THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2013 – 03904

Between

BUNNY KAMEEL ALI

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Jagdeo Singh, Mr Michael Rooplal and Ms Saira Lakhan for the Claimant

Ms Tinuke Gibbons-Glenn and Mr Stefan Jaikaran instructed by Ms Nisa Simmons for the Defendant

Date: 19 April 2016

JUDGMENT

1. The job of a police officer is a dangerous one. There are many risks and dangers associated with the duties performed by police officers. Some of these dangers and risks cannot be avoided or provided for. Despite the best efforts of the employer, the State, the tragic reality is that some police officers will be killed or injured in the course of their

duties. The State as their employer, owes a duty of care to them. This duty extends to providing adequate training, resources, facilities, equipment and support. The State must not be negligent in administering its duties. It must act reasonably in doing so.

2. Bunny Kameel Ali was one such police officer injured in the course of his duties. He became a police officer in April 1982. In September 2008, he was transferred to the Court and Process Branch and stationed at the San Fernando Magistrates' Court in an area called the "cell block". This is where prisoners who have cases before the court are held when they come to court. His duties included ensuring the safety and security of prisoners who attended court. He ensured the safety of members of the public attending court. He and his colleagues placed prisoners from their transport vehicles into cells and conveyed them to the respective courts and then back to their cells.

3. On 5 October 2009 Officer Ali dutifully reported for work. The complement of staff included one sergeant, one corporal and nine constables. This was for the 7 am to 3 pm shift. He noted in his evidence that this was an understaffed number. That day these officers had to secure the reception area of the San Fernando Magistrates' Court, the cells and to shuttle more than 54 prisoners to and from five sitting courts. The usual or regular number of officers assigned from his experience to the San Fernando Magistrates' Court would be one sergeant, two corporals and 17 constables. This is not contested.

4. The list of prisoners for that day included persons charged with murder, rape, armed robbery, drug offences, wounding and other offences.

5. As a result of this shortage of police officers on duty he assisted another police officer No. 16262 PC Ali to supervise 12 prisoners in the holding cell.

6. While they were in the holding cell, 6 prisoners began attacking another prisoner named David Bobb. The way the cell is designed is that the cell is in the downstairs area of the court. There is a step which leads into the courtroom in question up which the prisoners are escorted to a cage in the courtroom. This incident occurred in the presence of the sitting Magistrate and members of the public in court.

7. While the claimant was attempting to restrain the prisoners from causing further harm to Bobb, and in carrying out his duties, Bobb ran behind the claimant and held on to the claimant's shoulder and used him as a shield to escape further attack.

8. The 6 prisoners jumped on the claimant placing all their weight on him. This caused sharp pain to his back and the rest of his body and he was unable to bear the pain of the prisoners being on top of him.

9. He heard attorneys and members of the public screaming and calling for help and calling on other police officers around the court to render assistance to him.

10. The other PC Ali intervened and assisted in trying to restore order to the cell. Bobb was separated, bleeding from a wound to his arm.

11. The claimant was injured and taken to the San Fernando General Hospital.

12. The 6 prisoners were later charged and found guilty of assaulting the claimant and sentenced to terms of imprisonment.

13. The attorneys here have sensibly agreed that since the claimant continues to be treated for his injuries that it was appropriate that the court should deal only with the issue of liability and that damages should be dealt with subsequently, if the claimant succeeded. For this reason I will not detail the injuries sustained. Suffice it to say, they were not minor.

14. After this incident a medical officer examined the claimant and placed him on exemption from outdoor duties and wearing of the regulation belt and he was referred for physiotherapy to the San Fernando General Hospital.

15. On 28 December 2009, the claimant was assisting another officer, PC Pedro, in placing prisoners in the cell block when another fight broke out among prisoners. While assisting in parting the prisoners the claimant received further blows to his lower back which he says further aggravated his injuries.

16. He continued to be treated by doctors attached to the police service and privately.

17. He received various periods of injury leave over an extended period of time.

18. On 11 October 2011 the claimant was back at work and he was assisting Corporal Alexander to forcefully remove a prisoner from a cell who was being assaulted by other prisoners and he felt a piercing pain to his lower back which ran down to both of his legs.

19. He was granted various periods of exemption from outdoor duties consequent upon his injuries.

20. The claimant says he only received first aid and self defence training when he joined the police service in 1982. This was a "miniscule part of my general training". He says he has not received any updated training since then.

21. He said on the dates of the first and second incidents the prisoners were brought and placed inside of the holding cells without handcuffs. He noted when riots occur, the Guard and Emergency Branch of the police service is responsible for bringing the situation under control. They have to be called upon in a process which involves getting authorisation from a senior police officer.

22. The claim has been brought on the basis of negligence and breach of statutory duty. The latter aspect has not been advanced evidentially, so I will focus on whether the claimant has proved his case in respect of negligence.

Law

23. An employer at common law owes a duty of care to his employees. These include:
    (i) A duty to maintain and provide a safe system of work
    (ii) A duty to provide and maintain safe equipment
    (iii) A duty to provide competent employees
    (iv) A duty to establish and enforce a safe place of work and safe system of work: See **Wilson & Clyde Coal Co. v English [1938] AC 57 at 78, 86** and **Clerk and Lindsell on Torts, 20th edition, para 13:07**.

24. In higher risk jobs, such as this, an employer is required to take reasonable care not to subject an employee to unnecessary risk. The employer must therefore take care to

reduce the risk involved in the particular undertaking as far as reasonably possible: **Shelly-Ann Richards-Taylor v The Attorney General, CV 2010 – 01230, para 5** per Jones J.

25. In **Munkman on Employer's Liability 15th edition, para 3.03**, the authors state:

> "The principles of causation may be summarized that, where a claimant can establish that the injury or damage was foreseeable, it is still necessary for the claimant, on whom the burden of proof lies, to establish that the wrongful act of the defendant was the cause of it, or at least materially contributed to it. The correct test is a matter of law and varies depending on the circumstances of the case.

26. Further at para 3.04:

> "Even where the claimant can establish that the injury or damage he sustained was within the bounds of forseeability, it is still necessary for him to establish that the wrongful act of the defendant was the sole or substantial cause of it, or at least that the wrong materially contributed to it. Indeed in many actions for personal injuries... the starting point in any causation is the but for test; that is, it must be shown that had the defendant not committed the breach of duty concerned, the injury would not have happened."

27. In **General Cleaning Contractors Limited v Christmas [1953] AC 180** Lord Tucker noted at 195:

> "This form of action is frequently spoken of as being based on "a failure to provide a safe system of work," but this language is misleading since it omits what is an essential element in the cause of action, viz., negligence. Window cleaning is obviously a hazardous operation and - except in the case of the absolute obligations imposed in certain circumstances under the Factory Acts - there is no absolute

obligation upon employers to devise a system for their employees which will be free of risk. Their only duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation. In deciding what is reasonable, long-established practice in the trade, although not necessarily conclusive, is generally regarded as strong evidence in support of reasonableness.

It was said by Goddard L.J. in the Court of Appeal and by Viscount Simon in this House in the case of *Colfar v. Coggins & Griffith (Liverpool) Ld.*11 that in these cases the plaintiff must allege and prove specifically what is the defect in the system of which he complains. In other words, it is not sufficient that the system adopted was in fact unsafe, he must show something which could reasonably have been done or omitted which would have made the system reasonably safe and that this failure was the cause of his accident."

28. The claimant has advanced various particulars of the failure of the State to provide him with safe conditions of work. Among these he alleged were no training on how to deal with violent prisoners or how to manage prisoners on a daily basis; inadequate numbers of officers; no effective system for Guard and Emergency Officers to respond to riots or fights among prisoners; inadequate equipment such as shackles, batons and metal detectors; insufficient handcuffs; an unsafe work environment.

29. The defendant's sole witness was police officer Kassiram Lutchman, a police corporal attached to the Court and Process Branch, San Fernando. In 2009 he was attached to the Chaguanas Police Station. His evidence, therefore, cannot help with regard to the conditions existing at San Fernando Magistrates' Court in 2009. His evidence spoke of the system in place at the time he has been stationed there. He noted that there are systems to identify violent prisoners, to search them, and to have Task Force Officers be present to assist with moving certain prisoners. Metal detectors were installed in 2012. Of interest, at paragraph 4 (l) of his witness statement, he said according to Regulation

109 of the **Police Service Act Chapter 15:01**, the requirement is for 6 to 10 prisoners to be accompanied by at least 3 police officers. This he says is mandatory when they are being transported or moved from one area to another. He said it is not unusual for two police officers to be supervising 12 prisoners as long as they are within the holding cells and not being transported or moved. He noted there are workshops every Wednesday planned by a Senior Superintendent. He noted there has been some improvement work done at the Magistrates' Court since this incident.

30. Officer Kassiram was cross-examined. He noted there were staff shortages at the cell block. When this happens, the safety and security of officers is compromised. He noted that while there is now some training, at the time of the incidents the training would be inadequate to deal with the kinds of violent flare ups that occurred. He accepted that the San Fernando cell block has a reputation of being one of the most violent cell blocks.

31. There was therefore no serious evidential challenge to the evidence of the claimant as far as the situation that existed on the date of the three incidents and in particular in respect of the first incident. I therefore had no difficulty in accepting the evidence of the claimant as being unchallenged. It was also consistent with the documentation advanced in support.

32. The nature of the incident on 5 October 2009 was an attack by prisoners on other prisoners. While the provision of metal detectors could not have prevented a fight or an attack, a fight or an attack would tend to occur where there is inadequate supervision or manpower to prevent it. When these failings happen from time to time, this would likely become known to prisoners. Thus there arises a realisation that they can act in a way where it would take some time for control to be regained. They may be able to take a chance to attack another prisoner with whom they may have an issue. Opportunity knocks.

33. Such an attack by prisoners on other prisoners was reasonably foreseeable. The claimant speaks of more than one occasion of this happening. The defendant's witness accepted the San Fernando cell block had a reputation for being one of the most violent in the country. It is common sense that locked up persons will sometimes get into conflict with each other. When many are gathered in one place, the risk is intensified. It was also foreseeable that a police officer who acted to try to re-establish order or to protect a person under attack would or could be injured, even if the attack was not directed at him.

34. It is clear that on 5 October 2009 the number of police officers on duty to secure the 54 prisoners under their control along with the other duties they were required to perform fell far below what would be considered reasonable. 54 prisoners were being held. There were 12 in the cell at the time. There is no evidence to suggest that the claimant had any control over how many prisoners were in the cell with him. The number of police officers available was half what it would usually be. It is also clear that no up-to-date training had been provided to the claimant on how to deal with disturbances of the kind that occurred on these three days.

35. Continuing training or drills may help a police officer to consider the appropriate or best practice way to respond, reduce the element of surprise for him, identify ways to protect himself, allow him to keep calm and focus his mindset on how to regain control of the situation. Being prepared is essential. Lack of training opportunities for the claimant to develop his skills in prisoner management left him unprepared. The claimant seems to have acted on no more than his human instinct to try to help the prisoner who was under attack. Further, the officer, who was inside of the cell, was not furnished with handcuffs to use, and the prisoners were not handcuffed.

36. The insufficiency of police officers being on duty and the lack of sufficient handcuffs so that the prisoners could have been properly secured, at very least materially contributed to the attack taking place out of which the claimant was injured. The lower strength of police officers meant that others could not respond in quicker time to assist the claimant in controlling the melee. This would have materially contributed to him being injured. A greater number of police officers being present would also have been a deterrent to such an attack taking place. Order and control could have been secured faster. The officers could have assisted in getting the prisoners off the claimant. The danger of having only half the complement was an obvious one.

37. The claimant has in my view satisfied the "but for" test in these circumstances. When the court considers the number of prisoners, the facilities in which they were kept, the number of them who were present in the cell at the same time and the inadequate number of police officers (2) with them in the cell to manage them at the material time, the conclusion is inescapable that there was a substantial breach of duty in relation to the claimant. This is notwithstanding the giving of serious consideration to the risks that would necessarily be attendant upon a police officer performing a dangerous duty such as this.

38. In my view, the claimant was exposed to the unnecessary risk of having to manage a number of prisoners without sufficient support by other police officers and without adequate equipment, in particular handcuffs which the prisoners could have been restrained with.

39. There is insufficient evidence put before me for me to make clear conclusions on whether there were breaches of the **Occupational, Safety and Health Act**. That aspect of the case was not developed in the witness statement of the claimant and no other evidence from a suitably qualified person who had examined the building at the time has been

advanced. I would note, however, that there did not appear to have been any safety inspections of the facilities in the period leading up to these incidents. Certain basic equipment such as fire extinguishers and a first aid kit were lacking at the material time. The description of the design of the cells raises some unease.

40. It goes without saying that we live in troubled times. There are many more violent prisoners now than before. Prisoners remain in custody for very lengthy periods awaiting trial and the court facilities housing them in some localities are less than adequate. When they are gathered together in confined spaces, conflict is to be expected. There have been several incidents in different courts involving near riots and affrays in the court buildings. The San Fernando Magistrates' Court stands out for having an unusually high number of such incidents as confirmed by both witnesses in this case. In addition, the claimant has put forward various newspaper accounts and entries made in station diaries detailing incidents which have taken place involving prisoners.

41. Consequently, an urgent assessment should be done of all court facilities and in particular those where incidents have occurred to ensure that there is compliance with the appropriate standards of safety and security. The assessment should identify whether the processes used and the facilities contribute to unnecessary and heightened risks of police officers being attacked and injured. This is necessary to protect those who work there and who access the facilities on a daily basis be they prisoners, victims, witnesses, police officers, lawyers, judicial officers and members of the public. Officer Ali was left vulnerable on that day in October 2009. The State must do its part to ensure that no one is injured in future as a result of a failure to take reasonable steps to ensure the safety and security of those who use our judicial buildings.

42. I must also comment on the certain aspects of the evidence which the claimant has given of various difficulties he has endured in dealing with the bureaucracy in the police service

since his injury in the line of duty. None of what he has said has been refuted by evidence from the defendant. The bureaucratic inefficiencies which this officer, who was injured while dutifully performing his job on 5 October 2009, has complained of, is patently unacceptable.

43. There is judgment for the claimant against the defendant. The defendant must pay the claimant damages to be assessed before a Master on a date to be fixed.

Ronnie Boodoosingh

Judge