

**REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 2009-03485

HAKIM BRATHWAITE

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

Before the Honourable Mr Justice R. Boodoosingh

Appearances:

Mr G. Ramdeen for the Claimant

Mr M. Bhimsingh for the Defendant

Dated: 25 June 2012

REASONS

1. This was a claim against the Attorney General for damages for assault and battery and consequential loss suffered by the claimant as a result of the actions of servants and/or agents of the State in assaulting and beating the claimant on 4 January 2009 at the State Prison, Port of Spain. His claim for damages included aggravated and exemplary damages, interest and costs.

2. A claim form and statement of case was filed on 28 September 2009. The defendant entered an appearance on 15 October 2009 but failed to file a defence. On 22 January 2010 the defendant applied for relief from sanctions to file a defence. On 25 January 2010 this application was dismissed and the claimant was granted permission to enter judgment against the defendant in default of defence. Judgment was entered against the defendant on 26 January 2010.
3. On the hearing of the assessment of damages this court, by Order dated 6 October 2010, ordered as follows:
 - The Defendant to pay to the claimant general damages in the sum of \$ 100,000.00.
 - Interest on the general damages to be calculated at a rate of 9% per annum from the date of service of the claim form to 6 October 2010.
 - The Defendant to pay to the claimant \$ 40,000.00 as exemplary damages.
 - Interest on the judgment at the rate of 12% from 6 October 2010 to the date of payment.
 - Prescribed costs in the sum of \$ 39,000.00 to be paid by the Defendant to the Claimant.

Facts of the Assault and Battery

4. The unchallenged evidence of the claimant was that on 4 January 2009, he was incarcerated at the State Prison, Frederick Street, Port of Spain when at around 7 – 8 pm two prison officers, Mc Gregor and Matthew, came and searched the cell in which the claimant and six other inmates were being kept.
5. During the search the officers ordered the claimant and two other inmates to be placed in separate cells. When the claimant saw the cell he was being placed in he told the

officer he did not want to go there as the inmates in that cell were known to be violent and one of them had assaulted him before he came to prison. He was nevertheless placed in the cell and warned “Brathwaite whatever all yuh do don’t let me have to come back here for you”.

6. The claimant said there were about six other inmates in the cell and two of them immediately started to punch and push him around. Another inmate called out to Officer Mc Gregor and told him that there was a fight in the cell which the claimant was in. Both Mc Gregor and Matthew came to the cell. Mc Gregor called out to the claimant with his riot stave in his hand, cracked open the cell and pulled the claimant out. He told him to stand up in the corridor.
7. As the claimant turned his back to Officer Mc Gregor, he felt a stinging lash across his back. The officer then started firing lashes all over the claimant’s body. The claimant said he tried to ‘brakes’ the lashes aimed at his head and was hit all over his arms and across his chest and belly. Despite his pleadings, Mc Gregor continued to beat the claimant until a lash to the claimant’s temple on the left side of his head knocked him unconscious.
8. The claimant said he only revived when he felt a dash of water on his face. He said when he opened his eyes Mc Gregor then started to attack him again while he was on the ground, telling Officer Matthew “give me a chance with him again”. He said Mc Gregor started to kick him on his foot, legs, belly and back. He begged the officer to stop but he continued with the beating telling the claimant that he will teach him a lesson here today. The claimant urinated on himself from one of the kicks to his belly. On seeing this Mc Gregor fired a kick between the claimant’s legs but the claimant managed to block the kick with his hands.

9. The claimant called out to Officer Matthew for help but Matthew did nothing. He said as he rolled in the corridor Mc Gregor continued to pound his body with the riot stave while kicking him in his belly and back. He tried to hold on to one of the cell bars to try to stand up but the officer beat him on his fingers until he let go. A short time after, Matthew pulled the alarm in the main prison and some other officers came. They were all dressed in masks and armed with riot staves.

10. Three of the officers then started to beat the claimant all over his body with their batons. The claimant started bleeding from his mouth and would spit out blood every time he was hit in his belly with the staves. This barrage continued for about 15 minutes nonstop. By this time the claimant could hardly breathe and could not talk or walk. His shirt was bloodied and his body in pain and swollen. Two officers lifted him up and carried him to the Chief Officer's office. He was then placed in a cell and left there for the entire night. He was given no medication or assistance. He said he vomited and spitted blood for the entire night, passed blood in both in his urine and stool, and experienced severe stomach pains. His entire body was swollen and in pain. The next morning the prison medical officer came to the cell and after examining the claimant ordered that he be taken to the Port of Spain General Hospital. He was treated and remained warded at the hospital for four days.

The Medical Evidence

11. The medical report/ root cause analysis of Dr Ramroop confirms that the claimant was warded and underwent treatment at the Port of Spain General Hospital from 5 January 2009 to 9 January 2009. On admission, X rays were ordered of the claimant's chest, left elbow, left foot and skull. In fact, the report noted that the doctor's impression of the initial findings was that the claimant had blunt trauma causing shortness of breath, possible rib fracture and possible pancreatic injury.

12. I agreed with the claimant's submission that this would have attested to the extent of the injuries suffered by the claimant to the naked eye on initial examination.

13. The claimant's medical notes pointed to trauma to his chest and abdomen - consistent with the injuries alleged. The main findings were mild tenderness to the right lower abdomen and left lower chest wall with bruises to the chest. According to Dr Ramroop, the force of the trauma was most likely mild to moderate in nature with a blunt instrument being used. This opinion was based on the need for observation for 4 days with IV fluids and injections for pain throughout the claimant's stay. The claimant was discharged in stable condition on 9 January 2009 and again on 23 June 2009.

Damages

14. In assessing the award of damages I was guided by the factors set out by Wooding C.J. in **Cornilliac v St Louis (1965) 7 WIR 491**. The factors of relevance to this case were essentially:

- the nature and extent of the injuries suffered;
- the nature and gravity of the resulting physical disability; and
- the pain and suffering endured.

15. Based on the assaults and injuries suffered, counsel for the claimant submitted that the claimant was entitled to an award of general damages including aggravated and exemplary damages. He submitted a sum of between \$300,000 and \$ 350,000 should be awarded in general damages plus an additional sum of \$ 75,000 to \$ 100,000 for the element of aggravation.

16. He further submitted that exemplary damages should be awarded in the sum of \$ 100,000 to \$ 150,000.

17. There was no claim for special damages.
18. The claimant relied on a number of authorities which I considered in relation to similar facts and the consequential injuries suffered. I found the following cases to be of particular relevance.
19. **Kenton Sylvester v AG HCA No. 4025/ 1992, delivered 31 July 2002** – The claimant was attacked by several police officers and suffered a contused liver, a punctured lung, blood in his peritoneal cavity and spent 12 days in hospital, 8 of which were in intensive care. Hamel-Smith J. (as he then was) awarded \$ 200,000.00 in general damages and exemplary damages of \$ 50,000.00.
20. **Michael Bullock v AG CV 2007-01766** – The claimant suffered a fractured jaw, loss of several teeth and many other superficial injuries about the body. He was not given medical attention until the following morning. Master Paray-Durity awarded the claimant \$ 130,000.00 as general damages, inclusive of aggravation, and \$ 50,000.00 exemplary damages.
21. **Lester Pitman v AG CV 2009-00683** – The claimant was dragged out of his cell by two officers and beaten by another in full view of the others. The officer used his riot stave during the attack. The injuries suffered consisted mainly of soft tissue injuries. Jones J. awarded the sum of \$ 90,000.00 general damages and \$ 30,000.00 exemplary damages.
22. **Sean Wallace v AG CV 2008 – 04009, delivered 2 October 2009** – Des Vignes J. awarded the sum of \$ 160,000.00 general damages inclusive of aggravated damages and \$ 70,000.00 exemplary damages. Here the claimant was beaten by three prison officers in connection with a bag that was thrown over the prison wall. He was then taken upstairs by another officer and mercilessly beaten with a staff all over his body in like manner to

the instant case. He experienced severe pains and was warded at the hospital for four days.

23. The injuries sustained by the claimant and the pain and suffering endured during and after the beating are evident from the evidence. I considered the following features to be particularly troubling and also found them to be aggravating factors in this case:

- The attack was unprovoked and over a protracted length of time by more than one officer. The force used wholly excessive and disproportionate.
- The fact that the claimant was beaten into a state of unconsciousness after which the beating resumed. The nature and extent of the pain and suffering inflicted was exacerbated by the nature and manner of the assault.
- The claimant was not attended to immediately after the attack. He was only taken to the hospital the following morning and was left for the entire night without medication or any meaningful treatment.
- The injuries suffered were serious enough to require treatment at the hospital and the warding of the claimant for 4 days.

24. I found that the nature and manner in which the claimant was assaulted must have surely resulted in mental anguish and suffering necessitating an additional award of aggravated damages. As in **Sean Wallace**, the claimant must have endured great humiliation, fear and despair as the beatings continued unabated despite his pleas for help and mercy. He was beaten in full view of other inmates and in the presence of other officers who did nothing to stop the attack. He even urinated upon himself from one of the blows to his abdomen.

25. Having considered the past awards made and taking into account the particular circumstances of this case, I found the claimant was entitled to the sum of \$ 100,000.00

general damages inclusive of aggravated damages for the physical and mental suffering endured.

26. In my view, this was also an appropriate case for exemplary damages – clearly satisfying the **Rooks v Barnard [1964] AC 1129** criteria. The undisputed facts showed that the officers' conduct was oppressive, arbitrary and plainly reprehensible. The manner of the attack and the nature of the injuries suffered evidenced the degree of viciousness and malice towards the claimant. Further, the failure of the prison authorities to ensure that the claimant received proper medical attention immediately after the assault is to be deplored.

27. This type of case is however not new. Unfortunately the plethora of decisions from the courts condemning such conduct has seemingly fallen on deaf ears. I therefore considered it appropriate to signal the court's continued disapproval of this reprehensible type of conduct by awarding the claimant exemplary damages in the amount of \$ 40,000.00.

28. On the matter of interest, taking into account the prevailing interest rates and the varying awards in recent times, I considered it appropriate to exercise my discretion and award interest on the general damages of \$ 100,000.00 at the rate of 9 % per annum from the date of service of the claim form.

Ronnie Boodoosingh

Judge