

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015 - 01925

Between

Sunil Ramharack

Claimant

And

The Attorney General of Trinidad and Tobago

Defendant

Before Her Honour Madam Justice Eleanor Donaldson-Honeywell

Appearances:

Mr. Kenneth Thompson for the Claimant

Ms. Sacha Sookram instructed by Ms. Laura Persad for the Defendant

Oral Judgement

Delivered on 25th October, 2018

Decision on Liability

1. Judgment is going to be for the Claimant in relation to malicious prosecution and malicious procurement of the warrants. It will be my finding that you have established that there was no reasonable and probable cause. The inconsistency between the

documentary evidence submitted by the Defendants witnesses themselves with the case presented in this court is stark to the extent that the credibility of those witnesses, PC Byneal and Singh was damaged by those inconsistencies. There was a whole new element to the case that only came to light in this high court proceeding which had to do with the allegation that Mr. Ramharack was in custody in a car. That was not in the Station Diary, it was not in any evidence before the Magistrate.

2. I have also had sight of the Magistrate's decision and I accept the point made by Ms. Sookram; yes, that it's a higher standard there. However, the evidence speaks for itself. That evidence is not consistent with what was given here by PC Byneal. So that affected the credibility of those witnesses. With regard to the point made that it's incredulous that PC Byneal would pull aside the Claimant and ask him to stand somewhere for a few minutes. I don't find that incredulous especially in circumstances of a brawl, where you have persons that are drunk, some are liming, loud music playing. It doesn't seem incredulous to me that the officer could have just told him "you stand here" but he was not actually in custody at that time.
3. The evidence at the Magistrates Court with regard to the Claimant escaping is that at that time he was put to stand. There were two instances of escape alleged in the case before the court now. Before the Magistrate and in the Station Diary on the basis on which the Claimant was charged, the second escape was not a part of the prosecution at all.
4. The second escape referred to in these proceedings was a fabrication. It was introduced for these proceedings in light of the evidence regarding the first alleged escape having been found wanting at the Magistrate's Court.
5. But as it relates to the first alleged escape, removing his hand from the officer who put him to stand up, I found the Claimant's evidence was credible. The Defendant's evidence regarding the first escape defied logic. It was inherently improbable that an escape took place where a person could have been informed of being under arrest, simply held by the hand, which he violently pulled away and went back to liming and

drinking, within constant sight of the alleged arresting officer for two hours. This is the case for the Defendant regarding that first escape.

6. My finding is that the evidence at the Magistrate's Court and for these proceedings that the Claimant was informed that he was under arrest when PC Byneal held his hand was a fabrication. Instead the account of the Claimant that he was simply pulled aside from the loud, drinking, liming, disorderly fray and put to stand up, then the officer walked off, so the Claimant did so as well, is more credible.
7. The evidence of both the Defendant's witnesses also bolsters the credibility of this version. From their description of the event it was an uncontrolled melee in which the officers, including PC Byneal sought to attend to many persons behaving badly. Hence the officer would more than likely have walked away having put the Claimant to stand up.
8. Again, looking at it in the round, the fact that the two officers gave different accounts; in the Station diary, the Magistrate's Court and here affected their credibility vis a vis the Claimant who had the same story throughout i.e. in terms of his evidence before this court.
9. Also the officers' witness statements were somewhat inconsistent. In fact even up to this stage officer Singh, who was a supporting witness, could not give any evidence to support Mr. Ramahack being locked up in the police car. I should say, not locked up. There wasn't even any evidence that he was locked up. So, as to how he was in custody in a car where it was open to him to just open the door and leave, I really find that that aspect of the Defendant's case is incredulous. Also the fact that after the first alleged escape, the Defendant's case is that he violently moved his hand from PC Byneal, but after that he was liming and drinking for two hours in close proximity to PC Byneal and other officers. That to me is incredulous, that he was an escaped felon and he was just left to lime and drink. Yet the officers are saying the crowd was too rowdy and that's why they didn't pursue him.

10. On the balance of probabilities I find the Defendant's version far less credible than the version put forward by the Claimant, which is that he was just put to stand and no attention was paid to him. So the officer walked off and he walked off too. In the context of that "brawl", when I said brawl I meant that rowdy, drunken, liming, playing loud music, that sounds more credible to me. They put him to stand up but didn't have him in custody and he walked off. That is what I find more credible.
11. Also in terms of malice I accept the points of law cited by Mr. Thompson, with regard to the fact that although the burden of proof was on the Defendant he was not required to establish exactly what the improper motive was unless he may have known who had one. It was sufficient to present a case such that it could be inferred that there was such a malicious motive. I think in all the circumstances of the changes in the evidence and so on, I can reasonably infer that the prosecution was motivated by malice and not by any intention to bring criminal activity to justice.
12. There is also the fact that the circumstances were not such as would have given justification for the officer to report the matter in such a way that the Justice of the Peace [JP] would be of the view that bail could not be considered. And clearly the reporting of the offence could only have come from PC Byneal. He's the alleged arresting officer. So again I say that the procurement of that warrant that was endorsed "no bail", was procured based on the malicious efforts of PC Byneal.
13. Another unbelievable aspect of the Defendant's case is that PC Byneal claimed there was need for investigation after the incident. This was his explanation for the delay in giving the information to the Justice of the Peace that resulted in the warrant being issued. He said he did not know the name of the Claimant but his supporting witness, who was with him that night gave evidence at the Magistrates Court that he knew the owner of the vehicle the Claimant was seen near to playing loud music, as the Claimant's father. This was confirmed under cross examination in this court. There appears to have been no genuine reason for waiting several days to have a warrant issued.

14. Including the charge of the alleged escape from custody when seeking the Warrant gave a false impression to the Justice of the Peace, resulting in his endorsement of “no bail” on the warrant. The only other charge was of using obscene language which could not, per se, have caused the JP to indicate no bail. Thereafter the arresting officer executed the warrant and detained the Claimant on the day before a long holiday weekend knowing that he would therefore spend at least four days imprisoned, albeit for minor alleged offences.
15. The fact that the warrant was executed on the day before the long holiday, adds to the whole concept that I have that this prosecution was motivated by malice. I infer malice from the complete lack of reasonable and probable cause for arrest and from the surrounding circumstances including misleading the JP to procure “no bail” warrants and ensuring the Claimant spent 4 days locked up.
16. It is clear from the cross examination, which was very effectively done by Ms. Sookram, that the Claimant admits that he didn’t know PC Byneal and that he can’t say whether or not he had a motivation of bias. However, I accept the submission by Mr. Thompson that he is not required to prove the reason for the mind-set of PC Byneal. It is sufficient from his actions to infer that there was malice.

Decision on Constitutional Claim

17. Counsel for the Claimant cites the High Court decision of **ANR Robinson v AG HCA 941/1976**, in which separate awards were made under the heads of malicious prosecution; assault, wrongful arrest and false imprisonment; and infringement of the plaintiff’s constitutional rights. Counsel for the Defendant cites the Privy Council decision of **Antonio Webster v AG** as authority for the proposition that a constitutional claim cannot be made in the present circumstances. The Claimant in that case claimed damages for false imprisonment and assault and battery as well as constitutional reliefs in the form of declarations.

18. The Privy Council held at paragraph 20 that the Claimant was wrong to include the subsidiary claims for the constitutional declarations because “they were redundant”. Distinguishing the facts from the decision in **AG v Ramanoop [2005] UKPC 15**, the Court considered that there were no exceptional circumstances in the case to justify an award of vindictory damages exceeding the level of compensatory damages recoverable under common law.
19. The Board in **Jaroo v The Attorney General of Trinidad and Tobago [2002] UKPC 5, [2002] 1 AC 871** considered, at paragraph 29 that:
- “The right to apply to the High Court which s.14(1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy.”*
20. In the present case, however, Counsel for the Claimant has made it clear that the constitutional claim cannot be considered redundant due to the fact that damages he claimed under the tort of false imprisonment could not be awarded due to the arrest being pursuant to a warrant. This does not mean that the detention and or deprivation of liberty itself was not illegal. Therefore there exists no parallel remedy available to the Claimant for his unlawful detention and he is entitled to damages as claimed under constitutional relief.

Decision on Quantum of Damages, Interest and Costs

21. The Claimant has claimed damages for:
- (i) malicious prosecution,
 - (ii) malicious procurement of two warrants for the arrest of the Claimant,
 - (iii) contravention of the Claimants fundamental right to liberty under Section 4 (a) of the Constitution, and
 - (iv) false imprisonment from April 4, 2012 to April 19, 2012. As aforementioned it is conceded that no damages can be awarded for the latter claim regarding False Imprisonment because the imprisonment was pursuant to a warrant.

22. In oral submissions, Counsel for the Claimant sought a figure of \$75,000 under each of the remaining three heads. Citing the decision of **Cowie v AG & Others CV2012-02813** it was submitted that separate awards should be made in respect of malicious prosecution and malicious procurement of an arrest warrant in the circumstances of this case. The case of **Cowie** however, involved malicious procurement of a search warrant along with malicious prosecution. Malicious procurement of an arrest warrant has been held to be a tort on its own – **Roy v Prior [1971] AC 470; Gibbs v Rea [1998] AC 786**. However, in the present situation, the facts surrounding each of these torts are the same and would have resulted in the same injury to the Claimant. In essence the injury suffered by the Claimant resulting from these torts is the mental anguish, physical pain and reputational damage caused by his arrest and prosecution. Therefore only one award shall be made under these heads. In respect of the constitutional claim, the damages sought would be those caused by his detention and deprivation of liberty for approximately four days.
23. In the case of **Allister Richards v AG CV2016-02922** an amount of \$70,000 was awarded as general damages in 2018 for malicious prosecution in circumstances where the Claimant was charged with a road traffic offence. In that case there was no deprivation of liberty and the Claimant was prosecuted for approximately nine months until a no case submission was upheld by a magistrate.
24. In the 2012 decision of **Dover v AG CV2010-00108** the Claimant was awarded a global sum of \$60,000 in general damages for malicious prosecution over a span of around one year and false imprisonment for a period of 3 days.
25. In **Darsoo v PC Michael Pierre & AG CV2016-04653**, an award of \$70,000 inclusive of aggravated damages was made in 2018 for malicious prosecution. The Claimant in that case was charged for using obscene language, resisting arrest and being in possession of a broken bottle for the purpose of committing an indictable offence, was detained for six and a half hours and was prosecuted for a period of eight years. In that case, the Claimant's action for false imprisonment was statute barred and the award for malicious prosecution took into account the period of imprisonment.

26. In the Court of Appeal decision of **AG v Stuart CA162 of 2015** cited by the Defendants, the Appeal Court disallowed the malicious prosecution claim, reducing the sum award to \$50,000 for wrongful arrest. The Claimant/Respondent in that matter had spent approximately two days imprisoned before being charged properly (as the Appeal Court held) under Anti-Gang legislation.

27. In the decision of **Buchoon & others v AG CV2006-01846**, one of three Claimants was arrested for 7 offences and kept in custody for 7 days. He was awarded \$90,000 for false imprisonment inclusive of aggravated damages for physical abuse and verbal threats by the arresting officers. In the present case, the number of days in custody is much lower and there was no allegation of any such abuses. Therefore in the claim for damages for breach of the right to liberty the sum awarded should be much lower.

28. ORDER

- (1) In line with the more recent decisions of **Richards** and **Darsoo**, I would make an award of \$70,000 in general damages for both Malicious prosecution and Malicious procurement of an arrest warrant. In other words, I am not awarding \$70,000 separately for each of these claims but rather a total of \$70,000 for both.
- (2) An award of \$25,000 as damages for deprivation of liberty in contravention of S.4 of the Constitution will also be awarded.
- (3) The special damages claim of \$13,000 is also awarded to the Claimant although no receipts were produced. There is no dispute that the Claimant was represented by an Attorney-at-Law, Mr. Thompson for the Magistrates Court proceedings. The quantum claimed is such that on a balance of probabilities would have been paid for legal services.
- (4) The total award of damages as stated above is \$108,000.00

(5) Interest is to be paid on the amount awarded at the rate of 2.5% from June 9, 2015 which was the date the Claim was filed to the date of this Judgment.

(6) The Defendant is to pay the costs of the Claim on the prescribed basis to the Claimant.

(7) Stay of Execution for 28 days.

Delivered on 25th October, 2018

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**Eleanor Joye Donaldson-Honeywell
Judge.**

Assisted by: Christie Borely JRC 1.