

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2016-03185**

**DIPNARINE SAMNARINE**

**Claimant**

AND

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES**

**Appearances:**

For the Claimant: Mr. Ganesh Saroop

For the Defendant: Ms. Natoya Moore  
Instructed by Ms. Kendra Mark, Ms. Kadine Matthews

Date of Delivery: 28<sup>th</sup> March 2019

**JUDGMENT**

### ***The Claimant's case***

- [1] By Claim Form and Statement of Case filed on 23<sup>rd</sup> September 2016, the Claimant, Dipchand Samnarine, initiated proceedings against the Defendant and sought the following reliefs:
- a) Damages including aggravated and/or exemplary and/or vindictory damages for unlawful arrest and false imprisonment;
  - b) Interest at such rate and for the period as the Court may deem just;
  - c) Costs;
  - d) Such further and/or relief as the Court may deem just.
- [2] The Claimant's case is that at approximately 1:00 am on 15<sup>th</sup> June 2015 he was sleeping at his home at No. 13 Maharaj Trace, St. Mary's Village, South Oropouche when his brother Vickram Samnarine knocked on his door and told him "police out here to see you!" Upon entering the living room he noticed five police officers, one of which he knew as Sergeant Joseph.
- [3] The Claimant was told by one of the officers that he had to go to the Arouca Police Station with them. When the Claimant asked for what, one of the officers responded "for questioning in relation to a container". The Claimant complied and did not ask anything further. He left his home and was aggressively shoved into the trunk of one of the waiting police jeeps.
- [4] At approximately 3:00 am the Claimant arrived at the Arouca Police Station and was instructed to wait outside in the car park of the station for approximately five minutes. Shortly thereafter the Claimant was taken into the station and placed in a small room for questioning.
- [5] At that time the Claimant was informed that he was being detained in relation to a container that he delivered from SM Jaleel & Company Limited located at South Oropouche to Arouca. The Claimant informed

officers that he was dispatched by Ramdass Transport Company as a driver to go to SM Jaleel to deliver soft drinks to a mini mart in Arouca.

- [6] The Claimant was subsequently transported by five officers to a jail cell at the back of the said police station. The said cell was approximately twelve by fifteen feet and smelt of urine and faeces. According to the Claimant there was garbage on the floors together with flies and cockroaches. The Claimant was forced to use a hole that was provided as a toilet that was filled with faeces to the top. The Claimant was also forced to sleep on the cold ground as there was only one concrete slab that was already occupied by other prisoners.
- [7] At approximately 6:00 am on 15<sup>th</sup> June 2015, the Claimant was handcuffed and placed into a trunk of an unmarked police vehicle accompanied by Sergeant Joseph and 2 other officers. The Claimant was asked where he had dropped off the container; he replied that he was not sure as he had been escorted to the mini mart in Arouca by two cars and one Mazda pick-up van from SM Jaleel, and he was not acquainted with the Arouca district. The Claimant asserted that he still tried to assist the officers but was unsuccessful. After forty-five (45) minutes he was brought back to the said station and returned to the cell.
- [8] At approximately 3:00pm on the said day the Claimant pleaded that five other men were placed in his cell. He was subsequently moved and placed in another cell with one prisoner and later returned to the cell he was initially placed in with the other five prisoners.
- [9] The Claimant asserted that on 16<sup>th</sup> June 2015, four additional prisoners were placed in his cell. During the course of that day, he was taken to a room by Sergeant Joseph and was again questioned about the whereabouts of the container. The Claimant again informed him that he

did not know anything about the said container as he could not recall the exact location where had he dropped it off.

- [10] The Claimant also claims that he was not able to see any family member nor obtain legal representation during the period of his detention despite his repeated requests
- [11] The Claimant stated further, that five officers took him from his cell and placed him into a room for questioning. During the said questioning officers were writing and recording what the Claimant said. They also made him read and sign a statement written by them and then they played the said recording for the Claimant. According to the Claimant this lasted three (3) hours and he was then returned to his cell with about ten prisoners.
- [12] On 17<sup>th</sup> June 2015, there were six prisoners in the cell with the Claimant and no other prisoners were placed into the said cell until his release on 22<sup>nd</sup> June 2015. During the Claimant's eight days in detention the Claimant complained that he only ate once and was disallowed from receiving food from his friends and family. He also was only allowed to shower once and was denied the opportunity to change into fresh clothing.
- [13] On 22<sup>nd</sup> June 2015 at 6:10pm the Claimant was released from the Arouca Police Station without being charged. He alleges that during his detention he questioned officers on when he was going to be released. He was vaguely informed by officers that he was being detained in relation to a container.
- [14] The Claimant pleaded that he co-operated with officers throughout his arrest and detention. Despite this, he was not allowed to make any phone calls to his family and was not permitted to see them as well. He stated that at all material times he pleaded his innocence and denied any

involvement in any illegal activities; however, he was not given an opportunity to give an explanation about the incident.

[15] The Claimant was confused by the events and felt that his freedom was being restricted. He was also fearful for the safety of his life as he was incarcerated with hardened criminals for eight days.

[16] The Claimant pleaded that the officers acted without reasonable and probable cause in arresting him and their conduct was arbitrary, oppressive and unconstitutional.

[17] In his Reply filed on 11<sup>th</sup> August 2017, the Claimant denied that he was informed by Sergeant Joseph that the container he transported to the East was stolen from SM Jaleel and that 'someone in the east' asked the employees of SM Jaleel to steal the said container for the purpose of packaging narcotics and shipping them to USA. He also stated that he was not informed that he was being arrested in relation to the container that was stolen from the SM Jaleel compound in respect of which he was the driver.

[18] He also claimed that Sergeant Joseph never took him to the mini mart on 16<sup>th</sup> June 2015; he was shown a photograph and was asked if that was the said mini mart to which he responded in the affirmative.

[19] The Claimant also denied that he was informed by Officer Norville that investigations were incomplete and at a sensitive stage and he would be informed of further developments during his detention.

### ***The Defendant's case***

[20] By Amended Defence filed on 22<sup>nd</sup> February 2017, the Defendant pleaded that the Claimant was lawfully arrested and detained.

- [21] The Defendant averred that approximately two days prior to 15<sup>th</sup> June 2015, Sergeant Joseph received information from a confidential informant that a container was stolen from SM Jaleel compound and taken somewhere in the East by employees of SM Jaleel.
- [22] The informant also stated that the Claimant was the driver of the trailer to which the container was attached and that someone in the East had asked the employees to steal the container for the purpose of packaging narcotics in it and shipping it to the USA.
- [23] The said informant then took Sergeant Joseph to the address of the Claimant and pointed out the Claimant's home. The informant also gave Sergeant Joseph the names of two of the other employees involved in the said report.
- [24] Upon receiving this information Sergeant Joseph briefed a party of officers at the Arouca Police Station. On the 15<sup>th</sup> June 2015 at 12:00 am, Sergeant Joseph accompanied by a party of officers including Acting Corporal Dardaine Regimental Number 13838 and Police Constable De Four Regimental Number 18760 from the Arouca Police Station and Acting Corporal Pamphille Regimental Number 14566 accompanied by Police Constable Elliot Regimental Number 17309, Police Constable Maharaj Regimental Number 18715 and Police Constable Hinds Regimental Number 9010 from the Northern Division Task Force, left the Arouca Police Station, in two police vehicles to visit the Claimant's address at South Oropouche.
- [25] The Officers arrived at the Claimant's home at approximately 1:00 am. The said officers exited the vehicle, stood at the gate of the premises and called out to the occupants of the house. The Officers tooted the horn and a man exited the front door in the upstairs area of the house and stood in the balcony. One of the Officers informed the man that they were there to speak to the Claimant. The man then came downstairs and opened the

gate. The man escorted some of the officers into the home through the upstairs front door.

[26] Sergeant Joseph identified himself to the Claimant and informed the Claimant that a container was stolen from SM Jaleel compound and taken somewhere in the East by employees of SM Jaleel; that he and the Claimant was the driver of the trailer to which the container was attached; that someone in the East had asked the employees to steal the container for the purpose of packaging narcotics in it and shipping it to the USA.

[27] Sergeant Joseph cautioned the Claimant. In response the Claimant stated that “yes he removed the container to the east but he did not know anything about narcotics”. Sergeant Joseph further informed the Claimant that he will be taken to the Arouca Police Station and that his assistance would be needed in locating the stolen container. The Claimant in reply indicated that he did not have a problem assisting the officers but “he did not know the east good but he will take us”.

[28] Sergeant Joseph, in the presence of the other officers and another male civilian at the Claimant’s home, informed the Claimant of his legal rights and privileges and the Claimant made no request.

[29] The Claimant was escorted to an unmarked police vehicle and placed to sit in the rear passenger seat of the Nissan X-Trail, next to Ag Cpl Dardaine and behind Pc De Four. The Claimant at all material times was not handcuffed and there was no need to shove the Claimant into the police vehicle because the Claimant at all material times co-operated.

[30] The Officers returned to the Arouca Police Station at 3:00 am; however, before proceeding to the Arouca Police Station, and based on the directions given to the officers by the Claimant, the police officers in company with

the Claimant drove around the east in search of the location where the container was dropped off.

- [31] Upon arrival at the Arouca Police Station, the Claimant was escorted into the CID Office of the Station and subsequently placed in a cell by an officer attached to the Charge Room and two officers from the party of officers.
- [32] The said cell was approximately 12 by 15 feet in dimension and contained a concrete slab. There is a toilet in the said cell, and toilet bowl is in the ground and is flushable from outside the cell for security reasons. The toilets are flushed regularly and are regularly cleaned by the MTS workers. The cells are also cleaned regularly by MTS workers.
- [33] On Tuesday 16<sup>th</sup> June 2015, based on additional information received from the informant and the description provided by the Claimant on the 15<sup>th</sup> of June, 2015, Sergeant Joseph drove around the Arima district searching for the mini-mart (the Claimant had given a distinct description of the mini-mart-including 'tiles on wall of mini-mart and the colour of the mini-mart'). Sergeant Joseph located same sometime in the afternoon. Sergeant Joseph then returned to the Arouca Police Station where he took the Claimant from the cell, and together with other officers took the Claimant to the mini-mart which Sergeant Joseph had located. Upon arrival at the mini-mart, the Claimant confirmed that the mini-mart was the location where he dropped off the container.
- [34] The Defendant explained that there are three cells in the Arouca Police Station. Prior to the detention of the Claimant, six (6) men were detained on 12<sup>th</sup> June 2015. On the 15<sup>th</sup> June 2015, seven (7) persons including the Claimant were detained at the Arouca Police Station. On the said day one (1) person was conveyed to the Arima Police Station while two (2) persons were taken to court.



- [35] On 16<sup>th</sup> June 2015, seven (7) persons, including the Claimant, were detained at the Arouca Police Station with one (1) person being a female who was placed in a different cell. Attorney at Law J. Boye called in at the police station to communicate with the Claimant and Kawal Babootee, a Justice of the Peace also came to the police station to communicate with the Claimant.
- [36] On the 17<sup>th</sup> June 2015, there were eight (8) persons including the Claimant detained at the cells at Arouca Police Station, one of the detainees was a female and she was placed in a separate cell. During the course of the day, four (4) persons including the female were taken to court and later released. Later during the said day four (4) other persons were detained at the said Station.
- [37] Investigations were continued into the matter and on the 17<sup>th</sup> June 2015, a search warrant was executed by Sergeant Joseph and a party of officers from the Arouca Police Station and the Northern Division Task Force at the address of the mini mart in Arima where the owner and three (3) persons present on the premises were arrested.
- [38] On 18<sup>th</sup> June 2015 there were four (4) prisoners left with the Claimant. The Claimant was fed every day during his eight day detention. On Thursday 18<sup>th</sup> June 2015, PC De Four in company of Sergeant Ramjit and two representatives from SM Jaleel Company Limited (Mr. Mohan Gopie and Mr. Kevin Beepath) left the Arouca Police station and proceeded to the Arima Police Station. At the Arima Police Station both Mr. Gopie and Mr. Beepath were taken to an enclosed room and shown a quantity of cases of Fruta juices, which had been seized from the mini-mart on 17<sup>th</sup> June 2015. Mr. Gopie and Mr. Beepath indicated to PC De Four that they would have to conduct a stock check of their warehouse and check the barcodes and batch numbers, which are printed on the said cases, to confirm whether

the items were in fact stolen from the warehouse. Upon their return to the Arouca Police Station, PC De Four, in the presence of Sergeant Ramjit, requested a written statement from Mr. Gopie and Mr. Beepath however they both indicated that they would be unable to give same because they did not currently have the relevant information to assist in the investigation.

[39] On 19<sup>th</sup> June 2015, during the period 10:00am-10:55am Officer Norville and of 13086 Acting Corporal Baseanoo questioned the Claimant and he recorded a Statement from him.

[40] At the CID office, Officer Norville identified himself to the Claimant and told him that information was received that illegal drugs were being transported in items in a container which he was driving. Officer Norville then cautioned the Claimant. The Claimant made no reply. Officer Norville informed the Claimant of his legal rights and privileges and he made no requests. Officer Norville asked the Claimant whether he was willing to give a statement relative to the events that took place and the Claimant agreed to give same.

[41] Officer Norville recorded the Statement, read it aloud to the Claimant, and asked him if the contents were true and correct and the Claimant agreed and then he signed the Statement. No audio recording was made of anything that was said during Officer Norville's interaction with the Claimant. After the interview, the Claimant was returned to the cell. At no time during the Claimant's interview did he make any requests to phone his family nor did he make any requests to contact an Attorney on his behalf.

- [42] On 20<sup>th</sup> June 2015 Sergeant Joseph made attempts to contact the Vice President SM Jaleel, Bashir Mohammed, with respect to recording a statement and properly identifying the items seized to assist with the prosecution of the matter. However, Sergeant Joseph was unsuccessful.
- [43] On the morning of 22<sup>nd</sup> June 2015 Sergeant Joseph and Officer Norville left the Arouca Police Station and proceeded to the Arima Police Station. At the Arima Police Station Sergeant Joseph and Officer Norville physically inspected and searched the items seized from the mini mart for illegal substances. Nothing illegal was found.
- [44] Shortly thereafter Sergeant Joseph and Officer Norville left the Arima Police Station and proceeded to the SM Jaleel compound in South Oropouche. At SM Jaleel, Sergeant Joseph and Officer Norville met with the Vice President, Bashir Mohammed and requested that he supply the relevant personnel and documents to assist in the investigation.
- [45] After leaving SM Jaleel, Sergeant Joseph visited the legal adviser, Inspector Ali at the Tunapuna Police Station. Sergeant Joseph had a conversation with Inspector Ali and he was advised to allow the Claimant to leave the Arouca Police Station and continue his investigation. Sergeant Joseph then proceeded to the Arouca Police Station.
- [46] At 5:37 pm Sergeant Joseph released the Claimant from the Arouca Police Station. Sergeant Joseph further informed the Claimant that the investigation is incomplete and he will be informed of further developments.

[47] The Defendant averred that at all material times the Claimant was informed by officers as to the reason for his arrest and that the investigation was at a sensitive stage and was not yet concluded and that he would be informed of further developments.

## **ISSUES**

***(a) Whether there was reasonable cause to suspect that the Claimant committed an offence***

***(b) What is the appropriate amount of damages to be awarded in the circumstances where it is held that there was an absence of reasonable cause to suspect or the period of detention was unreasonable***

### **Issue (a)**

***Whether there was reasonable cause to suspect that the Claimant committed an offence***

## **LAW**

[48] The authors of Clerk and Lindsell on Torts<sup>1</sup> opine:

*“The tort of false imprisonment is established on proof of:*

*(a) the fact of imprisonment; and*

*(b) absence of lawful authority to justify that imprisonment.”*

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<sup>1</sup> 18th Ed [2003], para 13-19

[49] The Authors further opine that:

*“Arrest for the purpose of using the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance was an act within the broad discretion of the arrestor.”*

[50] **Sections 3(3) and 3(4)** of the **Criminal Law Act**<sup>2</sup> provides as follows:

*“(3) Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence*

*(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”*

[51] In the case of **Dumbell v Roberts**<sup>3</sup> the court discussed the nature of reasonable grounds for suspicion for an arrest. The threshold for the existence of reasonable grounds for suspicion is low, and the requirement is limited. Scott LJ said:

*‘The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for conviction.’*

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<sup>2</sup> Cap 10:04

<sup>3</sup> 1944 1 All ER 326

[52] In **Dallison v Caffrey**<sup>4</sup> Diplock L.J. in deciding whether there was reasonable and probable cause to arrest a plaintiff stated:

*“It is common ground in this case that a felony had in fact been committed. Where this is so, the common law as to the right of a person to arrest, detain and prosecute another person whom he suspects of having committed the felony is, I think, simpler and more sensible than Mr. Jukes, in his able and ingenious argument for the plaintiff, has suggested - and so are the respective functions of judge and jury at the trial of the action. It is in the public interest that felons should be caught and punished. At common law a person who acts honestly and reasonably in taking steps to serve this public interest commits no actionable wrong. What is honesty in this connection does not change: what is reasonable changes as society and the organisation for the enforcement of the criminal law evolves. What was reasonable in connection with arrest and detention in the days of the parish constable, the stocks and lock-up, and the justice sitting in his own justice room before there was an organised police force, prison system, or courts of summary jurisdiction, is not the same as what is reasonable today. Eighteenth- and early nineteenth-century authorities are illustrative of what was reasonable in the social conditions then existing. They lay down no detailed rules of law as to what is reasonable conduct in the very different social conditions of today. (Underlined areas emphasised)*

*He further stated that*

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<sup>4</sup> [1961] 1 QB 348 pg 370

*“Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest make it probable that the person arrested committed the felony. This is what constitutes in law reasonable and probable cause for the arrest. (Underlined areas emphasised)*

[53] In the case of **Shaaban & Ors v Chong Fook Kam & Anor**<sup>5</sup> the Privy Council dealt with the issue of false imprisonment and the distinction between reasonable suspicion and prima facie proof. At page 1630 of the judgment Lord Devlin stated:

*“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; “I suspect but I cannot prove”. Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police. To give power to arrest on reasonable suspicion does not mean that it is always or even ordinarily to be exercised. It means that there is an executive discretion. In the exercise of it many factors have to be considered besides the strength of the case. The possibility of escape, the prevention of further crime and the obstruction of police enquiries are examples of those factors with which all judges who have had to grant or refuse*

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<sup>5</sup> [1969] UKPC 26 PG 1630

*bail are familiar. There is no serious danger in a large measure of executive discretion in the first instance because in countries where common law principles prevail the discretion is subject indirectly to judicial control. There is first the power, which their Lordships have just noticed, to grant bail. There is secondly the fact that in such countries there is available only a limited period between the time of arrest and the institution of proceedings; and if a police officer institutes proceedings without prima facie proof, he will run the risk of an action for malicious prosecution...Their Lordships have not found any English authority in which reasonable suspicion has been equated with prima facie proof.”*

Later at page 1631 he stated,

*“There is another distinction between reasonable suspicion and prima facie proof. Prima facie consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all. There is a discussion about the relevance of previous convictions in the judgment of Lord Wright in *McArdle v Egan*. Suspicion can take into account also matters which, though admissible could not form part of a prima facie case.”*

- [54] In the case of **Fayed and others v Commissioner of Police of The Metropolis and others**<sup>6</sup>, two police officers without warrant, arrested the Appellants on suspicion of theft of, and criminal damage to, some of the contents of a safe deposit box. In deciding whether there was reasonable

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<sup>6</sup> [2004] EWCA Civ 1579 para 82, 83



cause for suspicion that a number of persons committed the theft the Court stated that:

*“[82] Whilst the liberty of the subject, carrying with it an entitlement to freedom from arbitrary arrest and detention, now enshrined in art 5 is of the greatest importance, it should be remembered that it expresses what has long been a well-established and rigorously applied principle of our common and statutory law. Both art 5, in paragraph (1) (c), and our domestic law provide the same or similar “compromise”, as Lord Diplock called it, between those two public interests. When considering, in the balance of those interests, the “reasonableness” of a police officer's use of a power to arrest in reliance on his reasonably held suspicion that the subject of his arrest has committed an offence, against that individual's entitlement to liberty expressly subject to that legitimate public interest, it is difficult, as Latham LJ indicated in Cumming, to see by what intellectual mechanism the ambit of Wednesbury discretion given to the suspecting and arresting officer should be reduced. The unknown, and the relative risk of public and/or private harm, whichever way the discretion is exercised, are mostly incapable of precise identification at that stage, as distinct from later when all or more is revealed in the further course of the investigation. In any event, cases such as these, where the subject's loss of liberty is known to be for a relatively short period for the purpose of an interview to which he was, in any event, prepared to submit, and which may or may not lead to him being charged, do not seem a logical or proportionate basis for narrowing the Wednesbury reasonableness test for exercise of the power - certainly not so as to substitute for it a test of necessity.*

*However, that is not to dismiss the possibility that Wednesbury-plus reasonableness in this context might approach the test of necessity where the intrusion on a person's liberty is of an egregious and/or public a nature and /or for such length of time and/or accompanied with harsh treatment.*

*[83] With those observations in mind it may be helpful for me to set out a number of, mostly unoriginal, propositions that I derive from the authorities:*

*1) In determining all Castorina questions the state of mind is that of the arresting officer, subjective as to the first question, the fact of his suspicion, and objective as to the second and third questions, whether he had reasonable grounds for it and whether he exercised his discretionary power of arrest Wednesbury reasonably.*

*2) It is for the police to establish the first two Castorina requirements, namely that an arresting officer suspected that the claimant had committed an arrestable offence and that he had reasonable grounds for his submission – Holgate Mohammed, per Lord Diplock at 441F-H, and Plange, per Parker LJ.*

*3) If the police establish those requirements, the arrest is lawful unless the claimant can establish on Wednesbury principles that the arresting officer's exercise or non-exercise of his power of arrest was unreasonable, the third Castorina question –Holgate-Mohammed, per Lord Diplock at 446A-D; Plange, per Parker LJ; and Cumming, per Latham LJ at para. 26.*

4) *The requirement of Wednesbury reasonableness, given the burden on the claimant to establish that the arresting officer's exercise or non-exercise of discretion to arrest him was unlawful, may, depending on the circumstances of each case, be modified where appropriate by the human rights jurisprudence to some of which I have referred, so as to narrow, where appropriate, the traditionally generous ambit of Wednesbury discretion - Cumming, per Latham LJ at para 26. It is not, as a norm, to be equated with necessity; neither art 5 nor s 24(6) so provide. The extent, if at all, of that narrowing of the ambit or lightening of the burden on the claimant will depend on the nature of the human right in play – in this context one of the most fundamental, the art 5 right to liberty. In my view, it will also depend on how substantial an interference with that right, in all or any of the senses mentioned in para 82 above, an arrest in any particular circumstances constitutes. The more substantial the interference, the narrower the otherwise generous Wednesbury ambit of reasonableness becomes. See the principles laid down by the House of Lords in R (on the application of Bugdaycay) v SSHD [1987] AC 514, and in R (on the application of Brind) v SSHD [1991] 1 AC 696, see e.g. per Lord Bridge of Harwich, at 748F-747B. Latham LJ had also to consider this aspect in Cumming, where, following Lord Diplock in Mohammed-Holgate, at 444G-445C, he said at paras 43 and 44: it seems to me that it is necessary to bear in mind that the right to liberty under Article 5 was engaged and that any decision to arrest had to take into account the importance of this right even though the Human Rights Act was not in force at the time. . . . The court must consider with care whether or not the decision to arrest was one which no*

*police officer, applying his mind to the matter could reasonably take bearing in mind the effect on the Appellants' right to liberty. . .*

*44. . . . It has to be remembered that the protection provided by Article 5 is against arbitrary arrest. The European Court of Human Rights in Fox, Campbell and Hartley held that the protection required by the article was met by the requirement that there must be 'reasonable grounds' for the arrest. I do not therefore consider that Article 5 required the court to evaluate the exercise of discretion in any different way from the exercise of any other executive discretion, although it must do so . . . in the light of the important right to liberty which was at stake.”*

*5) It is a legitimate, but not on that account necessarily Wednesbury reasonable use of the power, to arrest in order to interview and/or to seek further evidence – s 37(2) and, Holgate-Mohammed, per Lord Diplock at 445E-G.*

*6) It may be Wednesbury reasonable to use the s 24(6) power of arrest as a means of exercising some control over a suspect with a view to securing a confession or other information where there is a need to bring matters to a head speedily, for example to preserve evidence or to prevent the further commission of crime - see e.g. Cumming, per Latham LJ at para 44”*

## **Analysis**

[55] As the cases all establish, an arrest is a trespass to the person which amounts to a deprivation of liberty. Once the Claimant proves that his liberty was restrained, it is for the police officer to show justification for

the arrest; he must show the existence of reasonable and probable cause for the arrest. Before I embark upon an analysis of the evidence on this issue, it is important to note that 'reasonable and probable cause' is to be determined based on both a subjective and objective test. The officer must establish that

- i. he had an honest belief in the guilt of the accused (the subjective test);
- ii. that he had reasonable grounds for that suspicion/belief, which if true would lead any ordinarily prudent and cautious man in his position to hold that belief (objective test);
- iii. where the police establish these requirements, then the arrest would be lawful unless the Claimant can establish, that the officer's exercise of discretion to arrest was unreasonable. The court must consider whether or not the decision to arrest was one which no police officer, applying his mind to the matter could reasonably make bearing in mind the effect on the (applicant's) right to liberty.

[56] There is no dispute that the Claimant was arrested by the police and detained over a period of some seven days. It therefore fell to the Defendant to justify his arrest and detention in accordance with the principles cited above.

[57] The evidence relied upon by Sergeant Joseph, the arresting officer at the time of the Claimant's arrest, was that a container was stolen from SM Jaleel's compound and taken somewhere in the east by employees of SM Jaleel; very importantly, that the Claimant was the driver of the trailer to which the container was attached and that someone in the east had asked the employees to steal the container for the purpose of packaging narcotics in it and shipping it to the United States of America. The informant also gave Sergeant Joseph the names of two of the other employees involved in the said report. When Sergeant Joseph informed the Claimant of the

report, he told Sergeant Joseph that he did drive the trailer to which the container was attached to the east but did not know anything about narcotics.

[58] Sergeant Joseph, in the two days prior to the arrest of the Claimant, made no inquiries of the owner of the alleged stolen container – SM Jaleel and Company. They were only contacted on the 18<sup>th</sup> June 2015 – three days after the Claimant was in custody. The information in the possession of Sergeant Joseph on the 15<sup>th</sup> was that the container had been stolen by employees – not that the management of the company had been involved. An inquiry from the company as to whether a container was missing should have been the first inquiry to be made. If urgency was an issue, then nothing prevented the police from arresting the two employees of SM Jaleel once confirmation had been obtained that a container had been stolen. An interview with the owners of SM Jaleel and Company would also have revealed the arrangement for the movement of containers - that the company hired another company, Ramdass Transport Company, to move its containers and that the Claimant was an employee of the latter company engaged to drive trailers. No doubt company records at both SM Jaleel and Company and Ramdass Transport would have revealed whether there was a legitimate request from SM Jaleel to Ramdass Transport on the date and time alleged, to take a trailer and container to the east to deliver product or not as the case may be. This was not done prior to arresting the Claimant. I also note that after the Claimant had been arrested and detained for three days, when the officer made contact with SM Jaleel and Company there was no follow up inquiry about the missing container – just about some tins/packs of juice produced by the company and found at the mini-mart. The Claimant was cooperative when arrested and agreed to assist the police in locating the mini-mart even though he had indicated that he did not know the eastern part of the island and had been shown where to go to by the employees of SM Jaleel and Company. The mini-mart was eventually located the next day – the 16<sup>th</sup> June 2015.

[59] From the above, I conclude that in the absence of:

- i. information from SM Jaleel and Company with respect to whether a container had been stolen;
- ii. information from SM Jaleel and Company whether any product had been stolen;
- iii. information from SM Jaleel about transportation arrangements for its containers and whether on the date and time in question one of its containers had been scheduled to make a delivery in Arima;
- iv. information from Ramdass Transport Company relative to a request from SM Jaleel and Company for a trailer on the material date and time;
- v. the arrest of the two employees of SM Jaleel and Company who were alleged to have accompanied the trailer to the mini-mart in the east;
- vi. the failure to pursue any inquiry about the missing container with SM Jaleel and Company either before the 15<sup>th</sup> June 2015 or on that date.

that the officer did not have an honest belief in the guilt of the Claimant or a proper basis to hold a reasonable suspicion that the Claimant was part of a joint enterprise to steal a container from SM Jaleel and Company for the purpose of trafficking in/exportation of drugs.

### ***Objective Test***

[60] The suspicion which Sergeant Joseph had, on receipt of information from his inquiries, was that the Claimant was part of a conspiracy/joint enterprise to:

- i. steal a container from SM Jaleel and Company;
- ii. traffic in drugs;

iii. export drugs.

[61] The information that he had in his possession at the time of the arrest must be examined in order to determine whether there were reasonable and probable grounds for the arrest and detention of the Claimant. I bear in mind that the arrest could be lawful if Sergeant Joseph knew facts or was credibly informed that the person arrested committed the crime.

[62] In my view a reasonable and prudent police officer would not have arrested and detained the Claimant. Apart from the information that the Claimant was the driver of the trailer, there was no other information which pointed to his involvement in a conspiracy to steal that container for the purpose of trafficking drugs. In the ordinary course of his employment he was a driver of a transport company hired by SM Jaleel to transport its trailers. The fact that he did so on this occasion, which he readily admitted, could not, in the absence of any other information make him a suspect in those circumstances. Sergeant Joseph knew where the Claimant lived and worked; there was no immediate danger to the investigation that necessitated his detention. The arrest of the two employees of SM Jaleel, whose names the police had, may have been a more reasonable course once it was established that a container had been stolen as his informant told him.

[63] In the circumstances I hold that there was no reasonable and probable cause for the arrest of the Claimant.

***Issue (b)***

***What is the appropriate amount of damages to be awarded in the circumstances where it is held that there was an absence of reasonable cause to suspect or the period of detention was unreasonable***



## **Aggravated Damages**

[64] The award of general damages may also include aggravated damages where the circumstances of the case so warrant. In **Thaddeus Bernard v Quashie**<sup>7</sup> de la Bastide opined:

*“The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and include what is referred to as aggravated damages, that is, damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.*

*Under this head of what I have called ‘mental suffering’ are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages I think that practice should be discontinued.”*

## **Exemplary Damages**

[65] According to Mc Gregor on Damages<sup>8</sup>:

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<sup>7</sup> Civ App No 159 of 1992

<sup>8</sup> 18<sup>th</sup> Ed, Para 11-001

*“The primary object of an award of damages is to compensate the plaintiff for the harm done to him; a possible secondary object is to punish the defendant for his conduct in inflicting that harm”*

[66] In **Rookes v Barnard**<sup>9</sup> Lord Devlin stated:

*“In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may of course be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, then they can award some larger sum.”*

[67] Lord Devlin in **Rookes v Bernard**<sup>10</sup> supra identified three categories of cases where the court has discretion to award exemplary damage. These three categories of cases are:

- i. Cases of oppressive, arbitrary or unconstitutional action by servants of the Government,
- ii. Cases where the defendant’s conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff; and,
- iii. Cases in which exemplary damages are expressly authorized

## **Analysis**

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<sup>9</sup> [1964] AC 1129, page 1229

<sup>10</sup> Pages 1225-1228

[68] I do not accept the Claimant's evidence that he was not informed of the reason for his detention or that he was denied the opportunity to communicate with friends and family. By his own plea, his family brought food and clothes for him at the station which he said he was not allowed to have. Further, the records adduced by the Defendant show that he was visited by an attorney and a Justice of the Peace; additionally, I accepted that Defendant's evidence that on the 15<sup>th</sup> June 2015 the Claimant was cooperating with police and so there was no reason for him to be treated aggressively.

[69] The unlawful detention of the Claimant over a period of seven days is a factor which I take into account in making an award of general damages including aggravated damages in the sum of \$110,000.00

[70] The arrest and detention of the Claimant in circumstances where there was no reasonable basis to ground a suspicion that he did anything other than drive a trailer to which a container was affixed in the course of his employment must be condemned. A citizen must not be deprived of his liberty, and certainly not over such a long period, without any reasonable or probable cause. As indicated above, Sergeant Joseph did not make a minimal inquiry to provide a reasonable basis for his suspicion that the Claimant was part of a joint enterprise/conspiracy to steal a container for use in the export of/trafficking in drugs before arresting him. There was no verification that the container was stolen from SM Jaleel or whether the latter Company had retained Ramdass Transport to provide a driver and trailer to deliver a container to the mini-mart in Arima – which was critical information needed before arrest of the Claimant on the 15<sup>th</sup> June 2015 or his continued detention after 16<sup>th</sup> June 2015.

[71] In light of the above, I hold that this is an appropriate case for an award of exemplary damages.

## **CONCLUSION**

[72] In the circumstances, taking into account all the circumstances, I make the following Order:

- i. General damages in the sum of \$110,000.00
- ii. Exemplary damages in the sum of \$60,000.00;
- iii. Interest on the general damages at the rate of 3% from the date of filing the claim, 23<sup>rd</sup> September 2016 until judgment;
- iv. The Defendant to pay to the Claimant prescribed costs on the above sums.

**Joan Charles**

**Judge**