

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011-01197

KERRY & KERWYN VALENTINO

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Mark Seepersad
Instructed by Mr. Terrence Davis

For the Defendant: Ms. Anoinette Alleyne
Instructed by Ms. Kendra Mark

Date of Delivery: 13th June, 2017

JUDGEMENT

THE CLAIM

- [1] The Claimants sought damages including aggravated and exemplary damages for assault and battery committed against them by prison officers, the servants and/or agents of the Defendant.

The First Named Claimant

- [2] The Claimants pleaded that on or about 22nd December 2010 they were prisoners at the Golden Grove Prison, Arouca. The First Named Claimant, Kerry Valentino, became involved in an altercation with another inmate, when Prison Officers Baldeo and Pilgrim intervened and severely beat him about the body with their prison service batons. When the First Named Claimant fell to the ground, the officers continued to assault him with their batons; they eventually dragged him by his leg through the corridor of the cell area. Officer Pilgrim ordered another inmate to take the First Named Claimant to the Welfare Office; upon arrival he was further assaulted by Prison Officers Jones, Richards, Alexander, Gonzales and another officer. They inflicted blows with their hands, feet and batons.
- [3] It was pleaded that after the beating he was taken to the Main Prison Area without medical treatment. He was later taken to the Arima District Hospital where he was examined and transferred to the Eric Williams Medical Sciences Complex where he was examined and treated.

The Second Named Claimant

- [4] It was further pleaded that Kerwyn Valentino went to the scene of the altercation in order to investigate what was happening. Upon his arrival he too was set upon by Prison Officers Jones and another officer and

beaten with an improvised weapon made of plastic bucket handles strapped together to form a blunt instrument. It was pleaded that the Second Named Claimant was beaten on the right side of his body by these officers.

- [5] He was thereafter marched to the Welfare Office where he was severely assaulted by several officers – he was repeatedly punched, kicked and beaten with the improvised weapon and prison service issued batons. Whilst undergoing this severe beating by officers, Officer Baldeo repeatedly slapped this Claimant about the face and head. Prison Officer Pilgrim then poured water over his face.
- [6] This Claimant was also taken to the Arima District Hospital and later to the Eric Williams Medical Sciences Complex.
- [7] It was averred that the First Named Claimant suffered soft tissue injuries about the head, face, chest, back legs, arms and hands as well as welts, bruising, swelling, abrasions and pain about the body and pain in the eye. The Second Named Claimant also suffered soft tissue injury about the body including welts, bruising, swelling, abrasions and pain all over his body. In addition, he sustained a laceration to the chin which left a 1 ½ inch long scar; he also suffered a laceration to the upper thigh.
- [8] This Claimant alleged that at the time of this assault he had a steel implant in the right arm which was bent as a result of the blows dealt him by the prison officers.
- [9] The Second Named Claimant also averred that the assault aggravated a preexisting hernia causing him pain and discomfort. Both Claimants pleaded that they intended to rely upon medical reports from the Arima District Hospital and the Eric Williams Medical Sciences Complex.

THE DEFENCE

- [10] The Defendant denied that prison officers inflicted severe beatings on the Claimants as pleaded by the latter. Their pleaded case was that on the 22nd December 2010, both Claimants were involved in an altercation with another inmate, Jason Soogrim, during which they assaulted Soogrim using improvised weapons – Kerry wielded the bottom part of a broom while Kerwyn used a sharpened toothbrush.
- [11] The Defendant pleaded that the Claimants were ordered to stop their assault on Soogrim by prison officers who were present but they refused and continued to beat and stab the inmate with the improvised toothbrush.
- [12] Prison officers used their batons to hit the Claimants about their bodies to prevent them from causing further injury to Soogrim
- [13] The First Named Claimant then fell to the ground and let go of the broom whereupon another officer kicked the broom away from him. The Defendant denied that this Claimant was kicked while on the ground. The Second Named Claimant, meanwhile, threw the toothbrush on the ground and remained standing in the corridor. Officer Moreau then instructed that the Claimants be taken to the Supervisor's Office while he escorted the inmate Soogrim to the Infirmary.
- [14] It was also denied that the Claimants were taken to the Welfare Office or any other location and beaten; it was specifically denied that an inmate was requested to take the First Named Claimant anywhere since a prison officer must escort an inmate.
- [15] The Defendant denied that the action taken by the prison officers against the Claimants was unlawful, excessive and unreasonable; to the contrary, the Defendant averred that the prison officers acted in order to protect themselves and inmate Soogrim from further harm. It was

averred that in the circumstances their act of using force against the Claimants was proportionate to the threat presented by the latter and/or reasonable given that the Claimants were armed at the time of the altercation.

[16] The Defendant pleaded that the First Named Claimant suffered soft tissue injury to his right upper arm and the Second Named Claimant suffered soft tissue swelling and minor abrasions.

EVIDENCE FOR THE CLAIMANTS

[17] The Claimants each gave a witness statement which mirrored the facts pleaded in their Statement of Case about the assault inflicted on them.

Kerry Valentino

[18] This Claimant gave a detailed and graphic account of a grievous assault by several officers against himself and his brother, the Second Named Claimant, lasting 5-10 minutes. He disputed the contents of the report from the Prison Infirmary Officer which stated that he had soft tissue injury to his upper arms, referring to the contents of that report as a joke.

[19] The First Named Claimant testified that when he saw his attorney, Mr. Davis, at some unspecified time after the incident, he was 'still black and blue all over'.¹ He also stated that he saw the Second Named Claimant being severely beaten until 'he was like unconscious' and he was not moving.

¹ Witness Statement of Kerry Valentino para 12

Kerwyn Valentino

- [20] This Claimant also testified that he was severely assaulted by several prison officers over a period of some ten minutes. He fell unconscious and was wakened by water on his face and in his nose; he felt like he was being drowned; when he looked up he saw Prison Officer Pilgrim throwing water on him. He claimed that he had welts all over his body and that a steel implant in his hand had bent under the force of the blows from the Prison Officers.
- [21] He too denied that the contents of the Prison Infirmary Report which stated that upon examination this Claimant had abrasions in both extremities with slight swelling.

EVIDENCE FOR THE DEFENDANT

- [22] The Defendant called several officers as witnesses in support of its case.
- [23] Officers Alexander, Basdeo, Jones, Baboolal and Rattan all testified that they were not posted in the area where the incident took place and either arrived afterward or did not go to the scene at all. They all denied assaulting the Claimants while Officer Moreau testified that he saw the Claimants assaulting inmate Soogrim with a broom and sharpened toothbrush; that they were called upon to desist by officers at the scene however, they did not stop the assault. Officer Moreau then observed officers using their batons hitting the Claimants about their bodies in an effort to get them to stop and prevent further injury to Soogrim who had been stabbed repeatedly by the Second Named Claimant with the sharpened toothbrush.

[24] The First Named Claimant eventually fell to the ground and let go of the broom whereupon he was restrained by officers. Officer Moreau denied that Kerry was beaten while he was on the ground. Meanwhile Kerwyn continued fighting with Soogrim; he was dealt several blows with the baton and eventually he threw down his weapon. Officer Moreau then instructed the officers to stop using force against the Second Named Claimant.

[25] It was his evidence that Soogrim was taken directly to the Infirmary while the Claimants were taken to the Superintendent's office. A report including an accident report was filed by Mr. Moreau and charges were laid against the Claimants to which they both pleaded guilty.

ANALYSIS

[26] I had to consider the inherent probability/improbability of the rival contentions of the parties and the plausibility/improbability of the respective cases in order to determine this matter².

[27] On the facts of this case, the prison officers admitted to using force against the Claimants that was proportionate and reasonable in the circumstances. Having admitted an assault, the onus fell on the Defendant to justify that assault on the evidence. If I rejected the Claimant's account of an excessive, unreasonable and unlawful assault then the Defendant would have discharged the burden to justify the force used; the Claimants however, would have failed to establish on a balance of probability that they had been unlawfully assaulted by the prison officers.

[28] This case falls to be determined on the facts as I find them and the credibility and reliability of the witnesses called on behalf of the parties. I

² Reid v Charles & anor PC Appeal 36 of 1987 pg 6 per Lord Ackner

also assessed the evidence taking into account the documents disclosed in the case, particularly the medical reports.

[29] At the outset, I should state that I did not believe the Claimants' case. They both testified about a brutal assault inflicted on them by several officers wielding batons and improvised weapons while repeatedly kicking them about their bodies. The First Named Claimant's injuries as detailed by him is not supported by the medical evidence. Dr. Buchu, who examined the First Named Claimant at the Arima District Hospital, testified that this Claimant had bruises on both upper limbs and mild tenderness on the upper arm. He was referred to the Eric Williams Medical Sciences Complex for a query fractured right arm because of the swelling that he observed on the limbs. The medical report from the Eric Williams Medical Sciences Complex confirmed that the First Named Claimant had not sustained a fracture of his right arm. The report also revealed a mild abrasion to the right upper limb but there was no bleeding and no abnormality seen. I am of the view that these reports totally discredit the First Named Claimant's case that he was severely assaulted and suffered soft tissue injury all over his body. I accepted the evidence of the Defendant's witnesses that blows were administered to this Claimant to stop his attack upon another inmate when the Claimant refused to respond to their orders to stop. I therefore hold that the injuries sustained by the First Named Claimant were inflicted in the circumstances as described by the Defendant and were lawful, reasonable and proportionate.

[30] I also disbelieved the case advanced by the Second Named Claimant for the same reason. The Second Named Claimant pleaded that he too suffered soft tissue injury all over his body; that he sustained a 1 ½ inch laceration to his chin and a steel implant in his right arm was bent as a result of the excessive blows of the officers. He also alleged that a preexisting hernia was aggravated causing him intermittent pain and

discomfort; that he sustained a scar the size of a five cent piece on his thigh. These assertions did not, however, accord with the medical evidence.

- [31] The evidence of the Prison Infirmary Officer is that he found Kerwyn on the ground in a fetal position, shaking. He eventually complained about body pains in both extremities. He did not complain about a preexisting hernia or lacerations or the steel implant in his hand. This officer conducted a physical examination of the Second Named Claimant after he removed his shirt and trousers. He observed slight swelling on both extremities – arms and legs. He did not observe any laceration to the chin or thigh. In his report he noted that he observed ‘abrasions to both extremities with slight swelling’.
- [32] Dr. Buchu also gave evidence in relation to this Claimant. On arrival of the Arima District Hospital, he observed that the Second Named Claimant had bruises on both upper arms; he was unable to move his left upper arm and had swelling and tenderness on his right upper arm. Kerwyn was treated with a tetanus injection and given pain killers. His right arm was put in a sling and a backboard applied for spinal support. He too was referred to the Eric Williams Medical Sciences Complex for x-ray to rule out a fracture and for further management.
- [33] In answer to Counsel, Dr. Buchu explained that the Claimant having been brought in with a history of assault, these were precautionary measures implemented. His medical opinion was that the degree of force used to inflict the injuries that he noted was moderate and that a blunt instrument was used since there were no lacerations.
- [34] The medical report from the Eric Williams Medical Sciences Complex indicated that this Claimant suffered soft tissue swelling with minor abrasions to both lower limbs. This finding supported the evidence of both the Prison Infirmary Officer and Dr. Buchu. It was in stark contrast

to the Claimant's evidence which was rendered manifestly unreliable by these findings. The x-rays did not reveal a bent steel implant in his hand, nor were there soft tissue injuries all over his body. In light of the medical reports, I therefore disbelieved the Second Named Claimant's evidence and accepted the Defendant's case – that this Claimant was dealt several blows in an effort to get him to stop a joint attack on another inmate by himself and the First Named Claimant. I therefore hold that the blows administered by the officers to this Claimant were proportionate, lawful and reasonable in the circumstances.

CONCLUSION

[35] I therefore Order:

- a) The case for the Claimants is dismissed;
- b) The Claimant to pay the Defendant's costs to be assessed in default of agreement.

Joan Charles

Judge