

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

CV 2014 – 04052

Between

MITRA BOODOOSINGH	First Claimant
DOOLIN BOODOOSINGH	Second Claimant
ANAND BOODOOSINGH	Third Claimant
USHA DADOOL ALSO CALLED DADOOL	KUMARIE USHA Fourth Claimant
ANDY BOODOOSINGH	Fifth Claimant
TRICIA BOODOOSINGH	Sixth Claimant

And

POLICE CONSTABLE LORENZO LEZAMA (NO. 17636)
First Defendant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
Second Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Chris Seelochan for the Claimants

Ms Coreen Findley and Ms Sasha Sookram instructed by Ms Diane
Katwaroo for the Defendants

Date: 7 February 2018

1. This claim is for malicious prosecution and false imprisonment. The claimants are all members of the Boodoosingh family of Sunset Drive, Lopinot. They were father, mother, children and in laws. They were arrested at their home on 31 October 2010. They were charged for possession of a firearm and ammunition by PC Lorenzo Lezama. The men were kept in custody for over 4 days before they were released. The female persons were kept for 3 ½ days approximately. They had appeared in court on 2 November 2010 and got bail. However, there was a delay with the processing of bail due to “industrial action” which took place within the court system.
2. The claimants’ case is that they were not in possession of any firearm and ammunition. Their case is that they were set up. The case was fabricated by PC Lezama aided by his colleagues. The crucial question in this case is whether I accepted the claimants’ evidence that there was no firearm hidden on their premises or whether I accepted the defendant’s case that PC Lezama found a firearm hidden there.
3. If there was no firearm there, then in the circumstances of this case malicious prosecution would follow since PC Lezama would have known that there was no firearm and he was therefore fabricating a case against them. In that sense both objective and subjective elements of the tort would be established.
4. It is not in dispute that the claimants were charged and that the criminal cases were determined in their favour. The Magistrate dismissed the cases for the non-appearance of the complainant.

5. Not all of the claimants were present throughout the search of the premises undertaken by the first defendant and other police officers. Some were gathered into the living room of the house. The first claimant, who was the father of the home, and the fifth claimant accompanied the officers on the search.
6. The claimants disputed the evidence that the object was found under a sink, between or under a suitcase. Their evidence essentially is that it was planted by being brought in and placed in the premises.
7. Two witnesses for the defendant gave evidence about the finding of the firearm among the suitcases. There were PC Lezama and PC Ali. Both gave evidence in their witness statements that they saw the firearm there.
8. The claimants' attorney has urged me to prefer the evidence of the claimants and to find that there was no firearm and that this was a setup, fabricated by the first defendant, aided and abetted by his police officer colleagues.
9. There were several inconsistencies pointed out by the claimants in the evidence of the defendants. These related to matters such as:
 - The number of police vehicles
 - The number of police officers present
 - Whether dogs were present
 - The time it took to get to the scene from the police station
 - The length of the search
 - The description of parts of the house including the laundry room

- Whether the firearm object was between two suitcases or under an object on top of suitcases
- Where another officer, Sergeant Alexander, was present during the search
- Whether the officers had mentioned in their witness statements searching the suitcases

10. The first point to be noted is that this incident took place 6 years before the witnesses gave evidence. Some fading of memories and inability to recall events is to be expected. The court must also look to the nature of the inconsistencies to decide how material they were. While one or two inconsistencies, taken alone may be seen to be minor, a combination of inconsistencies, taken together, can undermine a witness' evidence or the case for one side.

11. However, what both PC Lezama and PC Ali, maintained throughout the cross-examination was that they found the firearm on the top of a suitcase under a sink and that suitcase had an object on top of it. The firearm was concealed according to their evidence.

12. The claimants also pointed out a few other matters:

- a. The firearm was not retrieved from the Forensic Sciences Centre;
- b. PC Lezama did not tender into evidence the submission form for the firearm to the Forensic Science Centre;
- c. As part of the record of proceedings in the Magistrates' Court, the Magistrate stated that there was no record that the exhibit was produced to the court as is the practice before it is sent for analysis; and
- d. No statements were prepared for the criminal case.

13. From all of these it appears that the approach of the police was that all investigations stopped once the firearm was found. There was a notable laxity in how the case against the claimants was prepared. There was almost the sense that after they had reported the firearm was found, that that was the end result of their responsibility.
14. There was certainly more that the defendants could have done to advance the case, as submitted by the claimants. The absence of Sgt Alexander was also significant since he was involved in the events of the day.
15. All of these matters are serious and well advanced by Counsel for the claimants. However, at the end of the day, the critical issue was between the firearm being planted as alleged by claimant or being found as stated by both PC Lezama and PC Ali. The critical issue is whether I accept, notwithstanding the inconsistencies and other failings, that the police officers were truthful about finding the firearm.
16. The claimants gave evidence that they did not know any of the key police officers before. They did not know PC Lezama nor PC Ali. They could advance no reason why the police officers would seek to set them up by planting a firearm there. There was nothing from the claimants' case as to why this would have been done. This seems more than strange that they would be set up for no reason.
17. There was also some wavering in the evidence by the claimants. While they said the case was fabricated, they also seemed to acknowledge that a firearm was there.
18. The allegation of the planting of a firearm must of course be scrutinised carefully. It is not a light allegation to make. The more serious an allegation is the stronger should be the

evidence before the court can draw the conclusion: **Re H [1996] 1 All ER 1** at 16 per Lord Nicholls of Birkenhead.

19. I also considered significant that there was evidence in the witness statements from the fourth claimant and one Roopnarine Singh, a gardener of the claimants, that they saw someone go into a police vehicle and come out with an object resembling a firearm to be planted. This was not pleaded. This was a significant fact which ought to have been pleaded. Its appearance in the witness statement can be viewed as being a material omission affecting the believability of this bit of evidence.
20. I carefully reviewed the evidence of both PC Lezama and PC Ali. I also had regard to how they gave their evidence. I also had regard to the evidence of the claimants. It may well be that some of the claimants had no knowledge of the object being present so they genuinely think they were set up. But it only took one person to bring a firearm into the house to make the case once there was the honest belief and there was objectively sufficient evidence.
21. Notwithstanding the inconsistencies and the failure to bring further evidence by the defendants, I believe the evidence of PC Lezama and PC Ali about the finding of the firearm on top of a suitcase under the sink. I do not accept on a balance of probabilities that they fabricated a case against the claimants by deliberately planting a firearm in the house. This is particularly the case as no reason has been advanced as to why the police would just randomly select the claimants to set them up. Where such allegations are made the court must look at them cautiously.
22. Following from the finding of the firearm was the arrest of the occupants of the house. It is, of course, unfortunate that it sometimes occurs that when a firearm is found on premises all the occupants will be brought before the court and

charged. It may well be that one of the occupants, acting alone, brought the object and knew of it. But all occupants are charged. This circumstance has received the attention of the courts from time to time. Recently the Privy Council in the case of **Sandra Juman v The Attorney General [2017] UKPC 3** per Lord Toulson has pronounced on this matter: see in particular paragraphs 9 to 19.

23. In similar vein, these claimants were all occupants of the premises, having access to the area where the firearm was found. It was therefore open to the police officer to believe that they may have known about it and therefore to bring a criminal charge in light of the deeming provision of the Firearms Act Chap. 16:01. Both the subjective and objective elements of the test have been satisfied.
24. The police officer cannot be said to have acted without reasonable and probable cause in arresting and bringing the claimants before the court. Had the case been tried it would have been open to the claimants to give evidence individually about their knowledge, or lack of knowledge of, and consequently, possession of the firearm. The court could then make a determination of guilt in relation to each of the persons charged. There being reasonable and probable cause, it cannot be concluded the police officers acted with malice.
25. The next matter concerns the imprisonment of the claimants. The onus is on the defendant to justify the length of the detention. The claimants were arrested in the late afternoon of the 31 October 2010 and brought to court on 2 November 2010. The officers indicated that their investigations continued for any missing firearms and searches were conducted to see if there were outstanding warrants for the claimants. These two matters did not arise directly from the investigation as to whether the claimants were in possession of the firearm. The police officers did say there were checks

to see if the firearm was used in the commission of other offences.

26. The investigation which the court is concerned here relates to the charges brought. However it cannot be said that the length of time before they were brought to court was so lengthy in all of the circumstances to be unjustified. They were brought to court in less than 2 days.
27. It is of concern, however, that it took an additional day and a half to two days and a half to have their releases secured due to delays within the court system. According to the first claimant he was granted bail at about 11:30 am on 2 November 2010. He was only released on Thursday 4 November 2010 at about 6:00 pm. This was approximately 2 days and 6 hours after his bail was granted by the Magistrate. The female claimants were granted bail at about 11:30 am on Tuesday 2 November 2010, but were released only at 6:00 pm on Wednesday 3 November 2010. This was one day and 6 hours after bail was granted. According to the claimants this was due to industrial action in the public service.
28. The claimants had pleaded this at paragraph 33 of the statement of case. No admission was made by the defendants about this. The defendants did, however, admit the fact of the detentions until the 3 November in the case of the female claimants and until the 4 November in the case of the male claimants.
29. The claimants asserted this was due to industrial action in the public service. They were not cross-examined on this matter. The defendants also advanced no evidence on this issue. There was no evidence by the defendants, for example, that there was a problem with the bail security being advanced, or that the checks of the security took longer than expected because of issues arising from the security, or

that the bail documents were not in order, or that there was any contribution by the defendants to this delay.

30. I was referred to the dicta at paragraph 23 of the judgment of the Privy Council in **Terrence Calix v The Attorney General of Trinidad and Tobago [2013] UKPC 15** per Lord Kerr where it was noted that a judicial act precludes liability in false imprisonment. However, that relates to any previous act of imprisonment relating to setting a prosecution in motion. Once bail is granted, this ends the previous false imprisonment.
31. However, what has not been addressed by the defendants, whether in pleadings, evidence or submissions, is any issue of liability arising from a fresh period of unjustified detention after bail had been granted. The claimants remained in the custody of the State. The claimants' obligations, once granted bail, were to make arrangements for their bail to be taken. The State's obligation is to facilitate the bail process being dealt with in a reasonable time.
32. Put another way, if bail has been granted and all the conditions for the grant of bail have been fulfilled, a person in custody cannot continue to be detained for any longer than is necessary to process the bail. If that happens a fresh period of unlawful imprisonment arises. And once the issue is raised the State has to justify the continued detention in line with the established authorities such as **Ramsingh v The Attorney General [2012] UKPC 16** and **Williamson v The Attorney General [2014] UKPC 29**.
33. This case is similar to the position in the Jamaican case of **Bandoo v Detective Sergeant Grant and The Attorney General for Jamaica [2017] JMSC Civ 59** where Linton J. noted:

“It is the claimant’s evidence that he was arrested on June 5, 2005 and first brought before the court on June 24, 2005. Further, when his bail conditions were altered, and after he was granted bail by the court, he was again detained for an additional four days before the process was complete. It is curious that a procedure that would otherwise be complete in a short time took days and I find that he was again unlawfully detained.”

34. The evidence that industrial action in the court system taking place which delayed the bail being processed has not been answered. There was no suggestion that there was anything else that the claimants could have done to secure bail. This was beyond their control.
35. I find that in all the circumstances, and giving a generous time frame for the processing of bail, that bail having been granted at 11:30 am and in the absence of any evidence justifying the delay, that the detention of the claimants became unlawful after 6 pm on the day they were granted bail.
36. Thus in the case of the female claimants they were unlawfully imprisoned for one day and the male defendants were unlawfully imprisoned for two days.
37. Having been in custody for 2 days before, and having then been granted bail, the claimants must have anticipated they would get to return to their homes pending the determination of their cases. Industrial action cannot justify the detention of citizens for any longer than is necessary. Persons working in the court system have a special responsibility to do their duties in a diligent manner and not to allow the liberty of citizens to become caught up in industrial relations matters.

Where that happens all the courts can do is award a measure of compensation for the wrong done to citizens.

38. Considering the authorities cited to me by both sides a fair award would be the sum of \$35,000.00 for each of the female claimants, they having been unreasonably detained for one day and \$55,000.00 for the male claimants, they having been detained unreasonably for 2 days.

39. This is not a fit case for an award of aggravated damages or exemplary damages. There were no aggravating circumstances disclosed in the evidence for the period of time being considered. Further, the threshold needed to be crossed is that of outrageous behaviour by State authorities deserving of being punished or oppressive, arbitrary or unconstitutional action by servants of the State, as was considered in **Rookes v Barnard [1964] AC 1129** or the several authorities including **The Attorney General v Ramanooop [2005] UKPC 15** and **Takitota v The Attorney General of Bahamas PC Appeal No. 71 of 2007**.

40. There is judgment for the claimants in the terms stated as follows:

- a. The defendants must pay each of the first, third and fifth claimants the sum of \$55,000.00 in damages.
- b. The defendants must pay each of the second, fourth and sixth claimants the sum of \$35,000.00 in damages.
- c. Interest is to run at the rate of 2.5% per annum from the date of the filing of the claim form to the date of judgment.

- d. The defendants must pay prescribed costs to each of the claimants in accordance with the judgment sums and interest awarded up to the date of judgment.

Ronnie Boodoosingh

Judge