

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2015-4110**

**BETWEEN**

**KHAMRAJ RAMSAHAI**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Mr Douglas Bayley for the Claimant

Ms Natoya Moore for the Defendant

Date: 16 November 2017

**REASONS (Edited Oral Judgment)**

1. On 6<sup>th</sup> April, 2015 the Claimant was a prisoner on remand at Golden Grove Prison, Arouca. On that day he was attacked by another prisoner named Scars. It is not in doubt that the Claimant was injured.

2. In his claim he alleged negligence by the prison authorities in respect of:

- Failure of the prison officials to conduct patrols;
- Failure to conduct checks for weapons on the prisoners;
- Failure to protect him;
- Failure to respond to calls for help;
- Failure to exercise care by allowing the attack to occur;
- Failure to take steps to prevent the assault/battery;
- Failure to have an adequate and sufficient complement of staff on duty given the number of prisoners and the ratio of guards to prisoners, since such fell beneath the minimum acceptable level to ensure prisoner safety and security;
- Failure to know or detect that Scars had a connection to the victim of the Claimant's crime such that they ought to have known that an attack was reasonably foreseeable and measures should have been taken to ensure their separation and the Claimant's safety.
- Failure to have medical facilities to properly treat the Claimant's injuries;
- Failure to comply with the sections 4(1), 20(1)(a), 20(2)(a), 20(2)(d)(i) and (ii) of the Prison Service (Code of Conduct) Regulations, Chapter 13:02.

3. That a duty of care exists on the Prison Authorities to prisoners is not in doubt.

4. In **Casey –v- Governor of Midlands Prison and Others [2009] 1.E.H.C.466 (unreported)** Irving J. set out the duties as follows:

Prison authorities are required to take all reasonable steps and reasonable care not to expose prisoners to a risk of damage or injury, but the law does not expect the authorities to guarantee that prisoners do not suffer injury during the course of their imprisonment. (Muldoon – Ireland [1988] 1.L.R.M. 367).

The duty of care owed by prison authorities to its prisoners must be tested in the context of the balance to be struck between the need to preserve security and safety on the one hand and their obligation to recognize the constitutional rights of prisoners and their dignity as human beings on the other hand. (**Bates v Minister for Justice & Ors [1998] 2 I.R. 81**).

In determining what is an appropriate standard of care, regard should be had to the hardship that any proposed system might impose on prisoners and whether any such system would place an excessive burden upon the prison authorities (**Bates v Minister for Justice & Ors [1988] 2 I.R. 81**).

Cases of assault upon prisoners whilst in custody in general are likely to be decided upon by reference to what should have been anticipated by their custodians. (**Bates v Minister for Justice & Ors [1998] 2 I.R. 81**).

5. The item used to attack the Claimant was a makeshift knife with a surgical blade being attached to a toothbrush to create a weapon. It was an improvised weapon, the blade of which was approximately an inch and a half.
6. I have evaluated the evidence on both sides. On the day, the Claimant was on his way to take a bath after he had cleaned his slop pail. On entering the bathroom area he felt something smash into his back. It was painful. He turned and saw his attacker, Scars. He saw Scars had a makeshift knife. The Claimant got cut. He screamed out in pain. No officers came to him. He received another cut to his abdomen as his scuffle with Scars continued. Scars kept telling him, you kill my family, you have to dead. Still, no one came to his assistance. He kept screaming for help. No officers came. He felt as if he would be killed.
7. He then ran to where the Prison Officers were stationed. He was taken to an Infirmary Officer and then to the hospital where he was treated.
8. Two officers who were on duty in the section where the attack took place gave evidence.
9. Officer Greig Ramkissoon had told the Claimant he could go to have a bath. After the Claimant went to the bathing area he heard two loud screams about five minutes later. It would take him less than a minute to run to the bathroom area. Some of the prisoners were

having breakfast which created a lot of noise and commotion. Thus when he heard the initial screams he “was not immediately aware that an attack was taking place.” Ramkissoon asked some of the inmates what was going on and they told him the noise was coming from the bathroom area. He, along with two other officers, ran towards them. The Claimant had blood on his face. He and the other officers had to get the situation under control to avoid a riot. The other officers dealt with the other inmates while he took the Claimant to the Infirmary.

10. Officer Victor Joseph was alerted to the attack on the Claimant by Officer Ramkissoon.

11. Deryck Modeste was an Acting Prison Supervisor. He was the supervisor on the 6<sup>th</sup> April, 2015. He said the usual complement of officers for the shift was sixty-five persons. On that day there were forty-six on duty. Sixteen were on sick leave, two were in the prison band and one officer was attending the clinic.

12. He noted that the incident occurred during the “tubbing” time. He said while tubbing was going on (where the prisoners empty their slop pails) inmates would not be allowed to bathe, but “sometimes in order to manage the number of inmates, some inmates would be allowed to bathe while the tubbing process is ongoing.”

13. He was informed about 6:50 a.m. of the incident.

14. He and the officers noted that prison cells are inspected every day in the Remand Section to ensure no tampering of bolts and to ensure the integrity of the cells. Officers do random searches. Cells are not searched every day as that would disrupt the operations of the prison, but searches are conducted on “information” being received.

15. An Infirmary Officer, Roddy Ramdhan, also gave evidence of treating the Claimant and sending him to the hospital.

16. Additionally, the officers indicated they had no information that Scars had any problem with the Claimant. The Claimant had not reported any such danger to the prison authorities, nor did they have any information. Thus they had no reason to foresee an attack would have been mounted on the Claimant.

17. In cross examination, Ramkissoon denied they were not adequately patrolling the area. In answer to the court he stated there were five officers to two hundred to two hundred and forty prisoners that day. Not all of the prisoners were however outside at the material time.
18. In considering the evidence I have found that the Claimant has not established that the medical treatment he received was inadequate or that the prison did not properly provide for his treatment.
19. I also found that the officers on duty could not personally be faulted for the steps they took on the day in question when they learnt of the attack on the Claimant. They were placed in a difficult situation given the number of officers available on the shift. I also find that there is no evidence from which the Prison Authorities could foresee an attack of the sort that took place. The Claimant, himself, did not report any threat and there was no information on which they could have acted to take preventative measures.
20. What was of concern was the systemic issue related to the number of Prison Officers on duty on the day in question and whether this could be said to have caused or contributed to the incident taking place.
21. Officer Ramkissoon, in cross-examination, noted that the ratio of prison officer to inmates is one officer to twenty. For Prisons Officers II, one to twenty-five to thirty would do. The officers' evidence was that five officers were assigned to the section.
22. Thus, given the number of prisoners in that section it would have been expected six to seven officers would have been assigned. The prison officers made do with the five who were there. Had there been one or two officers more, these officers could have been closer to the scene and could therefore have responded quicker. The Claimant gave evidence that he screamed, but no officers came to his immediate assistance. This is supported to some extent by Officer Ramkissoon who could not identify immediately where the screaming came from. The Claimant was able to run away towards where the officers were.
23. Another way in which the lower numbers of prison officers impacted was that the procedure did not contemplate that prisoners could have a bath while tubbing was going on, but this was allowed according to Officer Modeste "in order to manage the number of inmates." This must mean in relation to the numbers of the officers available to supervise the prisoners.

24. This attack was similar to the one in **Muldoon –v- Ireland [1988] 1LRM 367**. It was sudden and unprovoked.
25. Fights and attacks will sometimes unfortunately happen in prisons. However, the number of officers available can and will impact on the response time of the officers where the number of officers is short. It impacts on where the officers can be strategically placed. The Claimant in his witness statement speaks of three phases of the attack.
26. The first was the stab to his back. He turned and saw the Claimant. He screamed then. No one came. There was a scramble and he then got another stab, this time in the stomach. He kept screaming and time passed. He then got another slash on his right upper back while running away.
27. While the first stab could probably not have been anticipated and prevented, the continued attack may have been curtailed if there were officers on duty or if they could have been placed closer to where he was or if the prisoners were not permitted to bathe during the tubbing process. Given the time of day, however, a full complement of officers would probably not have allowed more searches to be done to seek to minimise the number of weapons.
28. Officer Modeste indicated sixty-five officers per shift was not an arbitrary figure nor is the ratio of one officer to twenty prisoners arbitrarily selected. On the day, there were nineteen officers short of sixty-five. This was thirty percent short. The majority of the absent officers had been reported sick. The evidence from the Defendant did not disclose if this was an unusual occurrence or whether this was the norm for a given day. That was an important omission. If this was the norm, then the prison was routinely operating below strength.
29. What the lesser numbers impacted on primarily was the overall supervision and the response time to the attack.
30. The start of the attack probably would not have been prevented but the severity in terms of the wound to the abdomen and the further slash to the back. It is in relation to these two injuries that the Claimant has established a case on a balance of probabilities against the Defendant.

31. Taking the injury to the Claimant's face out of the equation as well as the stab to the lower back there would be the injuries to his abdomen and stab to his upper back consistent with the slash he received when attempting to flee. Of the injuries, there were the less serious ones. He did give evidence of substantial pain and distress. There really is no resulting disability from these injuries. In light of the case cited fair compensation for these would be \$25,000.00.
32. This is not an appropriate claim for exemplary or aggravated damages. There was a failure to have proper numbers which affected the ability of the authorities to respond to the Claimant's attack. There is no conduct to deter or to punish the Defendant for.
33. What this shows more than anything else is the need for adequate staffing of the prisons, adherence to established systems for the supervision of prisoners and the need to change the design and facilities of the prisons. It need hardly be said, because it has been said so many times, that if prisoners did not have slop pails to empty, there would be no tubbing process. There would be one less task for overburdened prison officers to have to supervise.
34. Interest is to run at 2.5% per annum from the date of the filing of the claim form to the date of judgment.
35. Prescribed costs are payable by the Defendant to the Claimant based on the total of the damages and interest awarded up to judgment.
36. There is a stay of execution of forty-two days.

**Ronnie Boodoosingh**

**Judge**