

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009 - 00667

BETWEEN

DAVID WALCOTT

CLAIMANT

AND

P.C. LAWRENCE CROMATY

FIRST DEFENDANT

AND

CARMINI SANKAR

SECOND DEFENDANT

Before the Honourable Mr. Justice A. des Vignes

Appearances:

Claimant in Person

Mr. N. Byam and Ms. Cherisse Nixon
instructed by Ms. Ramsook for the Defendants

JUDGEMENT

1. This action was filed on the 26th February 2009 wherein the Claimant sought the following remedies:
 - (i) Damages against the First and Second Defendants for conspiring to wrongfully arrest and/or detain or forcefully remove the Claimant from conducting legitimate business at a public office.

- (ii) Damages against the First Defendant for wrongfully arresting and/or detaining the claimant and forcefully removing him from a public office without the right to be heard on any allegation or allegations made against him.
- (iii) Damages for assault against the First Defendant for wrongfully attacking the Claimant and forcefully removing him from a public office.
- (iv) Damages against the First Defendant for wrongfully preventing the Claimant from conducting his legitimate business at a public office.
- (v) Damages against the Second Defendant for breach of authority.
- (vi) Costs

The Statement of Case

2. This claim has been pursued against the First Defendant only since the Claim Form and Statement of Case were not served upon the Second Defendant within four months and the Claimant's application filed on 25th February 2010 for an extension of time to effect service upon the Second Defendant was refused on the 12th April 2010. As a consequence, the Claimant's claim against the First and Second Defendants for conspiracy to wrongfully arrest and/or detain or forcefully remove him from conducting legitimate business at a public office must necessarily fail.
3. The Claimant alleges that sometime in March 2005, a Tuesday in particular, he went to the office of the Chief Immigration Officer to retrieve the personal belongings of a Mr. Bacara, a Gambian immigrant who had been recently deported from Trinidad. The Claimant states that Tuesdays are the days when members of the public are entitled to have audience with the Chief Immigration Officer.
4. While there, he was instructed by Ms. Carmini Sankar, the Secretary to the Chief Immigration Officer, that he should take his queries to the Investigations Department on Henry Street and that he could not see the Chief Immigration Officer because he could not be disturbed. The Claimant insisted that his request be relayed to the Chief Immigration Officer but Ms. Sankar refused and again instructed the Claimant to go to the Investigations Department.

5. The Claimant did not proceed to the Investigations Department but remained at the office of the Chief Immigration Officer seeking to convince Ms. Sankar that he should be permitted to meet with the Chief Immigration Officer.
6. About ten (10) minutes thereafter, the First Defendant arrived at the office of the Chief Immigration Officer and asked the Claimant what was going on. The Claimant responded that he had no idea.
7. Ms. Sankar then instructed the First Defendant to remove the Claimant from the floor. The First Defendant then instructed the Claimant to leave the floor but the Claimant did not comply with this instruction for the reason that the Claimant was of the view that he was entitled to be there to conduct legitimate business.
8. The First Defendant then took up the Claimant's bag, held the Claimant by his arm and forcefully removed him from the office of the Chief Immigration Officer, into the elevator and escorted him to the ground floor.
9. The Claimant enquired of the First Defendant whether he was under arrest and, if so, on what charge. The First Defendant responded that the Claimant was not under arrest and he was not being charged with any offence. The First Defendant then demanded that the Claimant leave the building which he did.
10. The Claimant therefore complains that he was wrongfully and forcefully removed from a public service office and that he was denied the right to pursue his legitimate business without being given a right to be heard. He further complains that the First Defendant wrongfully arrested and forcefully removed him from the office.
11. The Claimant further complains that the actions of the First Defendant and Ms. Sankar were malicious, spiteful and geared to embarrass the Claimant and amounted to an abuse of authority.

The Defence

12. On the 15th December 2009 a Defence was filed on behalf of the First Defendant. In his Defence, the First Defendant denied that the Claimant had visited the office of the Chief Immigration Officer on a Tuesday and stated that it was on Friday 4th March 2005.

13. According to him, at approximately 2.45 p.m. the Claimant was on the Third Floor of the Immigration Department on Frederick Street in the Chief Immigration Officer's waiting room. Ms. Sankar, the Chief Immigration Officer's secretary, enquired of the purpose of his being there. The Claimant requested to see the Chief Immigration Officer and after being told that he was there to retrieve the property of an African immigrant, Ms. Sankar informed him that he could not see the Chief Immigration Officer as he was in a meeting and she referred him to Mr. King, the officer in charge of investigations. The Claimant refused to go to Mr. King.
14. Ms. Sankar insisted that the Claimant see Mr. King but the Claimant insisted on seeing the Chief Immigration Officer. The Claimant became aggressive, shouted and refused to leave the waiting room. He struck the partition around the cubicle. Ms. Sankar called for assistance from a police officer.
15. The First Defendant was instructed to provide assistance on the Third Floor. Upon arrival on that floor, he spoke with Ms. Sankar to enquire what was going on. The Claimant interjected to state that he had no idea. Ms. Sankar informed the First Defendant that the Claimant was being very aggressive and was speaking in an aggressive tone. She also informed him of what had happened in relation to the Claimant's requests.
16. The First Defendant then spoke to the Claimant and explained that he was not authorised to be in that area and that he needed to leave. He asked the Claimant to accompany him downstairs. The Claimant did not comply with the First Defendant's request but enquired whether he was being arrested. The First Defendant responded that he was not.
17. After repeated invitations by the First Defendant to the Claimant, the First Defendant picked up the Claimant's bag to prompt him to leave. The Claimant followed the First Defendant into the elevator which proceeded to the ground floor. The First Defendant returned the Claimant's bag to him as soon as he started walking. In the elevator, the Claimant asked the First Defendant for his name and regimental number. The First Defendant gave him his surname and pointed to the number on his uniform.

18. Upon arrival on the ground floor, the Claimant told the First Defendant that he would see him in Court and departed the building.
19. The First Defendant denies that he held the Claimant by his arm or that he forcefully removed him from the building.

The Reply

20. On the 13th April 2010, the Claimant filed a Reply. In his Reply, the Claimant alleged that the First Defendant attacked him and forcefully removed him from the office. Further, he denied that he had visited the office on Friday 4th March 2005 and insisted that he had visited the Chief Immigration Officer's office on the Tuesday after the deportation of the Gambian national. According to him, on Friday 4th March 2005, he was at an Orisa shrine in St. Helena Village.
21. In the rest of the Reply, the Claimant substantially repeated the allegations made in the Statement of Case and pointed out the flaws and inconsistencies contained in the Defence.

The Amended Claim Form and Amended Statement of Case

22. On the 2nd June 2010, the Claimant filed an Amended Claim Form and Amended Statement of Case and on the 15th November 2010 permission was granted to the First Defendant to file and serve an Amended Defence on or before the 7th February 2011. The First Defendant did not file an Amended Defence by that date or at all.
23. The amendments made to the original claim were to include a claim for false arrest and a claim for damages for battery. There is also a claim against the Second Defendant for aiding and abetting an act of false arrest and battery but since the Second Defendant was never served with the proceedings in this matter, that claim cannot be entertained.

The Evidence

24. On 12th December 2011 the Claimant filed a witness Statement and on the 27th February 2012 witness statements were filed by the First Defendant and Ms. Carmini Sankar.

The Issues

25. The following issues arise for determination in this matter:

- (i) Did the alleged incident occur on a Tuesday as alleged by the Claimant or on Friday 4th March 2005 as alleged by the First Defendant?
- (ii) Did the Claimant refuse to leave the Chief Immigration Officer's office when requested to do so by Ms. Sankar?
- (iii) Did the Claimant refuse to leave when requested to do so by the First Defendant?
- (iv) Did the First Defendant commit an assault and battery against the Claimant?
- (v) Did the First Defendant arrest Mr. Walcott?
- (vi) Was the Claimant entitled to remain at the office of the Chief Immigration Officer "*to conduct his legitimate business*", despite repeated requests by Ms. Sankar and the First Defendant to leave there?

I Did the alleged incident occur on a Tuesday as alleged by the Claimant or on Friday 4th March 2005 as alleged by the First Defendant?

26. The Claimant was uncertain of the date but insisted that it was on a Tuesday since the Chief Immigration Officer sees the public on a Tuesday. In favour of the Claimant's evidence it is not in dispute that in order to gain access to the Chief Immigration Officer's office the Claimant needed permission. The First Defendant, in his evidence said that on a Friday no one could go up to the Chief Immigration Officer's office without an appointment. There was also no evidence given of a breach of security by the Claimant. Ms. Sankar was uncertain of the correct date and gave a reason for her recollection of that specific date that was untrue and the evidence given by the Claimant about getting clearance from the First Defendant to proceed to the Third Floor was not challenged in cross-examination. Although this was not pleaded by the Claimant, no objection was taken by Counsel for the Defendant and the evidence remained unchallenged. There was also no report made by Ms. Sankar of a breach of security and when P.C. Cromarty arrived at the Chief Immigration Officer's office on the Third Floor, he did not raise the issue of a breach of security by Mr. Walcott. I did not have

the benefit of any evidence from WPC Jack to corroborate the First Defendant's evidence and the First Defendant's evidence to the effect that he was sure it was Friday 4th March 2005 because the Claimant told him, "*I will see you in court on Monday*" was not convincing. Accordingly, I believe that the Claimant gained access to the Chief Immigration Officer's office with permission and this could only mean that it was on a Tuesday and not on Friday the 4th March 2005.

27. Accordingly, on a balance of probabilities I accept the Claimant's evidence that the incident occurred on a Tuesday and not on Friday 4th March 2005.

II Did the Claimant refuse to leave the Chief Immigration Officer's office when requested to do so by Ms. Sankar?

28. On the evidence of Claimant, it is clear that when Ms. Sankar informed him that he should take his request to the Investigations Department, he did not accept or comply with her instructions. When Ms. Sankar was adamant that he could not see the Chief Immigration Officer, he made remarks to her and then sat down in the waiting room.
29. On the evidence of Ms. Sankar, she spoke with Mr. Walcott about the purpose of his visit and she informed him that she could not interrupt the Chief Immigration Officer at that time since he was in a meeting and that he should go to see Mr. King at the Investigations Department. The Claimant refused to comply and insisted that she permit him to see the Chief Immigration Officer.
30. Ms. Sankar also said that the Claimant became very aggressive and started shouting at her. She told him to leave the waiting room but once again he refused to go. She then called the Police.
31. Ms. Sankar was not shaken in her cross examination with regard to the aggression of the Claimant when she informed him he could not see the Chief Immigration Officer and that he should go to see Mr. King. It was not suggested to her by the Claimant in his cross-examination that he had not been aggressive. In fact, given the remarks which the Claimant said he made to Ms. Sankar about whether the Chief Immigration Officer thought he was a mini-God as well as his action in remaining in the Chief Immigration Officer's office after being told he should go to the Investigations Department, I consider the evidence of Ms. Sankar with regard to the Claimant's aggressive response to her to

be quite credible. Further, the Claimant's evidence that he remained seated in the waiting room after speaking with Ms. Sankar is consistent with the evidence of Ms. Sankar that he refused to leave despite being requested to do so.

32. Accordingly, I accept the evidence of Ms. Sankar that she told the Claimant that the Chief Immigration Officer could not be disturbed and that he should go to the Investigations Department and that she requested him to leave and that he refused to do so.

III Did the Claimant refuse to leave when requested to do so by Defendant?

33. The Claimant's evidence is clear that he was instructed by P.C. Cromarty to leave and that he did not comply. In his Witness Statement, at paragraph 7, he said that he came to conduct legitimate business which was not complete and he was entitled to complete it. He was again asked to leave and once again he did not comply. According to him, he told the First Defendant to consult the Chief Immigration Officer. Under cross-examination he clearly admitted that he was asked to leave and he refused to leave.
34. The First Defendant also gave evidence that he asked the Claimant several times to accompany him downstairs but he refused.
35. Ms. Sankar also gave evidence that P.C. Cromarty requested the Claimant to accompany him downstairs and that he refused to leave. Accordingly, it is clear from all the witnesses, including the Claimant, that the Defendant requested the Claimant to leave the office of the Chief Immigration Officer and he refused to comply with that request and I so find.

IV Did the First Defendant commit an assault and battery against the Claimant?

36. The Claimant said the First Defendant took up his bag, grabbed him by his right arm and forcefully removed him from the office.
37. The First Defendant stated that he picked up the Claimant's bag and moved off with it to prompt him to leave and the Claimant followed him into the lift. He said he spent about 10 minutes, from the time he came to the floor, trying to persuade the Claimant to leave. Further, he said the Claimant kept asking if he was under arrest and he kept

saying that he was not. In my assessment of the evidence of the First Defendant, I believe that he asked Mr. Walcott to leave on several occasions and when he continued to refuse to leave he took up his bag and motioned him to proceed with him to the elevator and the Claimant followed. I do not believe Mr. Walcott when he says that the First Defendant grabbed him by his arm and forcefully removed him from the Third Floor.

38. Accordingly, in so far as the Claimant alleged an assault and battery based on his forceful removal, I find that the First Defendant did not forcefully remove the Claimant from the office and did not commit an assault and battery against the Claimant.

V Did the First Defendant arrest the Claimant?

39. On the basis of my evaluation of the evidence and my earlier findings, I am of the opinion that the First Defendant, as a Police Officer assigned to the Immigration Department, instructed the Claimant to leave the Chief Immigration Officer's office. The evidence of the Claimant does not support his allegation that he was deprived of his liberty in any manner. On the facts, the Claimant was being asked to leave the office and the First Defendant insisted that he do so. Such action by the First Defendant did not amount to an imprisonment. This is supported by the fact that in the exchanges between the Claimant and the First Defendant in the elevator and on the ground floor, the First Defendant consistently responded to the Claimant's enquiries that he was not under arrest, was not being charged and was free to leave. In fact, when the Claimant arrived at the ground floor, he was permitted to leave the building without any restriction whatsoever.

40. Accordingly, I find that the First Defendant did not arrest the Claimant on that day and did not imprison him.

VI Was the Claimant entitled to remain at the office of the Chief Immigration Officer "to conduct his legitimate business", despite repeated requests by Ms. Sankar and the First Defendant to leave?

41. The evidence is clear that both Ms. Sankar and the First Defendant insisted that the Claimant leave the Chief Immigration Officer's office and that he refused to comply with their requests. The issue, therefore, is what was the Claimant's status, in law, after he was requested by Ms. Sankar to leave and he refused to do so and after he was

requested by the First Defendant to leave and he again refused to do so. The Claimant argued that since this was a Tuesday, a day when the public was entitled to meet with the Chief Immigration Officer without an appointment, neither Ms. Sankar nor the First Defendant could request him to leave and he was entitled to remain there until he completed his legitimate business.

42. The First Defendant's Attorneys contended that Ms. Sankar and the First Defendant were entitled to revoke Mr. Walcott's permission to be at the Chief Immigration Officer's office and once they requested him to leave and he refused to comply, his status changed from licensee to trespasser. At that stage, the First Defendant was permitted to take reasonable steps to end the trespass and to insist that the Claimant leave the office. Counsel relied on the case of **Rita Porter v Commissioner of Police for the Metropolis**¹.
43. In the light of my earlier findings that the Claimant had refused to comply with Ms. Sankar's request for him to leave and that he had acted in an aggressive manner towards her, I am of the view that the Claimant's permission to be at the Chief Immigration Officer's office had been revoked by Ms. Sankar and that thereafter his continued presence at that office amounted to an act of trespass. Therefore, when he continued to remain seated in the waiting room, Ms. Sankar was entitled to call for the Police to intervene.
44. Upon the arrival of the First Defendant, he again requested the Claimant to leave and he persisted in his act of trespass by refusing to leave. At that stage, the First Defendant was entitled to take reasonable steps to end the trespass by ejecting the Claimant from the office. The fact that this was a public office does not alter the fact that the Claimant's presence there was with the permission of the Immigration Department and that such permission could be revoked at any time. The fact that the Claimant had business to transact at that office did not entitle him to remain there after he was unequivocally informed that the Chief Immigration Officer was in a meeting and could not be disturbed. It certainly did not justify his demonstration of aggression towards the Chief Immigration Officer's secretary, Ms. Sankar. Accordingly, at that stage, Ms. Sankar could reasonably withdraw the Claimant's permission to be in the Chief Immigration Officer's office and

¹ (1999) WL 852129

she did not need to have the Chief Immigration Officer's authority to call the Police and to request their assistance. When the First Defendant came to the floor, he was entitled as a Police Officer vested with the power to preserve the peace and to detect other breaches of the law² to call upon the Claimant to cease his trespass and to take reasonable steps to eject him when he refused to comply with his requests to leave.

45. In my opinion, the First Defendant acted reasonably in his efforts to persuade the Claimant to leave the Chief Immigration Officer's office and he acted lawfully in the execution of his duty as Police Officer in picking up the Claimant's bag and escorting him down in the elevator and out of the Immigration Building.

46. In light of my findings, therefore, I will dismiss the Claimant's claim in its entirety.

Costs

47. I will dismiss the Claimant's claim with no order as to costs.

Dated this 5th day of December, 2012

**André des Vignes
Judge**

² S. 45 of the Police Service Act