

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV. 2018-00562**

Between

**Alyssa Morgan**

Claimant

And

**The Attorney General of Trinidad and Tobago**

Defendant

**Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell**

Delivered on 17 February, 2020

**Appearances:**

Mr. Farai Hove Masaisai, Mr. Issa Jones and Ms Antonya Pierre, Attorneys at Law for the Claimant  
Ms Mary Davis and Mr Nairob Smart, Attorneys at Law for the Defendant

**JUDGEMENT**

**A. Introduction**

1. The Claimant Alyssa Morgan, a trainee employed in the State Health Service, was arrested at home hours before daylight dawned one morning in 2016. She was detained in a police vehicle driving for hours to pick up male prisoners who were kept in the tray of the vehicle. Eventually she was driven to a police station and imprisoned for several hours. The arrest was on a warrant for default in paying \$100 outstanding on a \$1000 traffic ticket, as a sanction for which the Claimant was to be imprisoned for 9 days.

2. The ticket payment was due for not wearing a seatbelt almost four years before the arrest, when the Claimant was a teenager. As it turns out, the \$100 had been paid by the Claimant's mother many years ago. It was paid about a month after the arrest, just a few days past the due date and after the warrant was issued for her arrest.
3. On the night of her arrest four years later, the Claimant's attempts to explain to the Police Officers who came to arrest her that she had paid the full amount due were to no avail. She seeks by this Claim compensation for breach of her constitutional rights to personal liberty and security of the person.

**B. Issues**

4. The issues to be determined in the present matter are set out by the Claimant in closing submissions as follows:
  - i. Whether the arrest and subsequent detention of the Claimant on 28 August, 2016 was illegal, unlawful, harsh, oppressive and unconstitutional and infringed the right of the Claimant to personal liberty and security of person as entrenched in Section 4(a) of the Constitution;
  - ii. Whether the enforcement of a warrant issued four (4) years ago for the sum of one hundred dollars was oppressive, arbitrary and unconstitutional;
  - iii. Whether the Defendant should pay the Claimant damages for breach of her constitutional rights and/or wrongful arrest and/or false imprisonment inclusive of aggravated/exemplary damage and/or vindictory/punitive damages.

**C. Procedural History**

5. The Claimant first filed her claim on 16 February, 2018 as a private law claim in wrongful arrest/false imprisonment. At the first Case Management Conference, the Defendant raised points of law challenging the viability of the Claim on the basis that the Defendant's officers' actions, pursuant to a warrant, could not be challenged. Parties were permitted to make legal submissions on the point. After consideration of these arguments, the Court allowed the Claimant to amend its claim to a Constitutional fixed date claim. This amended claim was filed on 10 December, 2018.

6. An application to strike out this fixed date claim was then made by the Defendant based mainly upon a lack of affidavit evidence in support of the claim, as well as on the legal point on protection of the actions of the officer by the issuance of the warrant. In a preliminary ruling on the striking out application dated 12 June, 2019, the Court held that there was no basis for striking out as the Claimant had shown an arguable case and the failure to file affidavits with the claim form was merely a procedural defect, remediable under CPR26.8.
7. The parties were, thereafter, permitted to file Affidavits, and directions for written submissions were given. The Claimant, but not the Defendant, complied by filing submissions within the time period allotted.

**D. Affidavit Evidence**

8. The Claimant filed an affidavit on behalf of herself, one by her mother Ms. Lisa Mitchell-McIntosh and one by her boyfriend, Mr. Randolph Kirton. The experience of the arrest, as described by the Claimant, commenced on April 28, 2016 at around 3:30 a.m. She was awakened by loud banging on her front door. Her boyfriend was sleeping next to her and he jumped out of his sleep. When she came out of the room with her boyfriend, the Claimant saw her sister, stepbrother, aunt and sister-in-law all coming out of their rooms to see what the banging was about. Randolph opened the window and they looked out and saw police officers standing in the yard and street.
9. There were three jeeploads of police officers. One male Officer asked for Alyssa Morgan and she replied that she was Alyssa Morgan. She was told by another officer that they had a warrant for her arrest.
10. She was startled, totally stupefied and could only think that she didn't do anything wrong. She had to compose herself for a moment. A female officer indicated that the warrant was for \$100 outstanding on a seatbelt ticket she received in 2011. The Claimant says she was confused and told the officers that her mother had paid the ticket in full for her.

11. Randolph then asked to see the warrant before they would open the door and the officers refused stating they could enter by force. The Claimant decided she would let the officers take her before any further commotion was made that would wake the children in her home or her neighbours.
12. The officers stepped in once the door was opened and told the Claimant to go and change her clothes. A female officer escorted her to her room to supervise her. When she was finished changing, she returned to the living room and the officers handcuffed her despite her protests that she was coming willingly.
13. The Claimant began to cry, feeling emotions of anger, fear and frustration because she was being arrested for a \$100 fine that she was certain had been paid. The Claimant was put to sit in the backseat of a police jeep between two officers. She observed other men in handcuffs in the tray of the vehicle.
14. The officers made further stops, effecting arrests. The Claimant's wrists began to hurt because of the handcuffs. One of the stops was at a house in O'Meara. The Claimant was of the view that this area was a hotspot and began to feel fearful of being shot at. There was also another stop at a house in Malabar to arrest a person. However, the warrant was not executed as the person the party attempted to arrest threatened to commit suicide if they tried to do so. He indicated that he would surrender himself to the police station. The officers left without him.
15. The Claimant's wrist continued to hurt and she stared at her handcuffs thinking of the ticket having been paid. By the time they arrived at the Arima Police Station, the sun was rising. The Claimant hid her face in shame as she was escorted out. The warrant was read out to her.
16. She was told by a police officer that all someone had to do was go to the Port of Spain court and pay the \$100 for her and she would be released. She was taken to a cell and observed that the cell was unclean. There was garbage everywhere and the facilities were filthy. She was brought to tears again.

17. The Claimant was then told that she was going to the Port of Spain court and thereafter to prison. This caused her to cry again. As she waited to be transported, a male officer passed by and questioned why she was being handcuffed for a \$100 seatbelt fine. He then ordered that her hands be released from the cuffs and this was done.
18. The Claimant was walked back to the cell to await certain documents. Another officer spoke with her and expressed an opinion that putting her in handcuffs like a big criminal was uncalled for.
19. The Claimant began to wonder about her son, whether he went to school and whether he had asked about her. She replayed the events in her mind and cried, thinking that she never expected to be in this type of situation.
20. The Claimant was then released and was told that her arrest was not the fault of the police, it was a mistake made by the court. The Claimant's mother and boyfriend had come to the station to show the receipt proving the full ticket had been paid since 10 December, 2012.
21. The deadline for payment of the ticket had been 2 December, 2012 which was a Sunday. The Claimant's mother had gone to pay on the 3 December but could only pay \$900 at the time so she indicated to the clerk that she would pay the \$100 balance the next Monday, thereby informally seeking an extension of time. She fulfilled the promise to pay the remaining \$100 on 10 December, 2012. The warrant for the Claimant's arrest was issued on the 7 December, 2012 before the \$100 balance had been paid.
22. After her release, the Claimant visited a doctor for back pain. She was given five days sick leave and some medication for the pain. She returned to the hospital on 9 May, 2016 and was given another five days sick leave and a referral to the psychiatric out-patient clinic so that the anxiety she was experiencing could be addressed. She made another visit to the hospital on 25 May, 2016 and was given a further three days sick leave and some more medication.

23. On 6 June, 2016 the Claimant had her first session at the Psychiatric Clinic. Since the incident she says that her life has been extremely hard. She experiences anxiety whenever she sees police near her house, has trouble sleeping and some back pains. The Claimant has forgiven the officers who did this to her but is determined that their actions should have consequences and that this experience should never again be endured by anyone else.

24. The Claimant made allegations in her Affidavit about the intoxication of the arresting officers as well as their reckless driving. However, this evidence was disputed by the Defendant's witnesses.

25. The Claimant's two witnesses supported her version of events about the arrest and her eventual discharge. They could not speak to the events occurring in the police van or in the cell as they were not present.

26. The Defendant filed the following affidavits in support of its case:

- i. Wilfred Buckmire, Police Officer
- ii. Merissa Nedd, Special Reserve Police Officer
- iii. Lorraine Leopold, Police Officer

27. Mr. Buckmire's affidavit outlines the Defendant's explanation for the Claimant's arrest. He states that it was his duty to hold and execute court issued warrants at the time of the Claimant's arrest. Pursuant to this duty, he regularly checked for these warrants at the Arima Courts and some, in relation to persons from other magisterial districts, were delivered to him. He states that he has a statutory duty to obey these warrants and that he is not afforded any discretion in their execution.

28. He further explains that the court has the authority to recall warrants and this can be done in a speedy manner. Notably, he states that on a usual day he has hundreds of warrants that he must prioritize and execute.

29. There was however, no indication in the Affidavit of Mr. Buckmire as to when he checked for and obtained the Warrant for the arrest of the Claimant. Further, there is no explanation

given so as to relieve the arresting officers of responsibility for the lengthy delay in executing the Warrant. Nothing in the Affidavit indicates that the Officers acted within a reasonable time and manner or that the Claimant was a fugitive known to be resisting arrest such that the specific actions taken, at that time many years after the warrant was issued were in obedience to the warrant.

30. In relation to the Claimant's denial upon her arrest that the amount on her ticket was still owing, he states that this was a usual response made by persons in order to avoid arrest. He did not, in the Affidavit, give any indication as to why he felt that in the Claimant's particular case the response that the ticket was paid may have been truthful. No evidence is given of the officers having taken into account that the Police made no efforts to act on the warrant for many years and that the quantum outstanding was minimal.

31. At the end of his affidavit, Mr. Buckmire indicates that after the Claimant's release, he made enquiries at the Port of Spain Magistrates' Court and was informed of the circumstances leading up to the issuance of the warrant in the Claimant's name . The fact that the ticket was paid since 2012 is admitted but Mr. Buckmire asserts that the Claimant had not applied for an extension of time to pay the \$100 a few days after it was due. The Defence witnesses do not, however, contradict the Claimant's mother's evidence that she orally sought an extension of time to pay the \$100.

#### **E. Cited Legislation**

32. **Section 4(a) of the Constitution of Trinidad and Tobago** provides:

*It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*

*the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law*

33. **Section 49 of the Police Service Act, Chap. 15:01** provides:

*(1) When an action is brought against a police officer for an act done in obedience to a warrant or order of a Magistrate or Justice, the officer shall not be responsible for*

*any irregularity in the issuing of the warrant or order or for any want of jurisdiction in the Magistrate or Justice issuing it.*

*(2) In any action brought under subsection (1), the Court shall give judgment for the officer if he fulfils the following conditions:*

*(a) he gives the warrant or order in evidence;*

*(b) he proves that the Magistrate or Justice signed*

*(c) he proves that the act complained of was done in obedience to the warrant or order.*

34. **Section 109 of the Summary Courts Act, Chap. 4:20** provides:

*“109. A person arrested, whether with or without warrant, shall not be handcuffed or otherwise bound, except in case of necessity, or of reasonable apprehension of violence, or of attempt to escape, or by order of the Court or of a Magistrate or Justice.”*

#### **F. Analysis**

35. The approach taken to analysis in determining the first two issues herein is based on the Pluralistic Model of Law explained by Wilson R. Huhn in **Teaching Legal Analysis Using a Pluralistic Model of Law, Gonzaga Law Review, [Vol. 36:3, 2000/01]** and adapted in the Judiciary of Trinidad and Tobago’s Gender Equality Protocol entitled Justice through a Gender Lens<sup>1</sup>. The approach was applied by Jamadar JA as he then was in **Civil Appeal No. P. 75 of 2018 The Law Association of Trinidad and Tobago v The Honourable Chief Justice** at paragraphs 4 to 7.

36. The considerations include textual analysis, examination of the legislative intent, review of relevant precedent, taking account of tradition and policy analysis.

*(i) Textual Analysis*

37. Section 4(a) of the Constitution protects an individual’s right to liberty and security of the person. To strike the balance, it provides that an individual should not be deprived of these rights except by due process of law. The Claimant claims that these rights have been

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<sup>1</sup> Page 41 of hard copy version and page 45 of the online version.

violated by the lengthy delay in executing a warrant and the failure to make checks to ensure that it was still valid after such a prolonged period.

38. The text of the Constitution, particularly those sections which outline rights and freedoms are to be construed liberally. The approach to be adopted was outlined in **Matthew v The State [2004] UKPC 33** by Lord Hoffman at para. 42:

*“The correct approach to interpretation of a constitution such as that of Trinidad and Tobago is well-established by authority of high standing. In Edwards v Attorney-General for Canada [1930] AC 124, 136, Lord Sankey LC, giving the judgment of the Board, classically described the constitution established by the British North America Act 1867 as ‘a living tree capable of growth and expansion within its natural limits’. The provisions of the Act were not to be cut down ‘by a narrow and technical construction’, but called for ‘a large and liberal interpretation’. Lord Wilberforce spoke in similar vein in Minister of Home Affairs v Fisher [1980] AC 319, 328-329, [1979] 3 All ER 21, when he pointed to the need for a ‘generous interpretation’, ‘suitable to give to individuals the full measure of the fundamental rights and freedoms referred to’ in the constitution and ‘guided by the principle of giving full recognition and effect to those fundamental rights and freedoms with a statement of which the Constitution commences’.”*

39. The concept of due process has been interpreted by the courts as involving “the concept of the rule of law itself and the universally accepted standards of justice observed by civilized nations which observe the rule of law” - **Thomas v Baptiste (1999) 54 W.I.R. 387** per Lord Millett. The provisions of the Police Service Act must, therefore, be interpreted in accordance with the standard of due process outlined in the Constitution.

40. Section 49 of the Police Service Act was proclaimed on 1 January, 2007. Prior to that time, there was common law protection for the actions of the Police in execution of warrants. In **AG v Williams (1997) 51 WIR 264**, the Privy Council, considering the prerequisites to obtain a search warrant in Jamaica, held that the requirement that a search warrant be issued by a justice (or magistrate, as the case may be) is to interpose protection of a judicial decision between the citizen and the power of the State.

41. The plain meaning of Section 49 of the Police Service Act outlined above is that an officer, acting in obedience to a warrant, will not be responsible for any irregularities or want of jurisdiction in its issuance. Further, where an action is brought against such an officer, the court must rule in the officer's favour once the warrant is produced, it was signed by the Magistrate or Justice and it is proven that he or she was acting in obedience to it.
42. On a strict interpretation, the section may be construed to mean that once the elements of S.49(2) are proven, there can be no responsibility by an officer for any irregularity. In the present case, the dispute does not lie in any irregularity or want of jurisdiction in the warrant issued.
43. The wording of S.49(2) (c) cannot, however, be ignored. When an arrested person seeks redress from the Court, it is only in relation to actions done in obedience to a warrant that Judgement in favour of the officer is mandatory. The question that arises is whether inefficient, untimely action taken several years after a warrant was issued and without any due diligence can be accepted by the Court as having been done in obedience to the warrant. In other words, can officers be considered to have acted in obedience to a Warrant if no effort was made in that regard for many years; in this case, it is four years which is unacceptable enough but potentially it could be 20 years of delayed obedience.
44. Thus, an issue that arises is whether some discretion should have been exercised by the officers in the instant case due to the length of time that elapsed between issuance and execution of the warrant. Therefore, there is some ambiguity as to the application of the section in relation to the present circumstances.
45. A written closing submission was filed by the Defendant months after the due date and without applying for extended time. Several cases dating back to the 1970s were cited therein, however no definitive light was shed on the interpretation of Section 40(1) within the context of Constitutional rights. Clarity can therefore be achieved by further analysis based on the intent, precedent and policy consideration

(ii) *Intent*

46. The explanations given and considerations that guided the makers of legislation are a logical starting points for analysing the intent behind the passage of the legislations. In **Pepper (Inspector of Taxes) v Hart [1993] AC 593**, the rule excluding reference to Parliamentary material as an aid to statutory construction was relaxed so as to permit such reference where:

- i. legislation was ambiguous or obscure or led to absurdity,
- ii. the material relied upon consisted of one or more statements by a Minister or other promoter of the Bill together, if necessary, with such other Parliamentary material as was necessary to understand such statements and their effect and
- iii. the statements relied upon were clear.

47. However, more recent comments from the Court of Appeal in **Ferguson v AG CA P. 85 of 2013** suggest a cautious approach:

*“[T]he current thinking on source materials from Parliament such as Hansard Reports, is that they are of limited assistance to the courts in determining the intention of Parliament. They are useful as background material and are not to be treated as determinative of the intention of Parliament.”*

48. In the Hansard report on debates leading to enactment of the Police Service Act, no specific reference was made to S.49. On the first reading of the proposed bill and thereafter, the purpose of the bill is said to be *“to consolidate, amend and revise the law relating to the Police Service, to ensure efficient and transparent management of the Service and to provide that the principles of equity and meritocracy shall be applied at all times and for other related matters.”*

49. As explained by the Privy Council in **Williams**, there is the need for the separation of executive and judicial powers which may be violated if this type of investigation was expected:

*“If the legislature has decided in the public interest that in particular circumstances it is right to authorise a policeman or other executive officer of the state to enter upon a person's premises, search his belongings and seize his goods, the function of*

*the justice is to satisfy himself that the prescribed circumstances exist. This is a duty of high constitutional importance. The law relies upon the independent scrutiny of the judiciary to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met.”*

50. It is logical, also, that another purpose of this particular section may be to enable police to act expeditiously and promptly without investigation into court orders/warrants. However, in the present case, promptness is not an issue and the action of the police in checking on the circumstances of the warrant before making an arrest almost four years later would not be a breach of this separation of powers. It would merely be in exercise of a discretion to arrest and prosecute.

*(iii) Precedent*

51. The Claimant cites the case of **Nankishoer Rajpath v AG CV2007-01245** in which the court held that a lapse of two years rendered the warrant in question to no longer be a good warrant. In that case, the court was dealing with a situation much like the present, in which a warrant was issued before a late payment was made and arrest was effected after an extended period of time (two years in that case). Charles J made the following observations before stating that there was “a blatant disregard by the officers, of the Claimant’s “liberty” rights guaranteed under the Constitution:

*“20. The Court finds it only logical therefore, that if a proper check was seemingly not made in advance that when the officers were alerted to proof of payment of the fine, it should have been welcomed. Time should have been given to the claimant or his wife, both of whom were clear in cross examination that there is a special drawer in their home where they keep important documents, to bring forth the receipts and clear the matter up immediately...”*

*22. The Court finds that it was incumbent upon PC Collin John, who at the time was the designated warrant officer, to have been more diligent in investigating a warrant, which was issued two years prior, to ascertain whether it was still valid.*

*23. The fact that the court records were not verified or updated, for a second time, after the claimant's payment is not the fault of the claimant. For upon payment of his fine, he considered himself a free man, no longer shackled to the court."*

52. The court, in that case, dismissed the submission that a police officer acting in accordance with a valid warrant, is not liable to be sued in false imprisonment but did not make specific reference to S.49 Police Service Act. The central matter determined, therefore, in **Nankishoer Rajpath** was that the State was liable for the tort of False Imprisonment. The breaches of rights were said to have raised only subsidiary constitutional issues.

53. The decision of Dean-Armorer J, as she then was, in **Jeffrey John v AG CV2009-01536** is cited by the Claimant as having referred to and supported the reasoning of Charles J in **Rajpath**. In the **Jeffrey John** decision, the court had to consider the protection of police acting under authority of a warrant in a private law claim. The court determined that the defence of acting pursuant to a warrant was absolute once the elements in S.49(2) of the Police Service Act had been satisfied, despite the length of time elapsed. Therefore, it held that the liability of the police officer (and vicariously the state) had been proven.

54. The court examined the case of **Ramkissoon v P.C. Ramdath & AG HCS 1146/1976** where the court set out the law concerning arrests pursuant to warrants:

*"The question of whether Ramdath had reasonable and probable cause for the arrest of the plaintiff, does not in my opinion arise in a case where a warrant has been issued. This question is relevant where arrest has been made without a warrant".*

55. The court, in **Jeffrey John**, noted that it was unclear whether the **Rajpath** decision involved private law matters or constitutional issues. The Court in **Jeffrey John** went on to express the view that the case before it was an ordinary claim in tort and as such the Court was constrained to apply Section 49 of the Act and to depart from the ruling in **Nankishoer Rajpath**. However, the Court did support the statements made by Charles J in **Nankishoer Rajpath**, as Dean-Armorer J observed that it was an affront to the liberty of the citizen and to their right to the security of their person to be at risk of being arrested pursuant to a warrant many months or years after the offence in question had allegedly been committed.

56. The Court observed, however, at paragraph 23 of the Judgement: *“In respect of the claim for declaratory relief, it is my view that such relief ought properly to have been sought by way of an application under S.14 of the Constitution”*. Following on these two decisions, there appears to be no other case where the constitutional review of action by the police in a case where a warrant of arrest is effected on a claimant with undue delay was considered.

57. The Claimant cites **Indira Beharry v AG CV2014-03235** as authority that the Attorney General may be liable in a constitutional claim for breach of a claimant’s constitutional right as well as the Court of Appeal decision of **AG & Lisa Ramsumair-Hinds v David CA No. P028 of 2015** where the comment was made that:

*“Notwithstanding the Magistrates Protection Act, and the protection of the magistrate from personal liability, the circumstances in this case are capable of giving rise to a claim directly against the state for constitutional relief.”*

58. The Claimant also cites more general decisions relating to constitutional protection of the right to liberty and a fair legal system – **Independent Publishing Co. Ltd. v AG [2004] UKPC 26; Ramesh Lawrence Maharaj v AG (No. 2) (1978) 30 WIR 310**.

(iv) *Tradition*

59. Some consideration can also be given to the customs of the people of Trinidad and Tobago in relation to the rights enshrined in the Constitution. Due to its colonial past which saw the obliteration of the indigenous people of the region, introduction of enslaved persons and indentured labourers and the institutionalisation of racialised and unequal systems, the concepts of liberty and due process were identified as core features of local society to be preserved in the enactment of the Constitution<sup>2</sup>.

60. Indeed, the nation is said to be “forged from the love of liberty” in the National Anthem<sup>3</sup>. The colonial and post-colonial aspects of this country’s history, politics, sociology and

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<sup>2</sup> This information is a matter of public record, indisputable and well known, forming part of the notorious local history of Trinidad and Tobago.

<sup>3</sup> The Trinidad and Tobago National Anthem by Pat Castagne

culture highlighted the significance of competence, transparency, accountability, fairness and natural justice in public services including the police and the justice system. It follows that these underlying ideals ought to be honoured in determining how Section 49 should be interpreted with a view to protecting the constitutional rights of the Claimant.

(v) *Policy Analysis*

61. Taking into consideration the ambiguities highlighted in the textual, intent and precedent analyses above as well as the comparative clarity of the underlying values identified in the tradition analysis, policy analysis will be utilised as a further step in determining the appropriate interpretation of the relevant legislation. Essentially the parties are at opposite extremes in their contending positions regarding the interpretation and application of Section 49. It is necessary to consider the effect of the different interpretations.
62. Firstly, the case for the Defendant, as gleaned from the oral positions stated during Case Management, is that Section 49 provides protection regardless of the circumstances. Thus, once a warrant has been issued it allows for arrest at any time, even without efficient expeditious action and due diligence by police officers.
63. The endorsement by the Court of such an interpretation would have the effect of encouraging inefficiency within the police service by diverting the focus from genuine instances of criminal action to attend to warrants for traffic tickets paid many years before the arrest. In this regard, the issue of proportionality of the approach to enforcing a warrant for a minimal sum long after the fact, ought to be taken into account when an officer considers whether he or she is in fact acting “in obedience to the warrant.”
64. The interpretation suggested by the Defendant would also facilitate unmitigated threats to the liberty and due process rights of citizens under the Constitution. It would, for example, allow for someone who has complied, with minor delay by paying a fine, to be treated in the same manner several years later as someone who did not comply at all. The effect, in addition to encouraging inefficiency and trampling on constitutional rights, would be to discourage compliance with the law. In other words, if a person who complies with slight

delay will be treated in the same way as a non-complier, there is no incentive to pay the fine at all.

65. Secondly, the Claimant submits that her arrest on 28th August 2016 was an unreasonable and unlawful exercise of the power of arrest in the circumstances. Accordingly, on the Claimant's case in determining the appropriate interpretation and application of Section 49 to the facts of this case, this Court must also consider whether there was an alternative method available such as the issuance of a ticket or a summons to the Claimant and if yes, would the circumstances have required that that the Police officer utilize his discretion to verify that the Claimant paid the fine. The Court should consider whether the Officer, in acting properly in obedience to a four year old warrant, should have given the Claimant reasonable time to produce evidence of payment, as opposed to arresting the Claimant.

66. The Claimant further contends that the period of the Claimant's detention at the Arima Police Station was unreasonable, that is from 3:30 a.m. to 12:05 p.m. on August 28th 2016. Again, based on the Claimant's case, the Court's interpretation of Section 49 would not condone such action as being an action in obedience to the warrant.

67. The interpretation proposed by the Claimant is more in sync with the underlying values of the Constitution and Section 49 of the Act. It takes into account that, in properly acting in obedience to a warrant, the police officers were not relieved of the obligation to respect the Constitutional rights of the Claimant. Accordingly, on the facts of this case the officers having inefficiently delayed execution of the warrant for many years, a discretion could properly have been exercised in favour of not arresting the Claimant on the day and time, in the circumstances and in the manner that they did.

#### **G. Decision**

68. The Court's determination based on the analysis above is that the actions of the officers in the instant case were in breach of the constitution and that the Defendant was not protected by Section 49 of the Police Service Act in the circumstances.

69. The events of this case reflect gross incompetence both in keeping track of paid fines and in the process of addressing suspected non-payment of a fine for a minor offence. The case also reflects unfair treatment of the Claimant who was arrested based on a warrant that ought to have been recalled many years ago. She was innocent of the suspected offence. There was an unjustifiable breach of her rights to liberty and security of the person.

70. The failure of the Defendant to put into place a proper system to ensure that warrants are recalled, once outstanding fines are paid, caused the unacceptable breach of the Claimant's rights. The approach by the Police of seeking, based on the unrecalled warrant, to arrest the Claimant at a time before dawn, when any response she gave to the allegation that she had not paid the fine could not be verified, was also unacceptable. It is clear that the warrant was executed in an untimely manner, without due diligence, without deference to the Constitutional rights of the Claimant and without proportional exercise of discretion in the circumstances where she truthfully said the fine had been paid.

71. These two factors, not recalling the warrant and the officers' failure to act in a proper timely manner in obedience to it, resulted in the Claimant's unnecessary arrest and detention for several hours until the offices where her payment could be verified opened. It is my determination that based on a proper interpretation of Section 49 in the context of the Constitutional rights of the Claimant, the officers were not acting in obedience to a warrant when the Claimant was arrested.

72. In any event, even if the arrest was justified on the basis that it was made pursuant to the warrant (which I have determined it was not), it is the duty of the police to ensure that persons are not unduly deprived of their liberty. Pursuant to that duty, the arresting officer, having been told by the Claimant that the ticket had been paid and having sight of the age of the warrant, should have postponed the planned arrest and made expeditious checks on the records to ensure that the Claimant was not detained for longer than was necessary. The immediate arrest and imprisonment of the Claimant was not an appropriate action in obedience to the warrant in the circumstances.

73. Accordingly, the Claimant succeeds in this Constitutional Claim.

## H. Assessment of Damages

74. In the case of **Terry Andrews v AG CV2017-03165**, the Master assessed the damages to be awarded in a case where a claimant was wrongfully detained for around five hours for an alleged breach of a maintenance order. When the claimant was taken to the magistrate, it was determined that he was not in breach and that the warrant had been issued in error. Liability of the State was determined by consent and damages were assessed by the Master at \$30,000 in general damages and \$15,000 in vindictory damages.

75. The court considered the defendant's submissions that the claimant's arrest did not take place in view of anyone; that he was allowed to freshen up and dress before leaving; and that there was not sufficient evidence produced of the reason for his counselling. However, the court accepted the evidence of humiliation and outrage felt by the claimant at his arrest, stating that "as he was removed by officers from his home, in full view of family members who had congregated in the yard, it would have been acutely embarrassing."

76. The court noted, also, that although there was no reason outlined for the counselling, his enrolment in the programme immediately followed his arrest. Further, while the court agreed that the period of detention was short, it considered that the deprivation of a citizen's liberty was serious and "was not to be glossed over lightly, particularly in circumstances where the effects of the arrest and detention had a specific negative impact on the applicant".

77. The court cited the Privy Council case of **Attorney General v Ramanoop [2005] UKPC 15** as outlining the approach for assessing damages in constitutional matters at paras. 18 and 19:

*"18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. **A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is***

*discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.*

***19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award.”***  
[Emphasis added]

78. An appropriate common law measure of damages in compensation to the Claimant can be ascertained from the following cases:

- i. **Ivan Neptune v The Attorney General CV2008-03385** where for seven and a half hours detention, general damages for false imprisonment were awarded of \$25,000.00.
- ii. **Cliff Persad v The Attorney General HCA S-1971 of 2002** where for eight hours detention, general damages for unlawful arrest and false imprisonment were awarded for \$30,000.00.
- iii. **Charran Francis v The Attorney General HCA No 518 of 2003** where for eight hours detention, general damages for unlawful arrest and false imprisonment were awarded for \$35,000.00.
- iv. **Richard Darsoo v PC Pierre and The Attorney General CV2016-04653** where for approximately six and a half hours detention, general damages were awarded of \$70,000.00 for malicious prosecution with an uplift for aggravation.

79. In the present case, the police officers also acted in breach of S.109 of the Summary Courts Act in handcuffing the Claimant where there was no risk of violence or attempt to escape. In light of the awards made in these comparable cases, including **Terry Andrews**, an award of \$30,000 is appropriate to compensate the Claimant in the present circumstances for her loss of liberty, humiliation and mental distress. Having identified the appropriate sum to be awarded as compensation, this court must then ask itself whether an award of that sum

affords the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right.

80. It is clear to me that the circumstances of this case amount to an abuse of power and fall into the category of oppressive, arbitrary and unconstitutional action, therefore, an award of vindicatory damages in the sum of \$10,000.00 will also be made.

**I. Order**

81. It is ordered:

- i. That there be judgment for the Claimant against the Defendant;
- ii. A declaration that the Defendant's detention and/or arrest of the Claimant was illegal, unlawful, harsh, oppressive and unconstitutional and infringed the right of the Claimant to personal liberty and security of the person as entrenched in section 4(a) of the Constitution of the Republic of Trinidad and Tobago.
- iii. The Defendant do pay the Claimant:

General damages in the sum of \$30,000.00 for the period of unlawful detention with interest at the rate of 2.5% per annum from 28 August, 2016 to February, 2020; Vindicatory damages in the sum of \$10,000.00; and Costs in an amount to be assessed by the Registrar if not agreed.

.....

Eleanor Donaldson-Honeywell

Judge

Assisted by: Christie Borely, JRC 1