

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2015-02893**

Between

**KEON QUOW**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before Her Honour Madam Justice Eleanor J Donaldson-Honeywell**

**Appearances**

Ms. Vanessa Gopaul and Ms. Tamalie Budhu, Attorneys at Law for the Claimant

Ms. Kelisha Bello and Ms. Kezia Redhead, Attorneys at Law for the Defendant

**Delivered on March 2, 2018**

**Oral Judgment**

1. The issues for determination in the claim as filed concern the establishment on a balance of probabilities of proof of wrongful arrest, false imprisonment and malicious prosecution. Further in the event of establishment of these torts the issue as to heads and quantum of damages is to be determined.

**A. Liability**

2. As it relates to unlawful arrest and false imprisonment, the burden of proof was on the Defendant to establish reasonable cause for arrest under Section 12 (1) of the Anti-Gang Act, No. 10 of 2011 – i.e. that the officer had reasonable cause to believe the Claimant was a Section 5.5 (1) gang member.
3. The Defence failed to prove this in any respect, ultimately in that the arresting officer's evidence was not admitted due to non-attendance. However, even on the case as pleaded by the Defence, there was no hope in establishing reasonable doubt cause for arrest and imprisonment. I go into the reasons why I say this, as some points are relevant for consideration as to the remaining issues regarding malicious prosecution.
4. I say that on the pleadings no reasonable cause could be proven because the offence in question requires proof of many elements. On reading Section 5 (1) (a) with the definitions of gang, gang member and gang-related activity at Section 4 of the Act, clearly the officer had to have cause to believe in these factors:
  - (i) That a gang existed in the sense of a combination of persons. Unless there was a preponderance of other admissible evidence as provided at section 5(5) that meant the officer had to prove he had reason to believe there was a gang, by reference to factors such as knowledge of a common name, belief structure, criminal enterprise, initiation rites, and territorial situs etc leading to suspicion of existence of a gang. There were no such factors pleaded.
  - (ii) That the Claimant belonged to such a gang or voluntarily associated not just with the gang members but with gang related activity as defined. There is no pleading here as to a basis for believing in his membership other than that the Claimant limed with certain persons.
  - (iii) Finally, there must be reasonable cause to suspect gang related activity as listed in the 1<sup>st</sup> schedule. Here there is no such pleading. All that is said is that the Claimant and other persons liming would run when police approached

at the location where they were liming, which is not clearly described, sometimes narcotics, ammunition and firearm were found. There is no pleading directly connecting the Claimant to any of the items found.

5. In his Judgment in AG v **Kevin Stuart CA 162/2015** Justice of Appeal Bereaux set out at pages 11 to 13 and page 16 the type of details of gang activity and gang membership, and the nexus to gang activity that the Defence case must present to establish reasonable cause for arrest. In **Stuart** where there was more material presented, the court held there was no reasonable cause for arrest. There, unlike in the instant case, for example, there was the pleaded factor of actual interaction of **Stuart** in drug sales. Here there is nothing pleaded, save for alleged liming with certain persons and running when police approached and drugs etc. being found in the absence of the Claimant.
6. So it is clear that even if the officer had attended his evidence could not have established reasonable cause for arrest or imprisonment. A perusal of his witness statement, which does not go beyond the pleaded case, confirms this.
7. As it relates to the remaining tort of malicious prosecution the same concerns as to reasonable and probable cause are relevant but this time it is whether charging the Claimant was justified. The burden of proof of Malicious Prosecution was initially on the Claimant to show no reasonable and probable cause and also that the charge was by motive of malice.
8. As in **Kevin Stuart** the Claimant has discharged this burden, as on a balance of probabilities I found him truthful as to the written evidence at paragraphs 4 and 9 of his statement that he was not involved in gang activities and had no matters at court. That he had no matters in court was not contradicted by evidence to the contrary. Further, he provided evidence of his non-criminal activities as a footballer prior to arrest and as a Police Constable thereafter.
9. Clearly the burden of proof shifted to the Defence to prove there was reasonable cause to charge him as a gang member. As aforementioned, it is my finding that even if the officer

had come to court, on the pleadings there was no case made out as to reasonable cause to suspect the Claimant was a gang member and therefore arrest him.

10. After the arrest, unlike in the case of **Kevin Stuart**, nothing more was done to investigate whether he was a gang member before charging Mr. Quow.
11. In order to prove reasonable and probable cause for charging there are two aspects of belief- objective and subjective, as outlined by Breaux JA in **Kevin Stuart** at page 18. In **Stuart** the effort the officer kept on making in investigating alleged gang involvement was persuasive as to the officer's genuine belief in the offence having been committed- i.e. subjective. In this case there was no such evidence presented or even pleaded in the face of the clear lack of objective cause for the arrest of Quow on gang membership suspicion.
12. Thus, it is my finding that the Claimant's case of lack of reasonable cause for the charge has been proven on a balance of probabilities.
13. As to the issue of malice, it is my finding that based on two factors, malice is also proven on a balance of probabilities.
  - (i) Firstly, the inference is drawn from there clearly being no probable cause for arrest. See **Yasin Abu Baker v Nalini Singh CV2014-03547** at paragraph 48 citing Mendonça JA in **Manzano v The AG CA 151/2011**.
  - (ii) Secondly, the inference is drawn from the flagrant contempt of the officer, not only to the court in not attending but to the Claimant whom he arrested, in not being here to explain his motives. In this regard I follow the approach of the Privy Council in **Gibbs v John Mitchell Rea PC 62 of 1996** paragraph 46 as cited by Counsel for the Claimant.
14. In conclusion, the Claimant has successfully established his case as to wrongful arrest, false imprisonment and malicious prosecution.

## **B. Damages**

15. The Claimants claim general damages for wrongful arrest, false imprisonment and malicious prosecution, as well as aggravated damages and exemplary damages for the conditions suffered in prison and the oppressive actions of the police. In their oral submissions the Claimants submit that a reasonable sum to be awarded would be Two Hundred and Forty Thousand Dollars (\$200,000.00) in general and aggravated damages plus thirty Thousand Dollars (\$30,000.00) exemplary damages.
16. According to **Thaddeus Clement v AG CA 95/2010**, the relevant heads of damages for the tort of malicious prosecution are as follows: a) Injury to reputation, to character, standing and fame. b) Injury to feelings; for indignity, disgrace and humiliation caused and suffered. c) Deprivation of liberty; by reason of arrest, detention and/or imprisonment. The Court in that case further stated that certain aggravating factors can justify an uplift in the form of an award for aggravated damages. These factors will be considered in the present case as follows:

### **Injury to Reputation**

17. The Claimant alleges that there has been injury to his reputation as a result of his arrest and imprisonment. He avers in his witness statement that people now refer to him as “S.O.E.”<sup>1</sup> He has not, as the Defence points out, called any witnesses to support this averment. However, an inference could be made that witnesses who hold such an opinion of him would not likely come to support his case. There are, however, certain facts in the Claimant’s own case which point to the fact that he has not suffered such an injury to his reputation as he was able to secure a highly reputable job as a special reserve police officer and was able to do so on the merit of three character references. The Claimant’s evidence that his reputation was severely injured has not therefore been fully substantiated given the facts in his own case which contradict it.

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<sup>1</sup> Re the State of Emergency in place at the time when he was arrested.

### **Injury to Feelings**

18. The Claimant outlines feelings of intense trauma and suffering both during his stay in prison and thereafter. He avers that even recounting the incident to his attorneys was very emotional for him. He also claims that his prison experience left him depressed and unable to focus during football after he was released. The Claimant also describes certain indignities he suffered during his experience in prison including the dirty state of the toilets and the cell. It therefore appears that the Claimant indeed suffered great injury to his feelings during his imprisonment which had lasting effects on him.

### **Deprivation of liberty**

19. It is not contested that the Claimant spent 35 days in jail after his arrest. Having concluded that his arrest was wrongful and prosecution malicious, these days spent imprisoned must be compensated for. As considered in **Milette v McNicholls (2000) 60 WIR 362**: *“There is no doubt, that there must be an element of initial shock when a person is first arrested and imprisoned. This is an element which must be taken into account and compensated for in any assessment of damages for wrongful arrest and false imprisonment, regardless of whether the imprisonment is long or short... On the other hand, it is clear that while it can be expected that there will be some adjustment by any normal person to the circumstances of his imprisonment, it is so true that the longer it lasts, the more burdensome it becomes...”*
20. The unjustified arrest and charge, therefore, would have deprived the Claimant of his liberty for a considerable period of time, perhaps becoming more burdensome the longer it lasted.

### **Aggravating factors**

21. The aggravating factors in the present case would include:
- i. The failure of the arresting officer to appear to give evidence giving the impression that there were no good reasons for the arrest;

- ii. The lack of specificity in the police officer's pleadings and untendered witness statement re gang activity of the Claimant demonstrating that he acted entirely without reason;
  - iii. The uncontradicted evidence of the Claimant that he was not informed of the reason for his arrest, nor of his rights to an attorney upon arrest.
22. The Claimant cites the case of **Uric Merrick v AG CA146/2009** in which a sum of \$200,000 was awarded for a similar incarceration period of over 30 days. The Court of Appeal in that case considered an acceptable range to be between \$150,000 and \$280,000 as awarded in "shorter but comparable cases" of **Frankie Lopez v AG CV2007-03032, Victor Romeo v AG CV2007-04388 and Kedar Maharaj v AG CV2009-01832.**
23. The case of **Anthony Scott v AG CV2008-02309** was also cited as a comparator. In that case an award of \$150,000 was made in 2012 for a period of imprisonment of 37 days.
24. In the present case the conditions the Claimant endured at prison, the extended length of time spent imprisoned and the mental suffering endured as a result are sufficient to justify an award higher than \$150,000. Further the conduct of the Defence witness in the present case justifies a further increase. However, there does not appear to have been significant injury to his reputation as he is now employed with the police service and was able to join the police football club. Accordingly, an award of \$200,000 for wrongful arrest, false imprisonment and malicious prosecution shall be awarded.

### **Exemplary damages**

25. Exemplary damages may be awarded in cases of oppressive, arbitrary or unconstitutional acts by government servants - **Rookes v Barnard [1964] AC 1129.**
26. In the present case, the following constitute oppressive actions by the servants of the government:

- i. The failure of the police officer to inform the Claimant of the reason for his arrest;
- ii. The failure of the police officer to inform the Claimant of his rights to an Attorney;
- iii. The unreasonableness exhibited in the decision to arrest and charge the Claimant without establishing any of the requirements of the Anti-Gang Act, particularly where he was subsequently employed into the Police Force; and
- iv. The high-handed conduct of the police officer in labelling the Claimant as a “Beetham” gang member because of where he lives.

27. In the circumstances of the present case, taking into consideration the mental anguish experienced by the Claimant, the award of general damages made herein for wrongful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages is Two Hundred Thousand Dollars (\$200,000.00). Further, regarding the oppressive and arbitrary conduct of the police officers in conducting the arrest and in subsequently charging the Claimant without further investigation or evidence and subjecting the Claimant to unsanitary prison conditions, the sum of thirty thousand dollars (\$30,000) is awarded as exemplary damages.

### **Special Damages**

28. The Claimant has failed to sufficiently plead and prove the special damages claimed in respect of loss of earnings from the period after his release. It appears that the contract with the W Connection Football Club did in fact subsist after the Claimant’s release and although he states in his witness statement that it was not renewed, the Claimant’s pleadings indicate that he did in fact play practice matches during the period before he was hired as a police officer. It has not been sufficiently proven, therefore that he did not receive any earnings from this. Further the Claimant has not proven that he was barred from seeking other employment during the period he claims he did not play football.



29. The Defence concedes, however, that it is likely that he would not have received a salary during his time in prison for approximately one month as he would not have been able to play. In those circumstances, special damages for loss of earnings during that period in the amount of three thousand five hundred (\$3500) per month would be awarded.

**C. Order**

30. In the circumstances, I will make the following awards of damages to be paid by the Defendant in favour of the Claimant:

- (i) Special damages of Four Thousand, Eighty-Three Dollars and thirty Cents (\$4,083.30) plus interest thereon at a the rate of 2.5% from 25<sup>th</sup> August, 2015 up to the date of judgment;
- (ii) General damages of Two Hundred Thousand Dollars (\$200,000.00), inclusive of aggravated damages plus interest thereon at the rate of 2.5% from 25<sup>th</sup> August, 2015 up to the date of judgment; and
- (iii) Exemplary damages of Thirty Thousand Dollars (\$30,000.00).
- (iv) Prescribed costs of Forty-Six Thousand Dollars, Forty One Dollars and Seventy Four Cents (\$46,041.74) to be paid to the Claimant by the Defendant.

**Delivered on March 2, 2018**

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**Eleanor Joye Donaldson- Honeywell**  
**Judge**

**Assisted by: Christie Borely, JRC I**