

4.6 The Court is satisfied that this is an appropriate case to award damages to vindicate the Claimant's rights. A principal head of damages for false imprisonment is the injury to liberty, the injury to feelings and injury to reputation. In **Walter v Alltools** (1944) 61 T.L.R. 39 “a false imprisonment does not merely affect a man's liberty it also affects his reputation.” See also **Mc Gregor on Damages** 14th Ed. para. 1357, 1358 and HCA S 1597/86 **Kamal Ramsarran v Romiel Rush**. In HCA 350 of 1997 **Dilip Kowlessar v AG** the Court awarded the sum of \$38,000.00 as general damages inclusive of aggravated damages where the Court held that the detention of the Applicant for two days. The facts of that case are more serious than the one under consideration. The Applicant was placed in a cell with 12 other prisoners. The Court held that there

was no evidence that he was treated harshly by the police but he would have suffered great distress, inconvenience and embarrassment. The Court awarded the sum of \$12,000.00 in damages for false imprisonment for keeping the Plaintiff unlawfully in a police station for three hours in HCA 160 of 1993 *Albert Joseph v A Melville and the AG*. See also the useful guidance offered by Pemberton J in *Ed Jacob v R Small* at pages 2-3.

- 4.7 The Claimant's claim for damages in this case is based upon an imprisonment for a mere two minutes. The Court however takes into account that the imprisonment was the placing of the child in an unsavory environment and physically imprisoning the child in a cage. Unlike other cases of false imprisonment of civilians being imprisoned with other prisoners, this is a story of a child being returned to his prison. The Court takes into account the fact that from all accounts the child normally spent time in the cage.
- 4.8 There are however aggravating circumstances in this case. These include the officer's breach of duty in failing to keep the child in a place of safety. The actions of Acting Corporal Gabriel without justification summoning the national media resulting in the expose of the child's vulnerable state. Pursuing this course of action against the advice of better counsel from his colleague WPC David. These circumstances justify an award of aggravated damages.
- 4.9 The Court will therefore award a global award taking into account the aggravating circumstances. In *Alpha Sabah v AG* PC 39 of 2007 Lord Bingham stated:
"..ordinarily and in cases such as the present..constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case although it is not necessary and not usually desirable...for the allowance for aggravated damages to be separately identified."

- 4.10 Doing the best I can having regard to the state of the evidence the Court awards damages in the sum of \$10,000.00 inclusive of aggravated damages.

5. Costs

- 5.1 Counsel for the Claimant submitted that the Claimant would be entitled to his costs assessed under the Rules of Supreme Court (1975) for the work done by his attorneys prior to the date the matter was converted to the CPR.
- 5.2 The impact of a conversion of an action pursuant to Part 80.3 CPR no doubt may work an injustice on litigants. Prior to the matter being converted the litigant proceeds on the basis that the costs incurred are recoverable pursuant to Order 62 of the Rules of Supreme Court. Quite apart from the expectations of the parties, under those rules applications would have been made in which the Court would have made the usual orders that “costs be taxed in default of agreement”. It is logical to assume that the parties would be entitled to tax those costs under the cost regime in which the order was made. Indeed under the new rules those types of orders and costs orders such as “costs in the cause” are now almost obsolete. In this action for example there was an order made at the Summons for Directions stage in favour of the Claimant “costs in the cause”.
- 5.3 In this case the Court issued its notice on 3rd July 2007 transferring the action from the RSC to the CPR. Part 80.3 CPR is clear that the CPR are the governing provisions of this action after the action has been converted. There is no discretion it appears to award costs on any basis other than that set out in Part 67 CPR. This effect on the litigants entitlement to costs was recognized by Stollmeyer J in CV 2005-0111 *Edward Boucher v AG* as harsh and required an amendment to the CPR.
- 5.4 Perhaps such an amendment can be found in Part 51 of the Civil Proceedings Rules (UK) which specifically provides for practice directions to be made to make provisions for the extent to which those rules shall apply to proceedings issued before 26 April 1999. Practice Direction-Transitional Arrangements at 51 PD.18 specifically provides that any assessment of costs that takes place on or after 26th

April 1999 will be in accordance with CPR Parts 43 to 48. It makes further provision for the operation of transitional arrangements in relation to costs.

5.5 In this case the costs will be awarded pursuant to the prescribed costs regime of Part 67.5 CPR. See *Boucher* page 8.

6. Conclusion

6.1 The Claimant therefore succeeds on his claim for damages for false imprisonment. There shall be judgment for the Claimant against the Defendant for damages in the sum of \$10,000.00 inclusive of aggravated damages together with interest thereon at the rate of 12% per annum from 24th August 2004 to the date of this judgment, 9th June 2009.

6.2 The Defendant shall pay to the Claimant prescribed costs in the sum of \$4,724.40.

Dated this 9th day of June 2009

Vasheist Kokaram
Judge