

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-01802

BETWEEN

SHAREED KOON KOON

Claimant

AND

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES:

Mr. Robert Boodoosingh, attorney-at-law Claimant

Ms. Sasha Sukhram instructed by Ms. Nisa Simmons, attorneys-at-law for the Defendant

JUDGMENT

Introduction

1. In these proceedings, Shareed Koon Koon, a member of the Trinidad and Tobago Regiment, seeks damages for the negligence of clerical staff at the Tunapuna Magistrates' Court. In the course this judgment, the Court considered and applied well-known principles of the law of negligence and contributory negligence.

Facts

2. On August 21, 2012, Shareed Koon Koon, was issued with a Notice of Opportunity to pay Fixed Penalty, more commonly known as a ticket. On the face of the ticket, Mr. Koon Koon was charged with parking on a taxi stand, contrary to regulation 95 of the ***Road Traffic***

Regulations Chap 48:50. He was required to pay the fixed penalty of Seven Hundred and Fifty (\$750.00), failing which he was summoned to appear before the Tunapuna Magistrate's Court on November 5, 2012.

3. Mr. Koon Koon opted to defend himself and appeared before the Magistrates' Court on November 5, 2012. The hearing of Mr. Koon Koon's case was adjourned firstly to November 19, 2012 and then to December 3, 2012.
4. On the December 3, 2012, Mr. Koon Koon appeared before Magistrate Stroud at the Tunapuna Magistrate's Court. On this day, Mr. Koon Koon was found guilty. A fine of \$850.00 was imposed on him. In default, he would be required to serve 7 days hard labour. He was however allowed time, of four (4) weeks for payment.¹
5. Mr. Koon Koon, in his Witness Statement testified that at the end of his trial he heard the Magistrate impose a fine of \$750.00.²
6. He was cross-examined on this allegation and under cross-examination, Mr. Koon Koon was asked whether he heard that he had to pay \$750.00. He responded by indicating that he never said that.
7. Under cross-examination, it was drawn to the attention of Mr. Koon Koon, that the Statement of Case contained no allegation that he had heard the magistrate say that the fine was \$750.00. In response, Mr. Koon Koon insisted that the Magistrate never told him what the fine was.
8. Accordingly, Mr. Koon Koon presented two versions of what occurred when he was found guilty. In his Witness Statement he testified that he heard Magistrate Stroud say that the

¹ See the Extract of magistrate Case Book exhibited to the Witness Statement of Sascha Williams-Goddard and marked SWG2.

² See paragraph 3 of the Witness Statement of Shareed Koon Koon.

fine was \$750.00. Under cross-examination Mr. Koon Koon stated that the Magistrate never told him the amount. The Statement of case is silent as to a figure being specified by the magistrate. In fact, the Statement of Case makes no reference to the Magisterial hearing or to the sentence which was imposed on December 3, 2012.

9. Having heard the testimony of Mr. Koon Koon, it was my view that his testimony under cross-examination was to be preferred. He had not heard a figure stated by the Magistrate. The Court will rely on the documentary evidence to be found in the Extract of Magistrate's Case Book and find as a fact that the fine imposed was Eight Hundred and Fifty Dollars (\$850.00).
10. Mr. Koon Koon did not pay the fine as soon as it was imposed. He attended the Tunapuna Magistrate's Court on the December 20, 2012 and presented his ticket and paid the sum of \$750.00. He received a receipt, a copy of which was annexed to his Witness Statement and marked "B". The receipt stated that it was for "ticket No. 763085...."
11. On June 18, 2013, Mr. Koon Koon was at his home. He was arrested by P.C. Reyes who told the Claimant that he had a warrant for his arrest. He was processed at the Tunapuna Police Station and spent two nights in the cell.
12. On the morning of June 20, 2013, Mr. Koon Koon was taken to the Tunapuna Magistrates Court and placed in the holding cell. A police officer, P.C. Julien, enquired whether any prisoner had money to pay.
13. Mr. Koon Koon gave P.C Julien the money to be paid. P.C. Julien later returned with The Claimant's change and receipt and Mr. Koon Koon was released from custody.
14. The receipt was exhibited to the Witness Statement as C. An examination of exhibit C reveals its difference from the first receipt. The sum specified in Exhibit C was \$850.00

and indicated that same was paid in full. The receipt bore the indorsement, "on Warrant" and was headed, "Receipt for Time allowed Fine". Such a fine, according to the Defendant's Witness Sarah Herralal-Narine is entered in the "Time Allowed book".

15. The function of the Time allowed Book was explained by Sarah Herralal-Narine at paragraph 8 of her Witness Statement.³ This witness explained that following the imposition of a fine for which time is allowed, the time allowed fine is entered in the "Time Allowed Book" by the "Time allowed Clerk". Similarly, the Time Allowed Clerk would enter payment of the fine in the Time allowed Book, when the time allowed fine is paid at the counter.
16. Ms. Herralal Narine testified that she examined the records which indicated that the claimant's payment of \$750.00, on the December 20, 2012 was not entered in the Time Allowed Book but in the normal ticket book.
17. From an examination of her records, Ms. Herralal-Narine inferred that the Claimant, upon presenting himself at the counter on December 20, 2013, simply presented his ticket and did not indicate that he was paying the fine.
18. The above inference is consonant with the testimony of the Claimant under cross-examination, when Mr. Koon Koon agreed with the statement, that when he went to pay the ticket on the December, 2012, he presented the original ticket that indicated \$750.00, as payment due. Mr. Koon Koon did not refer to the fine, as imposed.
19. Ms. Herralal-Narine was herself cross-examined. She was questioned as to the procedure for the payment of a fine. In response, Ms. Herralal-Narine told the Court that the person

³ The Witness Statement of Sarah Herralal-Narine was filed on the November 28, 2016 on behalf of the Defendant.

paying the fine must go to the Counter, indicate to the Counter Clerk that they are fined and indicate the date of the fine. The Counter Clerk would then go to the Time Allowed Book and locate the fine.

20. Learned Counsel, Mr. Boodoosingh posed a hypothetical question by asking Ms. Herralal-Narine to suppose that a person comes to the counter and hands the clerk a ticket. Ms. Herralal-Narine responded that the Clerk will take it as being a ticket and take payment of the amount written on the ticket.
21. Having testified that the court keeps a yellow copy of the ticket, it was established that the yellow copy bears the fine at the back. Ms. Herralal-Narine under cross-examination indicated that the Clerk is required to check the white copy of the ticket against the yellow. This is sometimes done at the end of the day, in order to ensure that the full fine was paid.

Discussion

22. In these proceedings, the Claimant seeks damages for the false imprisonment and for negligence.
23. It was accepted, at an early stage of these proceedings, that an arrest pursuant to a warrant cannot be the subject of a claim for false imprisonment. Accordingly, the only issue which the court must consider is that of negligence and in particular whether the Counter Clerk, presented with the white copy of a ticket, failed to take reasonable care, by simply accepting the amount stated on the ticket and not proceeding, immediately to check the white copy against the Court's yellow copy in order to be sure that the correct amount was stated in the white copy.

24. The elements of the tort of negligence are well known. The Claimant who seeks damages for negligence is required to prove that the alleged tortfeasor owed him a duty of care; that there was a breach of that duty; and that there was resulting injury or damage. See paragraph 1-34 of **Charlesworth & Percy on Negligence** where three elements of negligence are listed, that is to say:

(1) the existence of a duty to take care, which is owed by the defendant to the complainant;

(2) failure to attain the standard of care prescribed by the law, thereby committing a breach of such duty; and

(3) damage, which is both causally connected with the breach and recognised by the law, has been suffered by the complainant.⁴

25. The issues which therefore engaged my attention were:

- a. whether the unnamed, unidentified Counter Clerk held a duty of care to the Claimant,
- b. whether the Counter Clerk breached that duty,
- c. whether the duties of a counter clerk are protected as being part of the judicial process.

26. It is my view that there could be no doubt that counter clerks owe a duty of care to members of the public who attend the counter for the purpose of paying a fixed penalty or a fine.

⁴ Charlesworth & Percy on Negligence 14th Edition, page 16 paragraph 1-34

27. The Counter clerk also carries a duty of care to other members of the public, who may be waiting in line behind a particular customer, as well as to the State, on whose behalf fines are being collected.
28. Consequently, according to the evidence Ms. Herralal-Narine, an unwritten procedure has been developed, where the person who attends the counter for the purpose of making a payment indicates whether he is paying the fixed penalty (ticket) or a time allowed fine. The indication by the member of the public evokes a response by the counter clerk either to have recourse to the ticket book or to the time allowed.
29. The Counter Clerk is required to check the white copy of the ticket presented by the customer against the yellow copy, which is kept on the Court's file. This checking exercise may not be possible while the customer is waiting, having regard to the number of tickets to be paid. In such an event, the Counter Clerk checks at the end of the day. The purpose of this checking is pursuant to the Counter Clerk's duty to the State, to ensure that there was no deficit in the payment of fines.
30. In these proceedings, Mr. Koon Koon went to the counter. He presented the ticket which specified the fixed penalty, which he had chosen not to pay. In presenting the ticket, Mr. Koon Koon must have been aware that the ticket was no longer relevant and that its relevance had been overtaken by his own decision to defend the charge and by magisterial hearing on December 3, 2012.
31. Having presented the ticket to the Counter Clerk, Mr. Koon Koon did not indicate that he had been fined. The Counter Clerk acted according to procedure by receiving the amount specified on the ticket.

32. In these circumstances, the Court considered whether the Claimant contributed to his suffering by his own negligence. Contributory negligence was defined at paragraphs 76-80 **Halsbury's Laws of England**⁵ in the following way:

"...The test is whether in the ordinary plain common sense the claimant contributed to the damage.

The existence of contributory negligence does not depend on any duty owed by the claimant to the defendant and all that is necessary to establish a plea of contributory negligence is for the defendant to prove that the claimant did not, in his own interest, take reasonable care of himself and contributed by this want of care to his own injury.

The standard of care in contributory negligence is what is reasonable in the circumstances, and this usually corresponds to the standard of care in negligence...A claimant must take into account the possibility of others being careless..."

33. It is my view that the Claimant also owed a duty to himself to bring the full facts to the attention of the Counter Clerk. His failure to do so resulted in the Counter Clerk being misled into checking the ticket book instead of the Time Allowed Book and into receiving an inaccurate sum of money from the Claimant. The negligence of the Claimant, in failing to alert the Counter Clerk that he was paying a time allowed fine, was the cause of the ultimate error which eventually led to the issue of a warrant for his arrest.

⁵ Halsbury's Laws of England, Volume 78 (2010)

34. Accordingly, I find no fault on the part of the Counter clerk. I find no breach of the duty of care which was held by this officer.
35. My findings makes it unnecessary for me to consider whether the work of the Counter Clerk is protected from claims in negligence, as being part of the judicial process. In support of their submissions on this issue, learned attorneys-at-law for the Defendants cited first instance constitutional motions, where warrants had been issued in error. In these proceedings, the warrant had not been issued in error, since there was an outstanding sum to be paid towards the time allowed fine. Moreover, recent authorities suggest that an arrested person may recover constitutional relief for a warrant which was issued in error. See the *Attorney General of Trinidad and Tobago v Russel David*⁶. Learned Attorneys-at-Law have not had an opportunity of commenting on the relevance of these authorities. I will therefore not rule on this aspect of the arguments.
36. The Claim is dismissed. The Claimant to pay to the Defendant, the costs of and associated with the Claim.

Date of Delivery: March 11, 2019
Justice Mira-Dean Armorer

⁶ Attorney General of Trinidad and Tobago v Russell David Civ Appeal Po28 of 2015, applied by this Court in CV2016-00060 Carlton Taylor v AG