

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007- 01952

BETWEEN

STEPHEN LEWIS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: R. Boodoosingh J.

Appearances:

Ms Marissa Ramsundar instructed by Mr Samlal for the Claimant

Ms Monica Smith instructed by Ms Florence Ramdin for the Defendant

Delivered: 2 July 2010

JUDGMENT

This is a claim for malicious prosecution and relief based on alleged breaches of the Constitution.

Stephen Lewis was in April 2006 a Special Reserve Police Officer. On 13 and 14 April 2006 he was a visitor to the San Fernando General Hospital where his brother was a patient. While there on both days he had an exchange with a Nurse, one Laurel Knutt.

The claimant alone gave evidence for himself and the defendant's witness was Gerald Mc Intosh.

From their evidence certain facts were agreed.

- On 23 April 2006 Corporal Mc Intosh visited the claimant's house.
- On 25 April 2006 Corporal Mc Intosh called the claimant in the morning time about giving a statement.
- On 27 April 2006 Corporal Mc Intosh and other police officers went to the claimant's house in Siparia about 1:30 am.
- The claimant was taken to Marabella Police Station.
- About 4:30 pm he was placed on an identification parade.
- He was identified as the person who had used obscene language at San Fernando General Hospital.
- He was charged by Corporal Mc Intosh with two counts of using obscene language.
- The matter came up twice before the Magistrate.
- On the second occasion, the matter was dismissed for non attendance of the police complainant.

There is little else that is agreed between the claimant and Corporal Mc Intosh.

The following issues were agreed between the claimant's attorneys and the defendant.

1. Whether the prosecution of the claimant was without reasonable and probable cause.
2. Whether the prosecution of the claimant was malicious.
3. Whether the defendant, its agents and/or servants breached the claimant's constitutional rights to:
 - i) Retain and instruct without delay, a legal adviser of his own choice and hold communication with him;

- ii) Inspect the search and/or arrest warrant when the police officers entered him home;
 - iii) Communicate with a friend or relative via a telephone call whilst in police custody.
4. Whether the police officers acting as servants and/or agents of the State were oppressive, arbitrary and unconstitutional (in their actions) and (if) the claimant is entitled to aggravated and/or exemplary damages.
 5. Whether the claimant is entitled to special damages for legal representation.

The first issue was whether this was a malicious prosecution.

The claimant gave detailed evidence as to what he says took place on 13 and 14 April 2006 at the Hospital. He said Mrs Knutt rang a bell loudly declaring visiting hours had ended. The claimant noticed that his brother was bleeding from his buttocks and he told Nurse Knutt about it. Nurse Knutt told him, “you don’t have to bother about that, the doctor would take care of that, now is time to get outta de damn ward.” He said on his way out he identified himself as an SRP Officer by showing his police identification card and told her that was not the manner to speak to people. She replied that she did not care about that, her husband was a police officer and she knew “a lot of big police.”

On 14 April he returned to see his brother. At the end of visiting hours, about 5:30 pm he went to the Nurses’ Station and asked if he could use the telephone to call the San Fernando Police Station because there was an emergency call on his mobile phone and the battery had died.

Nurse Knutt was again on duty and she replied: “You remember me from yesterday”. You not getting any blasted phone call here, use the pay phone.”

She said she knew a lot of police officers and he couldn’t do her anything. He told her she was a nurse and that is not the way to speak to persons visiting their sick relatives. He said “I am already in grief.” She retorted, “so what, I don’t care about you.”

From Corporal Mc Intosh’s witness statement the evidence was:

“At around 8:15 pm on Saturday April 15, 2006 I received certain information. I left the C.I.D. office on inquiries. These inquiries took me to the San Fernando General Hospital, ward 3. There, I had a conversation with one Laurel Knutt, the senior nurse attached to the ward, who had made a report. I interviewed several persons relative to the report made, and I recorded statements...”

This evidence in chief was vague to say the least.

The defendant also put forward uncertified and undated documents purporting to be Station Diary Extracts for 15 April 2006 and 27 April 2006. I allowed these documents with the proviso that I could only attach little weight to them. A Notice to Inspect these documents had been served on the claimant.

The 15 April extract contains a report that Laurel Knutt had reported to Corporal Mc Intosh that someone connected with a particular patient had used obscene language on both 13 and 14 April and the specifics of what was said was set out.

I was not prepared to attach much weight to this document. The statements allegedly taken were not submitted to the court and no explanation was given for their absence. The evidence was accordingly very thin from the defendant as to facts which could justify a prosecution against the claimant, given the detailed evidence given by the claimant.

Counsel for the claimant, however, unwittingly went on to try to fill the gaps in the defendant's evidence in her cross-examination of Corporal Mc Intosh.

The evidence she elicited in cross-examination included:

“A report was made by Laurel Knutt. To a senior officer. To Ag. Commissioner Philbert.

I was instructed to conduct investigations re: alleged obscene language.

Ag. Commissioner Philbert instructed me to carry out the investigation.

Received information from Philbert that an offence had allegedly, had taken place at Ward 3 of San Fernando General Hospital.

I was told I was required to go and interview Nurse Knutt and other nurses.

I left and went to San Fernando General Hospital.

I recorded two statements from Nurse Knutt and the Asst. Nurse that night.”

Then came this exchange:

“Q: You took a report from that other nurse? What did it contain?

A: I don’t recall what was in it at this time but it centered around the incidents of 13 and 14 April 06.

I went to San Fernando General Hospital as a result of then Ag. Commissioner. It included having a conversation with Nurse Knutt and other nurse.

Q: When you spoke to her, what information did she give you?

A: She reported to me of an incident at the Ward on 13 April 2006 and of another incident on the ward on 14/4/2006.

Q: She told you someone swore at her?

A: Yes. She told me she did not know the person’s name but she suspected he was a police officer.”

The cross-examination also revealed how he got to the claimant through his brother who was on the ward.

This exchange, along with the very brief and unhelpful evidence in chief led by the defendant, led me to ask several questions about the information and evidence which Officer Mc Intosh had before him as he determined if to lay a charge against the claimant.

There was a casual statement that he can’t recall what the other nurse said. Did that nurse support the report made by Nurse Knutt? What was the specific content of the report made by

Nurse Knutt? Why wasn't this put before me? Why was the version of the officer so vague in his witness statement?

I considered it necessary to approach the officer's evidence in cross examination with particular care since these answers would have been relevant to the defendant's case and therefore ought to have been included in his witness statement. I had, ultimately, to give little weight to the answers. A court is entitled to treat suspiciously important evidence to a side's case which comes forward only in cross examination. Had counsel for the claimant not gone down the road of cross examining this officer about those details, there would have been little or no evidence before me from the defendant on which to assess the officer's bona fides in bringing the charges.

Corporal Mc Intosh added in cross-examination that he asked the claimant for a statement who declined to give one. After this there were no additional inquiries and he laid the two charges.

The claimant also gave evidence that he had given a statement to a Sergeant. Ali. Corporal Mc Intosh said he did not know anything about that or about a Sergeant Ali assigned to the police station around that time. What is interesting is that the station diary extract was purportedly signed by an Acting Sergeant Rudy Ali.

Given the evidence of the claimant about what happened on the ward and the absence of evidence from the defendant about what information there was before Officer Mc Intosh when he decided to prefer the charge I am led on a balance of probabilities to the conclusion that this charge was made without reasonable and probable cause and that it was maliciously laid.

The answers coming in cross examination did not in my view rebut evidentially the clear and detailed evidence given by the claimant. There was also a significant absence of documentary evidence by the defendant without there being any proper explanation for this.

There is not sufficient evidence before me to consider if there a genuine attempt by the police officer to apply his mind to the bona fides of the report in the face of an order to investigate coming from the very top.

On this aspect of the claim, the claimant succeeds. But this is not the end of the matter.

At 1:30 in the morning of 27 April 2006 Corporal Mc Intosh and other police officer went to the claimant's home. Corporal Mc Intosh says he was "invited" to enter the home and to look for the claimant. He then went in and found the claimant hiding.

The claimant's version is that the officers barged into the home without an arrest warrant and told him he was "lock up." They then took him away.

The version of Corporal Mc Intosh on this incident is not believable. It goes against the grain of common sense. Why would the claimant seek to hide in a small house and have his girlfriend tell the officers they could come in to search? This was in my view no more than an excuse for entering the house without a warrant. It is clear from Corporal Mc Intosh's evidence in cross examination that he was given instructions to place the claimant on an identification parade and he was bent on carrying out this order. These orders were coming from senior officers. His

carrying out these orders went to the extent of arresting the claimant for a non arrestable offence in the middle of the night when no issue of a breach of the peace arose.

What then follows was that the claimant was taken to the San Fernando Police Station and then the Marabella Police Station.

The claimant was then, according to his evidence, placed in a cell until about 4:30 pm. The defendant offered no evidence in rebuttal except for a vague reference in the witness statement of Corporal Mc Intosh.

I accepted the evidence of the claimant that he was placed in a cell as he described it and kept there until he went on the identification parade. This was unjustifiable in this case. There was no evidence that the claimant was unruly when taken by the police or posed a threat or danger to anyone. If the intention was to place him on an identification parade he could have been brought in closer to the time and placed away from public view without being put into a cell. The nature of the offence did not justify the extreme measures taken in this case.

It is plain to me that there was an intention to punish the claimant because there was a belief, even if unreasonably, that he had used obscene language to someone who was either the wife of a police officer or someone known to “big police”, perhaps even the Acting Commissioner of Police himself. It is noteworthy in this regard that the instructions came from the Acting Commissioner of Police, a fact that only came out in cross examination.

While I do not at all ascribe any lack of bona fides to the action of the Acting Commissioner himself in giving the instructions, it may have been perceived by various officers that this case should be dealt with especially vigorously given the source of the complaint. A Commissioner of Police is entitled to treat seriously any report made to him about the conduct of his officers, and nothing I say here should be perceived as implying that reports of misconduct should not be properly and efficiently investigated. And nothing must be perceived as implying that a Commissioner of Police should not personally get involved in an investigation especially when it relates to the alleged conduct of one of his officers. At the same time a police officer accused of crime is also entitled, as any other citizen, to a fair investigation and all the procedural protections that the law affords. Further, the conduct of the investigating arm of the State must be proportionate to the nature of the report made and the circumstances of the alleged crime.

The claimant gave evidence that he requested to communicate with an attorney at law but he was denied this. The defendant led no evidence to challenge this evidence. I accepted that he was not given the opportunity to speak to an attorney at law. I find, however, that he was allowed to have a relative present to witness the identification parade.

The breach of this right, however, did not cause any specific prejudice to the claimant in this case. He made no confession and he was held to be placed on an identification parade. There was also no evidence that any attorney had attended to see him and was denied the opportunity to speak with him.

From the above, I therefore find:

- 1) There was malicious prosecution of the claimant.
- 2) There was no justification for the detention of the claimant in a cell and for the period of the detention given the circumstances of this case and the nature of the charges and the time that had passed from their alleged commission.

I do not consider it necessary to award damages for breach of his constitutional rights to communicate with an attorney in the circumstances of this case.

There was no justification, however, for the manner of the claimant's detention, the circumstances of this arrest and the length of this detention in those conditions. For this he is entitled to compensation.

The claimant would no doubt have suffered injury to his reputation and his feelings by this charge. He was a Special Reserve Police Officer. He was suspended after this charge was brought, and I am told, he was not re-engaged by the Police Service after the charge was dismissed. To his credit, he has been able to secure employment at times as a security officer but such work is not as steady as before nor is it as well-paid as his previous position.

I also looked at recent cases in this type of case. Among them were:

Joel Cromwell v Attorney General HCA 1230/2007. Decision given Nov 28th 2008

The claimant was charged with obscene language and resisting arrest. He claimed damages for malicious prosecution, false imprisonment and wrongful arrest, and damages for assault and battery. The claimant's version of events was accepted by the court. The sum of **\$135,000** general damages including damages for assault and battery, wrongful arrest, false imprisonment, and malicious prosecution as well as exemplary and aggravated damages was awarded. The learned judge found a violent and unprovoked attack and arrest which took place in the presence of several onlookers; the claimant was taken to 3 police stations, wrongfully imprisoned for 30 hours, 6 of which were in handcuffs in full view of public. He was deprived of food and was in extreme pain.

Mc Kenna v Attorney General HCA 3114/2006. Decision given 17 April 2008

This was a claim in false imprisonment and malicious prosecution. The sum of **\$40,000** general damages was awarded inclusive of an element of aggravated damages.

Ricardo Watson v Attorney General HCA 412/2003 Decision given 31 July 2008

The claimant was charged with the offences, housebreaking and larceny and possession of marijuana, which were dismissed. He was awarded **\$35,000** general damages (this figure included an element of aggravated damages) and **\$12,500** exemplary damages (owing to the behaviour of the police).

Gabriel v Attorney General HCA 1452/2003 . Decision given 8 Jun 2008

The plaintiff claims damages for wrongful arrest, false imprisonment and malicious prosecution. He was charged for armed robbery. He spent 84 days in prison. **\$125,000**

inclusive of an element for aggravation was given. The judge took into account the excessive length of time that elapsed between plaintiff's arrest and his being brought before the court: 8 days, the horrendous condition in which he was detained, and assaults of various types while being incarcerated. He was also awarded \$50,000 exemplary damages.

Alexis v Attorney General HCA 1555/2002. Decision given 17 Mar 2008

The Plaintiff claimed damages for malicious prosecution, unlawful arrest and detention and false imprisonment. He was arrested for possession of a dangerous drug namely cocaine. The sum of **\$100, 000** general damages inclusive of aggravated damages was awarded. The court accepted that the evidence was planted on the plaintiff and considered the charges remained pending for 4 years, the charge was defamatory of the plaintiff, they exposed the plaintiff to loss of liberty on conviction thus exposing him to fear distress and worry and the court found the police officer was actuated by malice and his actions constituted an abuse of power. The sum of **\$25,000** exemplary damages was given to mark the Court's disapproval of the conduct of the police officer.

Given the considerations set out in this case and having considered the cases mentioned, for the malicious prosecution, I award the sum of \$75,000.

The claimant was detained for about 18 hours before being put on an identification parade. He was taken from his home at 1:30 in the morning. The police entered his home without a warrant.

For the unlawful detention and the circumstances surrounding his arrest I award the sum of \$50,000.00. There is an element of aggravation included in this award.

I decline to make an award for exemplary damages. In my view, the award above, which includes consideration of aggravating circumstances, is adequate to show the court's disapproval of the conduct of the State's agents in this case.

I also award the sum of \$1500. as special damages as representing the cost of his legal representation in the Magistrates' Court.

The total award is therefore \$126,500. Interest will run on this from the date of entry of appearance by the defendant to the date of judgment at the rate of 6% per annum and at the rate of 12% per annum from the date of judgment to the date of payment.

The defendant will pay costs to the claimant on the prescribed scale in the sum of \$27,975.

Ronnie Boodoosingh
Judge