

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando [Virtual Trial]

Claim No. CV2018-00938

BETWEEN

Andre Aaron

(Also known as Barry Andre Aaron)

Claimant

AND

The Attorney General of Trinidad and Tobago

First Defendant

Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell

Delivered on: 31 January 2022

Appearances;

Mr. Zeik Ashraph instructed by Ms. Giselle Seepersad Singh, Attorneys-at-Law for the Claimant

Mr. Stefan Jaikaran instructed by Ms. Savitri Maharaj, Attorneys-at-Law for the Defendant

Oral Judgment

A. Introduction

1. The Claimant owns and operates a boat building business at Kings Wharf, San Fernando. He seeks remedies for wrongful arrest and false imprisonment arising from an incident in October 2016 when police officers located a boat engine at his business premises after the owner reported it stolen. The Claimant's case is that

a customer brought the engine to his location for repairs. One of his employees logged it into a record book. That employee attended Court as a witness for the Claimant.

2. Although the owner of the engine indicated shortly after recovering the engine on 1 October 2016 that he was not interested in further proceedings against the Claimant, the Claimant was taken to three police stations – San Fernando, Santa Cruz and Barataria – and kept there for almost five (5) days. Thereafter, he was released without charge.

B. Evidence and Analysis

3. Applying the principles at para 8 of **Ramsingh v The AG [2012] UKPC 16**, the onus was on PC Mohess, as arresting Officer, to justify the arrest of the Claimant.
4. The Defendant relied on three witnesses to prove that there was reasonable and probable cause for the arrest and the full five (5) days of detention. However, of the three witnesses, only two attended for the trial, namely, the arresting officer PC Travis Mohess and WPC Kizzey Jacob-Caliste who was stationed at Santa Cruz Station where the engine owner initially reported his engine stolen. The third witness Police Sergeant Nigel Horsford, who failed to attend for the Trial, was the officer then stationed at Santa Cruz who made the decision to keep the Claimant detained from 2 October 2016 to 5 October 2016.
5. The Defendant needed to prove that, with reasonable cause, the arresting officer suspected, both subjectively and objectively, that the Claimant committed an arrestable offence. In the instant case, the Defendant has not proven sufficient reasonable grounds for suspicion against the Claimant to objectively base the suspicion that caused his arrest and detention for almost five (5) days.
6. On the Defendant's own case, PC Mohess, at para 6 of his Witness Statement, does not specify what particular offence he suspected the Claimant of having

committed, vis a vis, the report of Gary Brown concerning a stolen item the Claimant had in his possession.

7. PC Mohess admitted under cross-examination that the Claimant operates a “shed” at the wharf and there he observed around five other engines. The engine owned by the complainant in this case was on display in the shed in plain sight. The fact of the Claimant’s possession of a boat engine *per se* in the shed where he repairs boat engines was not enough, even *prima facie*, to base a suspicion that the Claimant committed any crime, including larceny or receiving stolen items.
8. This is so, as it is common knowledge and also gleaned from cross-examination answers by PC Mohess, that it is not the norm for repairmen to demand or have proof of ownership regarding items for repair. For example, PC Mohess acknowledged that, in his experience, there is no requirement to prove ownership when he takes his motor vehicle for repair. PC Mohess agreed that even for an item as expensive as a vehicle, there is no proof of ownership and the repair person just accepts it.
9. Furthermore, PC Mohess admits that he took no statement from the Complainant before going with him to the wharf, where the Complainant said his engine could be found. He did not even ask him;
 - how he knew that the engine was at the wharf,
 - whether he spoke to anyone at the location on the wharf where it was being kept,
 - whether he was told anything about the intention for which it was there, and
 - the purpose for which it was there or anything other information.
10. PC Mohess’s evidence about how the Claimant acted when three officers and the Complainant came to his shed, corroborates the Claimant’s own testimony that he agreed to a search and was cooperative.

11. The two give differing accounts about whether, thereafter, the Claimant said anything about 'Angela' who brought the engine to his business place and 'Leo' who recorded it in a book. Mitchel Noel's testimony on the said receipt of the engine and recording it was un-contradicted.
12. The Claimant's version, that he explained how the engine got there and why, is more credible than PC Mohess', who says the Claimant said nothing. In any event, PC Mohess' Witness Statement says nothing about asking the Claimant questions as to why the engine was there or about his record books and so on. This goes against any reasonable ground for the arrest which followed.
13. The Defendant's case that the arrest took place at the shed is less credible than the Claimant's that he was merely asked to come to the Station to give a statement. He did so after helping move the engine. The allegation of an arrest on spot with no handcuffs is not accepted as truthful. PC Mohess failed to properly explain who moved the engine that required five (5) persons to lift. It is credible the Claimant helped and went voluntarily to give his statement at the Station.
14. At the Station in San Fernando, the Claimant arrived after 3 p.m., but was kept in a cell until 11:30 p.m. with no further questioning. He was then transferred to Santa Cruz, where the investigating officer worked. Hence, no additional objective grounds are in evidence as to why PC Mohess suspected the Claimant of an offence.
15. This lack of grounds was exacerbated at Santa Cruz where the only officer who gave evidence today agreed, under cross-examination, that he was only kept for questioning. It is well established, as explained in the case of **Trevor Williamson [2014] UKPC 29**, cited by Counsel for the Claimant that being kept for questioning is not a lawful justification for imprisonment.
16. There was information available from the Complainant's Statement, on Oct 2 2016, that the Claimant had a lawful explanation for having the engine. He

explained this to the Complainant prior to the Complainant going to the Station and making the report which led to the visit of officers to the Claimant's business place. The Claimant gave these same reasons to WPC Jacob-Caliste at the Santa Cruz Station.

17. As to false imprisonment, the Defendant concedes there is no proof of any reasons to detain the Claimant from 2 October to 5 October 2016. This is in the absence of the witness, PC Horsford, who should have attended for the Trial to explain the extended detention and be cross-examined.
18. The evidence as to poor conditions in the cells at all three police stations is uncontroverted.
19. In all the circumstances, the Defendant has not established any reasonable and probable cause for suspecting the Claimant of any offence. The lengthy period of detention is unjustified. The Claimant succeeds in proving both wrongful arrest and false imprisonment.

C. Assessment of Damages

20. I consider the circumstances of the present case and the appropriate award to be in line with the 2021 case of **Dass v AG CV2018-01739**, which is more recent than the 1999 assessment in **Mark Jones v Commissioner of Police HCA 19/1998** decision cited by the Defendant. An award of \$90,000 is appropriate in the present circumstances, considering the period of detention was longer than in the case of **Dass** and that the detention is considered unlawful from the initial arrest (as distinguished from both **Dass** and **Permell v AG CV2017-02478**).
21. This award is inclusive of an award of aggravated damages for the unchallenged aggravating factors highlighted by Counsel for the Claimant including:
 - the poor conditions of the cell at Santa Cruz,
 - the Claimant had a fainting spell for which an ambulance had to be called in,

- there was delay in that ambulance being called in,
- the conditions were such that the Claimant found it unbearable to eat, and
- the Claimant was unable to inform his family of where he was located.

D. Conclusion

22. IT IS HEREBY ORDERED:

- i. There be judgment for the Claimant against the Defendant.
- ii. The Defendant to pay the Claimant's damages in the sum of \$90,000.00, inclusive of aggravated and exemplary damages.
- iii. The Defendant to pay the Claimant's costs on the prescribed basis in the sum of \$22,000.00.

.....

Eleanor Joye Donaldson-Honeywell

Judge