

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain (Virtual)

Claim No. CV2018-00836

BETWEEN

Seandell Neptune

Claimant

AND

The Attorney General of Trinidad and Tobago

Defendant

Before The Honourable Madame Justice Eleanor Donaldson-Honeywell

Delivered on: August 18, 2021

Appearances

Mr. Lemuel Murphy and Ms. Delicia Helwig-Robertson, Attorneys at Law for the Claimant

Ms. Rachael Lyncia Jacob and Ms. Avaria Niles, Attorneys at Law for the Defendant

ORAL JUDGMENT

A. Introduction

1. This decision on liability and quantum of damages follows the trial of a claim for damages for false imprisonment and malicious prosecution. In light of an earlier Ruling, herein, on

October 30, 2020 dismissing an application by the Defendant for relief from sanctions, there was no Witness Statement evidence on record to prove the pleaded Defence.

2. The Claimant has proven on a balance of probabilities that he was unlawfully detained from the December 24, 2014 to the January 26, 2015, a total period of thirty-three (33) days. He has also succeeded in proving that he was prosecuted without reasonable and probable cause after proceedings were instituted maliciously against him by the agents/servants of the Defendant.
3. The Claimant seeks damages as well as aggravated and exemplary damages for his unlawful detention and prosecution.

B. Law and Analysis

General Damages

4. The parties agree on the general principle that general damages are awarded for the following:
 - a. Deprivation of liberty;
 - b. Injury to feelings; dignity;
 - c. Injury to reputation.

See **McGregor on Damages (18th Edition)** at para. 37-011; **Thadeus Clement v AG CA No. 95/2010** at para. 12; **Walter v Alltools (1944) 61 TLR 39, 40 (CA)**; **Kamal Samdath v Romiel Rush v Attorney General HCA S-1597 of 1986** at p. 43.

5. With regard to aggravated damages, it is acknowledged by both parties that such an award will take the form of an uplift in general damages where there is mental suffering, humiliation, indignity and where the basic award would not be sufficient compensation for the wrong sustained - **Takitota v The Attorney General and Others [2009] UKPC 11** at

para. 11; **Thaddeus Bernard v Quashie Civil Appeal No. 159 of 1992; Commissioner of Police for the Metropolis v Gerald, The Times 26th June 1998.**

6. Any uplift for aggravation ought to form part of the global sum - **Herman Lightbourne v Lionel Joseph Est. Cpl. No. 411 and Public Transport Service Corporation HCA 2402 of 1982.**

Comparator cases:

7. The Claimant has proven, on a balance of probabilities, which the facts set out in his evidence, in relation to injury to liberty, dignity and reputation, were true. He was deprived of his liberty for thirty-three (33) days in “very inhumane conditions”. Though the Claimant sets out in submissions the conditions of the Port of Spain prison as observed by the Court in previous cases, the Claimant’s own evidence in this case lacks detail as to the conditions he, himself, experienced.
8. The Claimant does, however, set out in his Statement of Case and Witness Statement the details of his injury to feelings and reputation. For the time he was imprisoned, he experienced stress and worry thinking about his wife and son who were without his support and protection. His reputation and job prospects were severely affected as he missed a Welding Certificate exam and, thereafter, was unable to apply to join the Army due to his pending criminal matter. He also found it difficult to get work during that time without a police certificate of good character. He also describes his feelings of humiliation at Court.
9. The Claimant suggests that general damages, inclusive of an uplift for aggravated damages, ought to be awarded in the sum of \$290,000. The Defendant proposes that an appropriate award is within the range of \$180,000 to \$200,000.

10. The Claimant and Defendant cite several cases in support of their submissions. The closest comparators to the present circumstances were:

- a. **Kedar Maharaj v The Attorney General of Trinidad and Tobago HCA 1832/2009**, delivered in February 2010: the Claimant was wrongfully detained at a mental hospital for a period of twenty-nine (29) days after a court order for his release had been made. He was not released until after the Claimant brought proceedings for a writ of habeas corpus. The Claimant was awarded a sum of \$280,000.00 in general damages and \$50,000.00 in exemplary damages. The Court considered that there is a *special obligation* on the part of State Attorneys, representing the State when court orders are made, to follow upon the implementation of the orders and to report to the Court on their efforts if there is non-compliance;
- b. **Mark Huggins v The Attorney General of Trinidad and Tobago CV2015-3208**, delivered in January 2018: the Claimant was awarded \$225,000.00 in general damages and \$30,000.00 in exemplary damages. The Claimant was arrested and detained and subsequently charged for being a gang member under the Anti-Gang Act contrary to section 5 (1) (a). He was detained for thirty-six (36) days and 3½ hours. He was housed in a cell about 10 feet x 10 feet with seven other men while at the Remand Yard Prison with only a bucket for a toilet;
- c. **Jamol Dunbar v The Attorney General of Trinidad and Tobago CV 2017-02511**, delivered in April 2019: the Court awarded \$230,000.00 in general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of an uplift for aggravation. In this case, the Claimant was arrested and detained for a total period sixty-five (65) days;
- d. **Joel Walker v the Attorney General of Trinidad and Tobago CV 2015-03439**, delivered in December 2018: the Court awarded the Claimant compensatory damages, inclusive of aggravated damages, the sum of \$220,000.00. The Claimant had been charged under the Anti-Gang Act and detained for a period of approximately fifty-six (56) days;

- e. **Keon Quow v the Attorney General of Trinidad and Tobago CV2015-02893**, delivered in March 2018: the Claimant was charged with being a member of a gang whereby the charge before the Court was for a little over one month. The Claimant spent thirty-five (35) days in custody and awarded the sum of \$200,000.00 in general damages for malicious prosecution

11. In the present case, the period of detention was thirty-three (33) days, less than the periods in **Walker** and **Dunbar**. The circumstances of the present case differ from the **Kedar Maharaj** matter as they do not involve a grievous error on the part of State attorneys. The present Claimant's injury to reputation during the period the matter was at the Criminal Court was significant and most comparable to that experienced by the claimant in **Quow**. In these circumstances, an award of \$200,000 is an appropriate award of general damages inclusive of an uplift for aggravation.

Exemplary damages

12. The Claimant seeks an award of exemplary damages for oppressive, arbitrary actions of the agents of the Defendant - **Rookes v Barnard [1964] A.C. 1129**. It is the Claimant's uncontested evidence that the police officers involved in his case broke the Claimant's gate, obtained illegal entry into his property and fabricated evidence to arrest the Claimant for possession of marijuana. On the Claimant's case, the officers gave false testimony on oath at the Magistrate's Court.
13. It is the Defendant's submission that this is not an appropriate case for the award of exemplary damage. However, in the absence of evidence, the Defendant is unable to provide a reason for this. They submit, simply, that when the evidence of the Claimant is examined, the conduct of the respective police officers does not warrant an award of exemplary damages.

14. These actions of fabricating evidence and giving false testimony are highly egregious and warrant intervention to signal the Court's disapproval of such actions. The Claimant proposes that an exemplary award of \$60,000 would be sufficient to express public outrage and to deter further breaches of this nature. The Respondent suggests an award in the range of \$25,000 to \$30,000 is in line with comparable cases.
15. In the case of **Stephanie Mohammed v AG CV2017-02298**, which involved falsified evidence by the police and a malicious prosecution, the Court awarded \$30,000 in exemplary damages in June 2020. The circumstances being comparable to the present case, a similar award would be appropriate.
16. Citing **AG v Fitzroy Brown & ors. CA 215/2012**, the Defendant submits that a rate of interest of 2.5% per annum be awarded on general damages from the date of service of the claim (March 14, 2018) to the date of decision. The Defendant also concedes 100% of prescribed costs ought to be awarded to the Claimant as this matter is determined in his favour - **Part 67 Appendix C of the Civil Proceedings Rules, 1998 (as amended)**.
17. The Claimant submits that costs on the relief from sanction application amounted to \$12,000 owing to the fact that both Instructing and Advocate Counsel had to appear on numerous occasions to deal with the said application. It is the Court's assessment that this is a reasonable quantum to be awarded.

C. Conclusion

18. Based on the foregoing, the Claimant has succeeded in proving his case as to liability and entitlement to damages in the following sums.
19. **IT IS HEREBY ORDERED :**
- a. Judgment for the Claimant as to liability.
 - b. The Defendant is to pay to the Claimant:

- i. General damages for false imprisonment and malicious prosecution which is inclusive of an uplift for aggravated damages in the sum of \$200,000;
- ii. Exemplary damages in the sum of \$30,000;
- iii. Interest on general damages to be calculated at 2.5% per annum from the date of the serving of the Claim which is March 14, 2018 to the date of judgement;
- iv. Prescribed costs on the claim pursuant Part 67 of the Civil Proceedings Rules 1998 (as amended) Appendix C; and
- v. Costs on the Defendant's application for relief from sanctions assessed in the amount \$12,000.

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Eleanor Joye Donaldson-Honeywell
Judge