

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV 2012-00962**

**BETWEEN**

**AFFOYON XAVIER**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before the Honorable Mr. Justice V. Kokaram**

**Date of Delivery: 15<sup>th</sup> May 2013**

**Appearances:**

**Mr. Gerald Ramdeen instructed by Mr. Varun Dabideen and Ms. Rachael Jaggernauth for the Claimant**

**Mr. Kashka Hemans instructed by Ms. Tricia Dyer for the Defendant**

**JUDGMENT**

1. This is another claim for damages for assault and battery made by a prisoner against prison officers at the Maximum Security State Prison at Golden Grove, Arouca. Justice Judith Jones in **Sobers and ors v AG** CV2010-04093 highlighted the proliferation of cases emanating from our prisons and generally of the frequency at which allegations of assault and/or battery were being made against persons employed by the State. Approximately 76% of the matters determined had resulted in a finding of liability against the state. This is confirmatory of the unacceptable frequent occurrence of abuse of power in the prison and the excessive use of

force against inmates. Based on the statistics of those cases, Justice Jones highlighted the need for urgent reform:

“Unless we address the physical conditions under which prisoners reside and prison officers operate and provide prison officers with training which will properly equip them to appreciate and discharge the responsibility we have placed on them it would seem to me that the institution of adequate preventative measures is beyond the capability of the prison authorities.”

2. It is true that these assault and battery cases are mainly questions of fact however this is not to make slight of the serious underlying problem as noted by Justice Jones emanating from within the walls of our prisons. The problem of poor prison conditions and an unhealthy psychological environment was referred to by Justice Jones in her earlier judgment of **Bartholomew v AG** CV2000-04755 as a time bomb. I also made reference to this time bomb in **Anino Garcia V AG** CV2009-03273. Unless it is diffused by prison reform and the introduction of programmes to equip the prison officer to adequately deal with the challenges of inmates, the hostilities will spill over the prison walls. For these reasons these claims are not ordinary cases. The duty of the Court in these cases is to protect the individual from the abuse of power. Equally, it is also to protect those in authority from unmeritorious claims seeking to take advantage of what clearly appears to be a growing unhealthy relationship between inmate and prison officer. Care must therefore be taken by both sides to properly present and prepare for these cases as the implications have far reaching consequences for the administration of justice in our prison system. On the one hand, a litigious climate is now being created in this prison system. On the other hand, the Court's attempts at quelling the spate of abuse goes on unheeded largely in my view due to the inadequacy of the remedies in tort to properly deter the abuse of power. The law of exemplary damages as a preventative measure to prevent future abuse is useless as these cases continue to come before the Court. When the Courts make pronouncements against prison officers is there any further action done internally to correct their behaviour? What happens to the prisoner who is found to have trumped up a case against an officer(s)? In my view there remains larger issues which deserve further investigation by the relevant authorities and the decisions of the Courts in these types of cases must be the impetus for action and reform rather than be viewed as yet another tame statistic.

3. In this case the Claimant, Affoyon Xavier who was an inmate at the Maximum Security State Prison claimed that on 4<sup>th</sup> November 2011 he was assaulted and beaten by four prison officers: Supervisor Edwin Moore #1546 (Officer Moore), Prison Officer II Ag Kevin Adams #1878 (Officer Adams), Prison Officer I Bridgelal #3244 (Officer Bridgelal) and Prison Officer I Otis Steele #3348 (Officer Steele) and Prison Officer I Shaboo Roberts #3736 (Officer Roberts). All of them were previously known to the Claimant. The Claimant himself was at the time awaiting adjudication by the prison authorities for an incident of violence between himself and another inmate Mohammed. The Claimant paints a picture of a merciless unprovoked attack unleashed by the foursome in a narrow corridor of 4 feet with batons and a notebook while the Claimant was handcuffed resulting in multiple body injuries with the most serious being a fractured jaw and chin.
4. The prison officers paint quite a different version of the incident. They contend that the Claimant was engaged in a scuffle with inmate Mohammed and their attempts to separate them ended with the Claimant falling to the ground where he was discovered bleeding from his mouth. The independent medical evidence reveals that the only injury the Claimant suffered was a fractured jaw. Not one blemish on his person was recorded or observed by any of the medical personnel who attended to him either at the infirmary or later at the Eric Williams Medical Sciences Complex. While the Claimant suggests that that particular injury most probably may have been sustained when he was hit with a baton to the left side of his head and chin by Officer Steele (who protested that he was not there) the prison officers appeared themselves to be clueless as to how the Claimant sustained that injury save that they noticed the bleeding mouth after he fell.
5. As expected in cases of this nature, there was hard swearing on both sides. This highlights the difficulty of unravelling the truth from mere demeanour and the useful observation of the Privy Council in **Reid v Charles** No 36 of 1987:

“...where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to

check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light of the particular facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard witnesses.”

6. In my view it is oftentimes more reliable to map the truth from the contemporaneous documents, the consistencies and inherent plausibility’s of the respective versions against their pleadings and against the legal and evidential burden of proof on particular issues. This analytical approach would also demonstrate that inconsistencies are contextual. In a fact driven exercise of analysing and retracing the occurrence of a particular incident from the memories of witnesses, a well rehearsed and unshaken witness may not be necessarily be a truthful witness. An exaggerating witness may not be necessarily untruthful. An inconsistent witness may still be reliable in certain aspects of reconstructing the events. In the case of multiple testimonies of the same event an exact picture is most often hardly ever obtained and the inconsistencies, as there must be, must be adjudged against the key issues of fact for determination of the oral and the documentary evidence including pre action protocol correspondence. As in this case the Court’s ability to observe the demeanour of the witnesses is critical as they give their evidence. But any observations or conclusions to be made about demeanour must be cross checked in the manner suggested in **Reid**.

7. Justice Jones correctly observed in **Sobers v AG**:

“In my experience it is not unheard of for a party to be found to be lying with respect to certain facts, but telling the truth with respect to others. Indeed facts in dispute are hardly ever black or white. If that was the position the role of the trial judge as the arbiter of the facts would be made much simpler by the application of a “one strike and you’re out” rule. The problem faced by the trial judge is that in the majority of cases there is generally an element of truth in both versions of the facts.

The fact that a party may be found to be incorrect or untruthful about a particular fact or set of facts is, in my opinion, only one of the circumstances to take into consideration in coming to a decision on credibility in general.”

8. Another factor to be weighed in the round in assessing a factual dispute is the drawing of adverse inferences against a party for the failure to adduce evidence which is available and material by the person bearing the burden of proof or the suppression of material evidence. Justice Jones in **Sobers** referring to the decision of Justice Rajnauth-Lee in **Ian Sieunarine v Doc’s Engineering Works (1992) Limited** HCA No. 2387 of 2000 observed:

“In answer therefore to the question why would the party not present such a witness to give evidence it is open to a court, sitting without a jury, to infer that it was not done because the evidence would not have helped that party’s case. Such an inference must not however be made in a vacuum but rather only in support of already existing evidence.”

9. The Claimant of course has the burden firstly of proving that his version of the assault and battery is correct and if so it is for the Defendant to justify the use of force. With regard to the use of reasonable force in order to succeed in this defence the Defendant will not only have to show that the degree of force used was commensurate with the situation. The force used must be reasonable and proportionate to both the particular circumstances and for the purpose used: *Halsbury’s Laws of England Volume 36(2) 4th Edition (Reissue) page 330 paragraph 589 page 330*. “The use of force was strictly necessary for the purpose for which it was engaged, that is the prevention of a crime; to prevent a breach of the peace and or in self defence or defence of others; and that it was not employed for other reasons as, for example, punitive purposes.”
10. Both parties have advanced different versions of how the incident occurred. Both these versions must first be scrutinised in the manner explained above to determine the true factual matrix before examining the defence of reasonable force. It is there that the burden lies on the State to demonstrate that no more than reasonable force was used to subdue the Claimant.
11. In this case I simply cannot believe the Claimant’s version of the incident. His version of the attack is unsupported by any independent documentary evidence whether from the officer’s

contemporaneous report and most critically his own medical reports. His alleged injuries, save for the fracture of his jaw, were not exaggerated, they were a total fabrication. To justify the injuries complained of in this case you must paint a picture of receiving blows all over one's body but I carefully observed the prison officers and noted their answers in cross examination, their explanations, their instinctive responses in the witness box to searching questions and the opportunity for fabrication when giving evidence. I have only found in their version consistency and honesty. Discrepancies in their testimonies can be readily explained in their version of the events. In the Claimant's version of events how can his discrepancy between the injuries complained of and recorded be explained save for negligent reporting by the medical personnel none of who came forward to assist the Claimant who had the opportunity so to do. Interestingly the Claimant deliberately and without reason suppressed the evidence of the medical officer who attended to him. I had observed from the case management that this witness appeared more helpful for the Defendant and to simply pull the rug from the Defendant on the day of the trial to make a decision not to call that witness is unacceptable.

### **The altercation**

12. The starting point of the factual analysis of the altercation between the Claimant and the prison officers is the pleaded case. The Claimant in his Statement of Case provides his version of the actual assault and battery in the following paragraphs:

“5. When Officer Adams returned with the said inmate, the Claimant and the inmate got into an altercation. Officers Adams and Moore, separated the Claimant and the inmate. Officer Moore then left and shortly returned with a pair of handcuffs. Officers Moore, Adams and Steele then approached the claimant and placed the pair of handcuffs on the claimant's hands. The Claimant told the officers that they should also put a pair on the other inmate.

6. Officer Adams then cuffed the Claimant in his face a few times and Officer Moore hit the claimant across his face with a thick hardcover notebook. Officer Steele and another prison officer, whose identity is

unknown to the Claimant, began cuffing, kicking and beating the Claimant with their batons. Officer Steele hit the Claimant with his baton to the left side of his face and then to his chin. The Claimant then fell to the ground and fell unconscious.

7. When the Claimant regained consciousness, he was in a pool of blood on the ground, and a lot of blood was pouring out of the Claimant's mouth. Officer Moore then instructed Officer Adams to take the Claimant to the infirmary. At the infirmary, an infirmary officer, whose identity is unknown to the Claimant, examined the Claimant and on realizing that his left jaw was broken, instructed Officer Adams to take the Claimant to the hospital immediately.

...

10. As a result of the actions of the officers the Claimant suffered and continues to suffer pain and damage, most of which are permanent.
11. The Claimant intends to rely on the medical reports that are herein attached to his Statement of Case.

### **PARTICULARS**

- a) Broken left jaw.
- b) Broken chin bone
- c) Swelling and bruises to face, ribs, feet, head, under right shoulder and left knee.
- d) Tenderness to face, ribs, feet, under right shoulder and left knee
- e) Severe pain in jaw.
- f) The Claimant was unable to eat for a few weeks after the incident.

- g) Bruises about his body.
- h) Welt marks all over his body.
- i) Blue black marks all over the Claimant's body.

...

14. In the consequence of the matters aforesaid the Claimant has suffered and continues to suffer tremendous loss, hardship, distress, inconvenience, pain and suffering, humiliation, loss and damage.”

13. The Defendant in its defence states:

“4. The Defendant admits so much of paragraph 5 of the Statement of Case that states that Officer Adams returned with the said inmate, that the Claimant and the inmate got into an altercation and that Supervisor Moore left and shortly returned with a pair of handcuffs. Save as previously admitted, the Defendant denies paragraph 5 of the Statement of Case. In response, the Defendant states that:

- a) The Claimant was standing close to the entrance o the corridor mentioned above.
- b) Officer Adams escorted inmate Mohamed into the corridor
- c) As soon as Officer Adams and inmate Mohamed reached near to the Claimant, the Claimant lunged at inmate Mohamed and began hitting him
- d) Officer Adams ordered the Claimant to stop. The Claimant did not heed to Officer Adams' order and continued hitting inmate Mohammed
- e) Officer Adams placed himself between the Claimant and inmate Mohamed but the Claimant continued trying to attack inmate Mohammed



- f) Supervisor E. Moore, Prison Officer I #3244 Bridgelal, Prison Officer I #3736 Roberts were in the general vicinity of the incident and saw the Claimant attacking inmate Mohammed.
- g) Supervisor Moore and Officer Roberts went to the assistance of Officer Adams and attempted to contain the situation.
- h) The Claimant continued behaving in an aggressive manner so Officer Bridgelal also intervened and assisted his colleagues in containing the situation.
- i) Officer Adams was eventually able to escort inmate Mohammed further into the corridor and out of the reach of the Claimant.
- j) Officers continued trying to restrain the Claimant. The Claimant continued to struggle and his pants fell down about his ankles. The Claimant forcefully pulled away from the officers, slammed into the corridor wall and fell to the ground.
- k) Officer Moore retrieved a pair of handcuffs and placed same on the Claimant's wrists.

10. The Defendant neither admits nor denies so much of paragraph 10 of the Statement of Case that says that the Claimant continues to suffer pain and damage. The Defendant has no knowledge of these representations and requires the Claimant to prove the same. Save as hereinbefore neither admitted nor denied, the Defendant denies paragraph 10 of the Statement of Case and responds as follows:

- a) The Claimant was injured during the course of an altercation which he instigated
- b) The servants and/or agents of the Defendant attempted to apply lawful restraint to prevent the Claimant from further injuring

inmate Mohammed and from causing further disturbance within the Prison. The Claimant lost his footing, fell and injured himself.

12. The Defendant denies paragraph 12 of the Statement of Case and in reply states that at all material times, the servants and/or agents of the Defendant acted in good faith and in lawful exercise of their duties and used only such force as was necessary to prevent the Claimant from further injuring inmate Mohammed and from creating a further disturbance within the Prison.”

14. The Claimant was the only witness to give evidence to support his version of events. He did file a witness statement of the medical officer who attended to him namely Candy Narinesingh. However at the morning of the trial it was announced that the Claimant will not call that witness. The Defendant adduced evidence through four officers Officer Moore, Officer Adams, Officer Roberts and Officer Steele. The agreed documents were found to be part of the bundle filed on 16<sup>th</sup> October 2012 and most of them were annexed to the witness statements themselves.
15. From the pleadings, the accepted documentary evidence and the testimonies of the Claimant and the four prison officers, the agreed factual backdrop to this dispute can be re constructed as follows: On 4<sup>th</sup> November 2011 the Claimant was in his cell when he was summoned for adjudication. He was being adjudicated for the offence of assault with violence against inmate Mohammed. In that earlier incident which occurred one month prior on October 5, 2011 he sustained a slash to his face and he still bore a scar as the evidence of that injury. Officer Adams came to his cell told him to stand and then he was escorted from his cell to the corridor outside the Supervisor’s office and handed over to Officer Moore. Inmate Mohammed was then escorted to the same area from the cell block area by Officer Adams. The corridor immediately outside Officer Moore’s office was about 4 feet in width and there was flight of steps leading up to that office.
16. It was when inmate Mohammed came closer to the Claimant that the Claimant lunged and attacked inmate Mohammed. They were then separated by the officers and the Claimant placed in handcuffs. After the incident involving that attack and the officers attempt to quell the situation, the Claimant suffered injuries namely a fracture to the jaw. The Claimant was

bleeding from the mouth after the incident and he was taken to the prison infirmary where he was diagnosed as having sustained injuries to the lower jaw. He was then referred to the Adult Priority Care Facility at the Eric Williams Medical Sciences Complex. He was taken to the Superintendent's office where he was adjudicated, where he and inmate Mohammed pleaded guilty and received seven (7) days remission as punishment. The prison office ambulance took him to the Eric Williams Medical Sciences Complex. It was there that he obtained an x-ray of the injury to the jaw. He remained warded for 14 days awaiting surgical intervention to correct the injury. At the Eric Williams Medical Sciences Complex, he was attended to by medical officers and nurses and there is in evidence nursing notes, doctors notes and medical reports which set out in detail the observations made of his injury and the treatment received.

17. Significantly although the report records no injuries save the fractured jaw it records the Claimant's immediate complaint to the medical personnel as follows:

“P/C – was involved in an altercation with another inmate prison officers intervened with baton striking patient in the face; pt also received cuffs and kicks about the body. Occurred at 1pm.

- pain in L side of face
- pain in the chest and back
- split in the mouth
- bleeding from mouth
- loss of consciousness
- vomiting, nausea
- headaches L side.”

However, later in that same record under observation none of the injuries save for the jaw was observed.

18. The Claimant's attorney refers to this recording of the Claimant's complaint as evidence of the injuries sustained and I shall deal with this false premise later in this judgment. Suffice it to say it is not evidence of his injuries but evidence of a complaint made which was not verified by the independent medical assessors.

19. This is the picture of all the available testimony. From this picture therefore the Claimant's case was that the beating by the four officers resulted in a fractured jaw. The Claimant claimed Officer Steele, Bridgelal, Moore and Adams were involved. The Defendant's case was that the injury occurred sometime in the meleé and Officer Shaboo Roberts and not Steele was involved. In the cross examination of the Defendant's witnesses I noted that counsel appeared to accept the limited nature of the injury to the broken jaw in putting his case to the officers.
20. The disparity in the two accounts of the Claimant and the Defendant arise from their account of the actual physical contact between the officers and the Claimant in relation to the altercation with inmate Mohammed. It is true as pleaded by the Claimant, that he was involved in an altercation with inmate Mohammed after which he was handcuffed. However the two versions of fact diverge as follows.
21. In my analysis the Claimant's version is one where there were two distinct stages of this incident or two phases. First there was the altercation with inmate Mohammed which the Claimant described as one strike "and the inmate fell" and then the Claimant was handcuffed. While doing so he said "why don't you handcuff Mohammed as well". At that stage, the first altercation had cooled off, the officers had separated the two and now began the second stage or phase where it is in response to that comment that the four officers unleashed a barrage of blows on the Claimant. The barrage was described in the pleadings referred to earlier in this judgment and which was maintained in chief and cross examination by the Claimant.
22. Under cross examination the Claimant demonstrated to the Court how his hands were handcuffed in front of him and how he covered his head and face as he received blows twisting as he received it "so many lash". He also showed how the blows were administered. He showed where he was hit with the baton on his face and his chin. In this version he fell to the floor in a pool of blood and was unconscious.
23. The Defendant's version is that the altercation between inmate and the intervention of prison officers leading to the Claimant falling to the floor was all one continuous act "it was dynamic" said Officer Moore and it was difficult as Officer Moore explained to put a "full

stop” to the event. The situation was unfolding it was dynamic it was “a whole situation taking place”. The incident “did not occur in slow motion” A situation occurred “there was action and reaction and it was a pull it was not something in detail...” It started with the altercation with the inmate Mohammed and ended with the Claimant on the floor but there was no pool of blood and then he was handcuffed by Officer Moore and taken for treatment and adjudication. This version is supported by the officer’s reports and is reflected as early as in the pre action protocol correspondence on the agreed bundle.

### **Assessing the evidence**

24. The evidence is adjudged against the issues to be determined. The narrow issue to be determined is simply whether the Claimant sustained the injury in the manner as alleged as a vicious attack by four officers -

- (i) Whether the prison officers unleashed an unprovoked attack on the Claimant with officers Adams, Moore, Bridgelal and Steele taking turns in beating the Claimant and
- (ii) Whether the Defendant used reasonable force when they intervened in an altercation between inmate Mohammed and the Claimant.

This is largely a question of fact and the credibility of the respective witnesses has been determined not only by the demeanour in the witness box but by reference to the pleadings, contemporary documents and the plausibility of the respective stories as explained above.

25. The Claimant was unshaken in cross examination and he maintained his story that there were these two phases to the incident and that he suffered these multiple injuries as described in his Statement of Case and outlined above. His altercation with the inmate was one blow and not a struggle. Under cross examination he contended he had nothing to gain from it. He was not exacting revenge. The only motivation for so assaulting the other inmate was apprehension when he saw the inmate fidgeting in his pants and advancing towards him.

26. I make the following findings from this explanation first it is a clear admission by the Claimant that he was the aggressor in this incident. Second there is no act of self defence.

The evidence hardly suggests that his life was in any imminent danger. It is a lame excuse for attacking an inmate in the full view of the prison officers. At best it shows that he had no respect for authority and willing to deal with inmate Mohammed in his own way. Third it is implausible that he would do this to protect himself when he simply could have called on the officers to help him to stop the inmate or call out for help. According to him the officers had batons and could have easily subdued the inmate. However with this version he was content to attack first. In this version of events with the Claimant being the aggressor, it is more likely and more probable that he would not stop at simply one hit and that the Claimant would be agitated, emotional and out of control. He would have, as the prison officers said under cross examination, continued to attack the inmate. If that is the case he should expect a reaction from the officers. The officers' versions which were unshaken are more believable that this was an attack on the inmate with the Claimant the aggressor, and while he was being separated the Claimant continued struggling.

27. Officer Moore when he was tested in cross gave an instinctive response with a ring of truth:

“Yes he was saying a lot of things he was throwing remarks “long time I tell you I will get you...” I can’t quite give you word for worked. He was showing aggression “I tell you I will get you me eh taking that that cut in mih face””

28. Under cross examination Officer Moore was asked about the lack of details in his report:

“Q: why did you not put that in the report?

A: From my perspective most of the times when the incident happens there is process that takes place on the matter I personally stick to the facts so that it does not say anything and so give the person the opportunity to say what they need to before the Superintendent. I try to say little in my report. This may have been my take on the matter, I don’t include certain things.”

29. From this testimony there are two important aspects to note. That this was an aggressive inmate Xavier and not simply one who is acting in self defence as he would suggest. He needed to be controlled by the officers. The attempt to control him and the altercation was viewed as one incident and the reports made were bare reports and not detailing each step. One reason advanced was that it gives the inmates and officers the opportunity themselves to

say exactly what took place if it is investigated further. There is no reason not to accept this explanation as untruthful.

### **The handcuffing**

30. It is clear that the Claimant needed to be restrained even on his own evidence. If the Claimant is to be believed that he did tell the officers that inmate Mohammed should be handcuffed, then why should they do that when according to his own logic he just assaulted inmate Mohammed? Handcuffing suggested restraint was necessary to subdue the Claimant. The Claimant never protested that he should not be handcuffed. He recognised therefore that his restraint was necessary.
31. The handcuffing according to the officers came at the end of the entire incident. If the Claimant was to be believed, that he was assaulted after being handcuffed one must examine critically this version that the officers felt obliged to attack the Claimant once he was handcuffed and that the attack was provoked by one comment “why don’t you handcuff Mohammed”. The only logical inference is if this provoked all four officers to beat him then this was a serious attack to further subdue the Claimant into silence. If this was the case, why was it necessary for all four officers to beat him? It suggests an incident out of odds with logic and motivated by venom. To draw such a conclusion one must be very careful and is akin to those cases where a grave abuse of power is alleged the stronger the evidence required. There is no evidence of motive to engage in such an activity. There is no corroboration of this vicious attack. There is no independent medical testimony to remotely suggest the Claimant emerged from such an attack lucky to be alive.
32. Is the Claimant simply exaggerating the truth that he was beaten with a baton to his jaw? One must examine the Claimant’s allegation of the actual beating. He was hit a few cuffs to the face by Officer Adams. He was hit across the face with a thick hardcover notebook by Officer Moore. He also claimed that he was cuffed, kicked and beaten across the body with batons by Officer Steele and Officer Bridgelal. He then attempted to twist his body and try to duck a few blows but this did not stop him getting hit. Officer Steele hit him with a baton to the left side of his face and then on his chin. The Claimant got dizzy and fell to the floor

unconscious. Interestingly there was no complaint of injuries to his arms even though he demonstrated that he was using it to deflect blows from his body and face.

33. The evidence of Officer Roberts, Moore and Adams was pellucid. This assault did not take place.
34. In my view, it is more probable that the handcuffing did take place after the entire incident which was the version maintained by the unshaken testimony of all four officers.

### **The fall**

35. According to the Claimant he was beaten until he went into unconsciousness in a pool of blood. According to the officers while they were dealing with a “hyped” up Claimant he pulled away in the altercation hit the wall and fell. It was described as a slip by Officer Moore, Adams and Roberts then they retracted this in cross examination and said they were unsure as to how he fell but he hit the wall and fell. For the prisoner to walk away with one isolated injury to his jaw from an altercation by four officers who were trying to restrain him, this seems to be a plausible explanation that in his own pulling the momentum took him to the ground. Whether he slipped or lost balance really is of no moment as I have accepted it was all one motion or sequence. The officers did see the blood and there was no pool of blood. This to me is consistent with continuing to treat the prisoner for adjudication.
36. Ultimately I have been starved of the medical evidence to demonstrate how severe it was to assist in determining how it was sustained. A fracture can manifest itself in varying degrees and caused in different circumstances. The fact that he was adjudicated, ill advised as it was, demonstrates to me a lack of seriousness of the injury rather than a callous authority carrying out an investigation after beating the prisoner to a pulp.
37. If the conclusion that the Claimant wants me to draw is that he was so severely beaten then I expect to see more evidence and more inconsistencies in the evidence of the Defendant. But for the critical areas they all maintained their story of the altercation, the fall and the injury.



### **Points of inconsistency advanced by the Claimant**

36. The Claimant's counsel in his oral submission advanced certain circumstances in the evidence of the Defendant which taken together demonstrates that they fabricated the story and that the Court is entitled to accept the Claimant's version as correct. Those inconsistencies are in the main dealt with under the following headings:

#### **Batons**

37. The Claimant made heavy weather of the officers' lack of batons in this case and their lack of authority to walk without batons. This was submitted as an indicator that they were fabricating their story and they would have all had batons. I would prefer that if the issue that officers on duty must carry a baton in all circumstances is in fact an issue in the case then it should be made a live issue frontally and not by a side wind. This is not only fair to the Defendant but to the Court for it to properly assess and gauge the reason for prison officers not carrying batons on duty. To say they should comply with regulations is equally met by an explanation that the supervisors have a discretion or that the rule is more often observed in its breach. But more evidence is required to make a determination on that issue and it is unsafe to rely on this to demonstrate that the officers were untruthful.

#### **The reports**

38. There was inconsistency in the reports in that the officers' reports say that the Claimant slipped. Mr. Moore said he omitted it from his witness statement. But they were all unsure as to how he fell. I have found that this is not a cover up of a major incident but simply that the fall was an unexplained event which is consistent with the type of struggle described by the officers whether he slipped or lost balance is not critical in my assessment.

#### **The alibi of Officer Steele**

39. There was no serious cross examination of Officer Steele and the other officers about his whereabouts. Officer Steele was simply not at the scene when the incident occurred. It was suggested that someone else could have supported his alibi. However, the evidence in chief of Officer Adams was that he took custody of the inmate Mohammed from Officer Steele who walked away. This was not seriously tested at all under cross examination.

40. It is suggested by counsel that he was the only one with a riot staff and yet he was not there therefore this is a fabrication. Similarly the argument goes the other way if the officers were concocting the story then they simply had to say that all of the officers did not have batons at all not even Steele. I found Officer Steele under cross examination unshaken and disinterested in the process. I accept he was not there and simply escorted the Claimant from the cell. This was corroborated by Officer Roberts.

The documentary evidence of the Claimant's injuries

41. This was a remarkable piece of evidence for its silence on the alleged injuries sustained by the Claimant, save for his jaw. It was submitted that the medical reports support the Claimant's version and that to fail to acknowledge this means that he would have had to concoct that story in a few hours. It works both ways when one looks at the reports of the officers. One would also have to say it should be accepted as to fail to do so means as well that the officers too concocted their story in a few hours. So it takes us nowhere.

42. The Claimant's story of receiving the blows and pain he suffered which is recorded as having been reported was not independently verified and treated. I have noted from the agreed bundle that the medical reports were produced as a result of a "Freedom of Information Act" request. This is on its face therefore a complete record. Essentially therefore the prisoner's complaint of abuse of power now filters through the walls of the prison and into the health institution of an allegation of incompetent and negligent treatment, as there is no record of any other injury. In his evidence he gives the impression of writhing in pain with swollen limbs while at the hospital. When all that is recorded in detail in the doctors and nurses notes was essentially all was well with the patient save for the pain in his jaw. The nurses' notes were meticulous in its detailed reporting and frequently the nurse will report the Claimant was resting comfortably. This was not a person writhing in pain.

43. The prison authorities' medical report shows no further injuries as well. This is to be compared to other reports which recorded injuries in the case of inmate Mohammed. That report incidentally does not appear to be the result of one strike and he fell.

## **Conclusion**

44. For these reasons I find the Claimant's story implausible and unbelievable. His claim has not been made out. If the officers used force, it was no more than reasonable to quell the dispute between the Claimant and inmate Mohammed by pulling them apart. The claim is dismissed with prescribed costs.
45. As I have indicated earlier, this judgment should not end here. The fabrication of an assault and battery against prison officers one of whom was not there at the time deserves further investigation by the relevant prison authorities.

**Vasheist Kokaram**  
**Judge**