

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

CV 2015 -02399

BETWEEN
WYATT JOHNSON

Claimant

AND
SHARON WARNER JOHNSON

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Haresh Ramnath for the Claimant

Mr Lynton Alfred for the Defendant

Date: 16 January 2017

JUDGMENT

1. The Claimant and Defendant live at Cinnamon Hill, Tobago. The Defendant was married to the Claimant's brother. There was an incident on 26 February, 2015 at Cinnamon Hill.

2. The Claimant obtained a grant for the administration of the estate of Edgar Johnson, his father. According to the Claimant, he was the owner of a five acre parcel of land, being part of the Concordia Estate.
3. He says he observed an excavator on the unadministered lands on 26 February, 2015. He is a police officer. He went to take photographs.
4. His sister in law, the Defendant, walked over to him and told him “don’t take no f.....ing picture here or ah go kill yuh m..... c.....”
5. She pushed him. She told him she brought the excavator here. He attempted to get past her. She said give the camera. She had a cutlass. She said she would kill him today. She brought the cutlass down and it connected his right middle finger.
6. He tried to get the cutlass. But he got dealt a blow to his face. She grabbed him around the neck as he kept trying to get the cutlass.
7. He was pushed to the ground. She came over him and pressed him down to the ground. This prevented him breathing properly. She bit him on his chest. To escape, he bit her on the right side of the face.
8. She got possession of the camera. By this time, his daughter, Jael Reid, arrived.
9. He was eventually able to get hold of the cutlass. His vest was soaked with blood. The police came. He was taken to the Scarborough Hospital and treated and then was discharged.
10. Jael Reid also gave evidence. She was at home on the morning of 26 February, 2015 when someone reported to her that “Shaffa” have your father on the ground. She went across to where they were.

11. She saw the Defendant on top of her father. Both were holding the cutlass. She saw blood on her father's face.
12. She proceeded to take a video on her phone. She asked the Defendant if she was going to kill her father today. She saw the Defendant with her sister's red camera in her hand.
13. Her father was able to get hold of the cutlass and threw it in the bushes.
14. She asked for the camera. The Defendant eventually gave it but it was damaged and the memory card was missing. The police arrived. She produced photographs showing the injuries to her father.
15. The Defendant alone gave evidence on her behalf.
16. She said she has been planting crops on a strip of land near where she lives. She said she got permission from her husband's father, Edgar Johnson, to do this.
17. She said on the day – 26 February 2015, she was on the said land she occupies next door to her home. She notice Wyatt Johnson who lives nearby come her way.
18. He approached her saying get off his land. The land was a bone of contention for the families for some time. He pushed her violently on her chest. She pushed him back. They began to struggle.
19. They fell to the ground. She managed to get on top of him. He cuffed her. She cuffed him back.
20. He bit her and she bit him back. He then attempted to get hold of a cutlass she had nearby. She had it for gardening purposes. She prevented him getting hold of the cutlass.

21. His daughter came up. She started to film on the phone. They stopped fighting.

22. He told her you will see what will happen to you.

23. The Defendant continued tending her crops. The police came. They arrested her for chopping somebody.

24. They were taken to the Claimant's yard. She then saw him coming down about twenty minutes after. She saw blood all over. He had no blood on him before. They were then taken to the police station. She was charged.

25. The medical report from the Scarborough Hospital showed injuries to his nose – bleeding and right middle finger. There was a 2cm laceration to the basal bridge. There was also a bite mark.

26. The Defendant gave no evidence in her witness statement about being treated for any injuries but a medical report was an agreed document. It showed a bite mark on her face and she complained of pain and dizziness on the day after the incident.

27. The medical evidence is more consistent with the evidence of the Claimant. It showed injury to his right middle finger, a bite mark and injuries to his nose. The Defendant's medical report also does not take away from the Claimant's version.

28. I find incredible the Defendant's assertion that the Claimant had no blood on him during the incident, but some twenty minutes later she saw a lot of blood on him. That would suggest he went and injured himself and then smeared himself with it. The finding of blood of his jersey is entirely consistent with his version.

29. I observed both the Claimant and the Defendant as they gave evidence. Their respective demeanours was also consistent with the Claimant's version.

30. I found Jael Reid, who is now a training to be admitted to practise as an attorney-at-law, to be a credible witness. Her version supports the Claimant's version in that it showed the aggression of the Defendant and that she was on top of him. Also, it is consistent with their being a struggle for the cutlass – as opposed to the Defendant's version where the cutlass was not in the picture in terms of there being a struggle for it. Further, that the Defendant had the camera.
31. The cross examination was however generally uneventful. both sides stuck to their versions.
32. The Claimant's case is more plausible and consistent with the supporting medical evidence. I also found the Claimant's case was supported in material respects as far as the battery case was concerned.
33. I find on a balance of probabilities that the claim for assault and battery is proved.
34. On the question of damages I have considered the extent of the injuries. They were, on the general scale, minor. However, there was a lengthy struggle, there were words of threat used. The Defendant also used her body weight. It must have been a traumatic incident for the Claimant. There was blood all over him. His peace was disturbed. Considering the authorities cited, I award general damages for assault and battery in the sum of \$25,000.00. I consider this to have been a brazen and uncalled for attack.
35. There was also a claim for special damages for the damage to the camera. I find this to be proved also. Given the approximate replacement cost for a camera of that make having regard to the invoice quoted, which seems reasonable, the Defendant must pay the Claimant the sum of \$3,500.00.
36. There was finally a claim for trespass. I find this claim not proved for the following reasons.

37. The Claimant produced a deed. However, there is no link between the deed and the actual location of the incident.
38. Further, the Claimant did not see the Defendant bring the tractor onto the land. He relies on her admission that she did so. However, this was a material fact not pleaded in the statement of case. Thus the evidence of it could be given little or no weight. The Defendant denies she was responsible.
39. There seems to be a dispute for the land which as to be settled on a different day.
40. The Claimant's case has not reached the threshold to prove trespass on a balance of probabilities. The claim for trespass is dismissed.
41. From the court's findings it follows the counterclaim must be dismissed.
42. Interest is to run on the general damages and special damages at the rate of 2.5% from the date of the claim from on 14 July, 2015 to the date of judgment.
43. The Defendant is to pay the costs of the claim on the prescribed scale based on the award of \$28,500.00.
44. The Defendant must pay the costs of the counterclaim. This was an assault and battery claim also. The injury was not significant. In those circumstances, I use the same general damages figure, which is the upper level of what the Defendant may have received had she succeeded, to assess the prescribed costs. The Defendant must pay the prescribed costs of the counterclaim based on the sum of \$25,000.00 to the Claimant.

Ronnie Boodoosingh

Judge