

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2009-03208

BETWEEN

THADEUS CLEMENT

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honorable Mr. Justice V. Kokaram

Date of Delivery: 26th April 2010

Appearances:

Ms. Cindy Bhagwandeem for the Claimant

Mr. Emmanuel Pierre for the Defendant

ORAL JUDGMENT

1. Justice Rajnauth-Lee in her judgment **Robert Naidike v the Attorney General** HCA 965 of 1996 made the observation that:

“Despite the importance of the human rights and fundamental freedoms enshrined in the Constitution of Trinidad and Tobago and the prevalence of breaches of these rights and freedoms awards for compensatory damages have sadly remained generally low and it may very well be that the time has come to re-visit the approach of our courts to these matters.”

2. This has been said, no doubt, in light of the duties of the State and their officers to protect the citizen and the trust reposed to the State their servants and agents by our society that

it will not derogate in any way from the fundamental Constitutional rights enjoyed by the citizen. Despite the many judgments however against the State, breaches of constitutional rights by law enforcement officers continue unabated. Having said that, the Court must be mindful that in each and every case of an assessment of damages that it ensures that the award adequately reflects the compensation to the Claimant that fits the factual scenario and the circumstances of that particular case including the vindication of its constitutional right.

3. Before me is the Claimant's assessment of damages for malicious prosecution, false imprisonment and breach of his constitutional rights arising out of the default judgment against the Defendant made on the 1st February 2010. Before the Court is the Claimant's witness statements which are uncontested and his skeleton submission.
4. The claim for damages covers both the tortious head of false imprisonment and malicious prosecution and as well as damages under the Constitution. Immediately having said in assessing damages, the Court must be cautious to avoid any double counting or double recovery as indeed it is recognized that exemplary damages in the law of tort for example should not be confused and infused in an award of damages under the Constitution to vindicate one's constitutional rights. However the Court must also be astute to protect the rights of the Claimant under the Constitution and to reflect that in an adequate award.
5. I have examined all the facts in this case as stated in the witness statement of the Claimant which of course at this stage is uncontested and not in dispute. I have examined the cases submitted by the Claimant¹ in particular **Ted Alexis v AG HCA 1555 of 2002 and Naidiki** and my award for general damages covering the torts of false imprisonment and malicious prosecution. In so far as false imprisonment is concerned it takes into account his deprivation of liberty and unlawful incarceration for 150 hours, for the malicious prosecution for the charge of robbery, the indignity and humiliation caused to him by the charges. This is a case where aggravating damages is applicable to reflect the manner of his arrest and his detention at the remand yard, the unpleasant conditions, the

¹ Subiah v AG PC 39 of 2007, Romauld James v AG CA 154 of 2006, Dale Maharaj v AG HCA 5263 of 1996, Mondesir v AG HCA 1903 of 1997, Stephen Singh v AG HCA 3031 of 1994

number of days his matter dragged on a charge in which the complainant failed to show his feelings of hopelessness as well as exemplary damages for the manner of his prosecution, the threats issued to him at the police station. I am mindful that an award of exemplary damages is necessary to record my disapproval and to punish the Defendant for its oppressive and arbitrary action.

6. Adopting the approach of Justice Kangaloo I approach this assessment of damages in the round as in **Ted Alexis**. I have examined the other facts in the authorities referred to me and I am of the view that based on the consideration outlined above I award the sum of \$85,000.00 in general damages inclusive of aggravating damages. Exemplary damages of \$5,000.00 will be awarded. To ensure that there is no double counting or double recovery however to at least reflect the vindicatory element of the constitution right that has been breached an award of \$2,000.00 for the breach of his constitutional right. The total award therefore is \$92,000.00 in general damages, special damages in the sum of \$8,000.00 that comprises the sum of \$5,000.00 for legal fees and \$3,000.00 for loss of earnings. Interest at the rate of 6% on general damages from the date of filing the claim to date of judgment and 3% per annum on special damages from the date of the breach 23rd October 2004 to date of judgment. Prescribed costs in the sum of \$14,850.00.

Vasheist Kokaram
Judge