REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-04084

BETWEEN

ANTHON BONEY

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Thursday 13th April 2017

Appearances:
Mr. Lee Merry instructed by Mr. Kelston Pope for the Claimant
Ms. Coreen Findlay instructed by Ms. Rachael Thurab, Mr. Ryan Grant and Ms. Laura Persad for the Defendant

JUDGMENT

1. This is a claim for damages for false imprisonment arising from the arrest and detention of the Claimant, Anthon Boney, on 29th November 2011. The arrest and detention took place during a State of Emergency[1] and under the Emergency Powers Regulations (EPR) 2011[2]. The State of Emergency was declared by the Government of Trinidad and Tobago to deal with escalating crime in certain parts of the country which was the subject of widely published media reports.

2. Mr. Boney's arrest was a very serious matter. It was alleged by the Defendant that then Deputy Commissioner of Police (DCP) Mr. Mervyn Richardson had received information in

[1] Declared pursuant to Legal Notice No. 162, No.8 of 2011.
[2] Legal Notice 163 of 2011.

November 2011, during the course of the State of Emergency, that Mr. Boney was involved in a plot to assassinate the Prime Minister and other government minsters. He had information that Mr. Boney had teamed up with other gang leaders such as Barry Barrington and Selwyn Alexis also known as "Robocop" among others. Mr. Boney was detained for a total of 7 days "for inquiries" and was released on 5th December 2011 without any charge being laid against him.

3. This claim requires the Defendant to prove that the condition precedent under Regulation 16 of the EPR for Mr. Boney's arrest and continued detention existed. In particular, firstly, whether the arresting officer, Police Corporal Charles Budri, "suspected that Mr. Boney was about to act in a manner prejudicial to public safety or to public order or was about to commit an offence against the Regulations". Secondly, whether his detention beyond 24 hours was justified or necessary, for the purposes of "conducting or completing inquiries", or in the circumstances of this case.

4. Mr. Boney's arrest and detention pursuant to Regulation 16 of the EPR goes against the grain of the common law and several criminal statutes[3] which requires there to be a "reasonable suspicion" that an offence is being committed to deprive a person of his liberty. Regulation 16 EPR plainly empowers a police officer to arrest without warrant, any person whom he "**suspects** has acted or is acting or is about to act in a manner prejudicial to public safety or order or ...about to commit an offence under the EPR". The operative word for the purposes of this claim is **suspicion** and not **reasonable suspicion** or **reasonable grounds to believe**.

5. Powers of arrest have long been predicated on the need for a police officer to have reasonable suspicion of a person's involvement in criminal activity before it is exercised. It is a requirement which seeks to preserve the integrity of the person from arbitrary arrest, a long standing fundamental constitutional human right of liberty.[4] Recognising the equally important protection of the community that is served by powers of arrest in the detection of crime, the requirement of "reasonable suspicion" has therefore evolved over the years and codified in statute as a fundamental safeguard to prevent abuse of that power. See **O'Hara v Chief**

[3] Criminal Law Act Chapter 10:04 and the Police Service Act Chapter 15:01.

[4] See the general discussion in **A and others v Secretary of State for the Home Department** [2004] UKHL 56.

Constable of the RUC [1997] AC 286 and **Abdul Kareem Muhamad v AG** HCA No. 3768 of 1990 per Best J.

6. "Suspicion" of course on its own is a state of conjecture or surmise where proof is lacking where one says "I suspect but cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. See Lord Devlin in **Shaaban Bin Hussien and Others v Chong Fook Kam and Another** [1969] 3 All ER 1626 at 1630. Suspicion then is an expectation that the targeted individual is possibly engaged in some criminal activity. A reasonable suspicion means something more than mere suspicion and goes beyond the subject belief of the arresting officer to the existence of objectively ascertainable facts. As far back as the 1940s with **Liversidge v Anderson and Another** [1941] 3 All ER 338[5] and **Dumbell v Roberts** [1944] 1 All ER 326 it was recognized that reasonable grounds for suspicion to legitimatise an arrest without warrant is a viable protection to the community. The power of arrest was itself recognised as open to abuse to become a danger to the community, instead of a protection, if the Court does not supervise the exercise of that power. As Lord Hoffman observed in **A and others v Secretary of State for the Home Department; X and another v Secretary of State for the Home Department** [2004] UKHL 56 "nothing could be more antithetical to the instinct and traditions of people as the power to detain indefinitely without charge". The judicial scrutiny of the power of arrest therefore counterbalances the competing rights of the community to security with the rights of the individual to liberty and freedom from restraint. The legitimate fulcrum in this balance is the requirement of "reasonable suspicion".

7. Why this inquiry as to the shades of difference between mere suspicion and reasonable suspicion is important is therefore the constitutional dimension of the fact that human rights can be infringed by acts of the State in the prevention of crime. In the context of the common law, the power of arrest without warrant is a draconian power only legitimized by the requirement of "reasonable suspicion". More so in legislation. In Regulation 16 however the requirement of "reasonable" has been deliberately removed by the drafter of the law. It is a law

[5] The dissenting judgment of Lord Atkin.

nonetheless which is recognized as having been passed notwithstanding the breach of fundamental human rights. Such is the nature of emergency power legislation and global counter-terrorism legislation. One cannot ignore the underlying purpose of the EPR as a counter-terrorist mechanism to in fact protect threats to public safety, preserve the integrity of the community and to preserve an equally important human right: that of human security. Terrorism and wanton acts of criminal activity threaten the very fabric of our democracy. It is an assault upon and threat to the most fundamental rights of the inhabitants of our democratic state, the right to life, liberty and security of the person and a collective right to peace. "Human security means as well freedom from fear from pervasive criminal attacks which challenges individual fundamental rights, safety and lives".[6]

8. There is no question in this case therefore of the legitimacy of the purpose of the EPR legislation under which the power of arrest is being exercised. As the Law Lords observed in **A and others v Secretary of State for the Home Department** "Where the conduct of government is threatened by serious terrorism, difficult choices have to be made and the terrorist dimension cannot be overlooked."[7] Similarly, in this case, it cannot be overlooked, as observed by Counsel for the Defendant, that this is a nation that has endured the reverberating pangs of criminal activity from the 1970 insurrection to the 1990 attempted coup to an increasing crime rate for a small nation which resulted in the Government's decision to declare a State of Emergency in 2011. It is also not to be overlooked that a growing debate in the international community seeks to debunk a concept of "one man's terrorist is another's freedom fighter"[8]. But it may be relevant here historically in this jurisdiction, looking further back in our history to our own freedom fighters the several rebellions by slaves and indentured labourers against unjust laws. It serves to demonstrate the hard fought struggle for liberty and personal freedom. That struggle is the historic and enduring background to a collective value of freedom which we all cherish – human security and public safety which criminal activity threatens and which the EPR legislation was designed to protect.

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[6] See the useful discussion on "Terrorism Security and Rights: The Dilemma of Democracies" 14 National J Const L 13 , Irwin Cotler.

[7] **A and others v Secretary of State for the Home Department; X and another v Secretary of State for the Home Department** [2004] UKHL 56 paragraph 38.

[8] See "Terrorism Security and Rights by I. Cotler" ibid.

9. How the democratic government has responded to these threats to the life of the nation by the passage of the EPR under which Mr. Boney was arrested, is not under question. In making a proclamation that a State of Emergency existed the President was satisfied that "action has been taken or is immediately threatened by persons or bodies of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety"[9]. The community and thus nation thrives under its own system of governance, laws, morals and values. When threatened it deserves protection. But in doing so it must not be at the expense of the very freedoms and liberties which are the marrow of our own values. The passage of draconian legislation such as EPR legislation, or counter-terrorist measures, are indeed democratic acts to protect community rights, the right to human security and collective peace. These are political decisions with human rights dimensions. But equally the Court as the "specialist in the protection of liberty and interpretation of legislation"[10] is well placed to subject such legislation to careful scrutiny. The Court will remain anxious that deeply held individual rights which form the backdrop to cherished values of liberty, the rule of law and democracy are not sacrificed on the altar of the search for communal peace.[11]

10. It is against this backdrop the question of the false imprisonment of Mr. Boney arises in this case. Where the only requirement to detain and arrest without a warrant and without charge is the mere conjecture, surmise or suspicion of the police,[12] the Court will insist that the suspicion must be honestly held, bona fide and not fanciful. As much as the Court will anxiously ring its hands in the face of the derogation of human rights (which has been legitimised by the democratic Parliament) it would insist that the execution of such powers do not further encroach on fundamental rights.

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[9] See Legal Notice 162 of 2011.

[10] Per La Forest J in **RJR-MacDonald Inc v Canada (Attorney General)** [1995] 3 SCR 199.

[11] **Hurley and Another v Minister of Law and Order and Others** [1985] (4) SA 709.

> "In this country, amid the clash of arms, the laws are not silent. They may be changed but they speak the same language in war and in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority, we are now fighting, that the Judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the Executive, alert to see that any coercive action is justified in law."

[12] Regulation 16 EPR.

11. It would therefore be wrong in my view to import into the meaning of the "Regulation 16 power" the requirement that the suspicion of an officer must be based on reasonable grounds. Plainly the drafters have legitimately removed such considerations in arriving at the balance between the competing individual and communal rights. It would be wrong for the Courts if by judicial law-making to interfere with a matter of policy to now reinvent a requirement for "reasonable suspicion" in Regulation 16 when the demands of the "collective" required and was declared democratically to be otherwise. There is therefore no warrant to read into the Regulation 16 power a higher threshold of "reasonable suspicion" to effect a lawful arrest. However, equally the Court will insist that the suspicion must be honestly held. Whereas deference legitimately will be afforded to the arresting officer in acting on his suspicion, the Defendant's acts as to the continued detention of Mr. Boney beyond the 24 hours will be scrupulously supervised and explanations will be demanded.

12. For the reasons set out in this judgment I am satisfied based on the evidence adduced by the Defendant that the arresting officer did hold an honest belief in his suspicion that Mr. Boney was about to commit an offence under the EPR. There was an honestly held suspicion of his involvement in gun related violence which may destabilize the country. His detention was initially necessary to conduct inquiries in relation to that serious threat to the society of Trinidad and Tobago. It was a matter which arose during a declared State of Emergency. However, subjecting the continued detention to anxious scrutiny, I am not satisfied that the Defendant has demonstrated that Mr. Boney's detention beyond 24 hours or for the remaining 5 days was necessary to complete their inquiries into his involvement into the alleged plot. Whereas his initial arrest and detention on 29th November 2011 was not unlawful, his continued detention was.

13. For the reasons set out in this judgment the Defendant will pay to the Claimant damages for unlawful detention for the period 30th November 2011 to the 5th December 2011 in the sum of $70,000.00. This is not a case which warrants an award of exemplary damages.

The Facts

14. The main facts in this case are not in dispute. On 21st August 2011 a State of Emergency had been declared in Trinidad and Tobago by His Excellency the President of Trinidad and Tobago

to deal with threats by persons of such a nature and on so extensive a scale as to be likely to endanger public safety.[13] On 4th September 2011 Parliament by resolution agreed that the Proclamation of the President be extended for a further period of three months, expiring on 4th December 2011. It was the subject of national importance and widely reported in the newspapers.

15. Mr. Boney was at home alone on 29th November 2011, during the State of Emergency. At 4:00p.m he heard a loud voice "Police". A large contingent comprising approximately 9 officers from the Belmont Police Station together with other members of the Trinidad and Tobago Defence Force and SUATT surrounded his home in Africa Road, Laventille. Inspector Singh and Police Corporal Charles Budri had comprised part of the team. Mr. Boney was arrested and escorted down the hill to a police vehicle and transported to the Besson Street Police Station and then transferred to the Belmont Police Station around 7:00pm.

16. At the Belmont Police Station he was interviewed several times. Mr. Boney was able to identify two police officers Inspector Singh and Superintendent John Daniel who conducted the interviews. Mr. Boney alleged that Inspector Singh told him in one interview that the "Government is fed up and called a State of Emergency …He said that they not looking good and asked whether he could link some firearms so that they could look good." Nothing came out of his interviews conducted by either Inspector Singh or Superintendent Daniel.

17. On 30th November 2011 DCP Mervyn Richardson issued an authorization notice authorizing the continued detention of Mr. Boney for a period of 7 [sic] days commencing 30th November 2011 to 5th December 2011 pursuant to Regulation 16(3) of the EPR 2011.

18. According to Mr. Boney he was never informed of the reason for his arrest nor his detention nor shown the authorization order, though he was told about it. He denies that he was a gang leader or involved in the drug trade or possession of illegal arms and ammunition. He has two convictions, one for obscene language and for simple possession of marijuana in 2011 and

[13] Legal Notice 162 of 2011.

1998 respectively. There are other charges pending against him which he is defending.[14] He referred to several media reports which reported the then Opposition Leader Dr. Keith Rowley making the revelation that a report existed which had put to the lie the existence of any assassination plot. In Mr. Boney's view the assassination plot was a hoax and was trumped up as a ruse to secure his arrest and detention.

19. According to the Defendant, Mr. Boney was informed of the reasons for his arrest at his home by Police Corporal Budri. DCP Richardson had received a report in November 2011 that a group of men were conspiring to assassinate the then Prime Minister Mrs. Kamla Persad Bissessar, the then Attorney General and other government ministers on a certain date. In relation to Mr. Boney his information revealed that he was involved in the alleged plot and had teamed up with other gang leaders. Acting on this report he informed the Commissioner of Police, Minister of National Security and Prime Minister. He was requested that the police conduct a full scale investigation into the allegations. He assembled a team to investigate into the alleged assassination plot. He assembled a war room with crime and intelligence analysts, police officers, members of the SSA and Defence Force which worked on a 24 hours basis. He also received legal advice from the late Dana Seetahal SC at intervals who also assisted the police in the investigation. His investigations had reached a stage which based on legal advice there was sufficient evidence to detain Mr. Boney and several other persons. Several raids took place over a period of time throughout the country resulting in the arrest and detention of Mr. Boney among other persons. DCP Richardson was also of the view that based on information coming from his investigative team that Mr. Boney's continued detention was necessary to conduct further investigations which resulted in the initial arrest and he issued the authorization order.

20. At the heart of this claim however is a determination whether the arrest and detention of Mr. Boney by the Defendant can be justified under Regulation 16 (1) and (3) of the EPR. In determining this a number of principles must first be acknowledged:

[14] Mr. Boney's criminal record was exhibited to the Defendant's hearsay notice but it was not formally tendered into evidence. The Station Diary Extracts of 2nd – 5th December 2011 were also not formally tendered into evidence by the Defendant.

- First, the onus of course in a claim for false imprisonment is on the Defendant to justify the arrest. See **Chandrawtee Ramsingh v AG** [2012] UKPC 16.

- Second, that the EPR abridges the liberty of the subject and acts purporting to be done in exercise of those powers must be carefully scrutinized. The rule of law requires that the exercise of a discretionary power is subject to scrutiny by the Court. See Best J in **Abdul Kareem Muhamad v AG** HCA No.3768 of 1900.

- Third, as observed in **Re Emergency Powers Bill** [1977] IR 159 "A statutory provision of this nature which makes such inroads upon the liberty of the person must be strictly construed. Any arrest sought to be justified by the section must be in strict conformity with it. No such arrest may be justified by importing into the section incidents or characteristics of an arrest which are not expressly or by necessary implication authorised by the section."[15]

- Fourth, to justify an arrest under Regulation 16 (1) of the EPR the Defendant must prove that the arresting officer suspected that the Claimant is about to act in a manner prejudicial to public safety or to public order. See **Mc Kee v Chief Constable of Northern Ireland** [1984] 1 WLR 1358. Regulation 16 and the requirement of "suspicion" lies in contrast to "reasonable suspicion" used by the drafters of the statutes in the summary offences, indictable offences and Criminal Law acts of this jurisdiction which requires the arresting officer to have "a reasonable suspicion" that is an honestly held suspicion based upon reasonable grounds. See **O'Hara v Chief Constable of the RUC** [1997] AC 286 and **Liversidge v Anderson and Another** [1941] 3 All ER 338.

- Fifth, suspicion is a state of conjecture or surmise where proof is lacking. To suspect means of course you cannot prove. Suspicion is therefore the starting point of an investigation. See Lord Devlin's judgment in **Shaaban Bin Hussien and Others v Chong Fook Kam and Another** [1969] 3 All ER 1626 and **Armstrong v Chief**

[15] **In Re Emergency Powers Bill** [1977] IR 159 at 173.

Constable of West Yorkshire Police [2008] EWCA Civ 1582. However it is a discretionary power exercised by the police which must be exercised honestly.

- Sixth, therefore what is critical is the arresting officer's state of mind and he must demonstrate that his suspicion was honestly held and based. See **Cedeno v O'Brien** [1964] 7 WIR 192. See also the discussion on honestly held suspicions in **O'Hara**. Regulation 16 permits an arrest on the basis of such an honestly held suspicion and a detention for the purpose of conducting inquiries into the matters which gave rise to that suspicion.

- Seventh, the continued detention for a further period beyond 24 hours under Regulation 16(3) must be based on an opinion that is reasonable or rational. The Defendant must put before the Court the facts to demonstrate that the "necessary inquiries" could not be completed within 24 hours or the reasonable period required to so complete the said inquiries.

- Eight, it cannot be denied that a plot to assassinate the Prime Minister and other members of Cabinet is an act which is prejudicial to public safety or to public order.

21. The legality of Mr. Boney's arrest and detention applying these principles are to be determined from the totality of the evidence. Therefore whether the arresting officer, Corporal Budri honestly held a suspicion that Mr. Boney was about to act in a manner prejudicial to public safety or to public order falls for an assessment of his credibility. One of the important issues arising from an analysis of Police Corporal Budri's evidence is whether it is sufficient for him to rely upon the instructions of his superior Inspector Singh to arrest Mr. Boney. I have analyzed the Defendant's evidence in relation to the report of the assassination plot, the investigations, the arrest and the detention. According to the Claimant the assassination plot was all a fabrication- a hoax. If that is true there was absolutely no reason to arrest Mr. Boney. The Claimant also argues that DCP Richardson did not apply his mind to the need to conduct further enquiries. He simply detained Mr. Boney for the maximum period under the Regulation indiscriminately and without reason. If that is true there was no valid reason to issue the authorization notice under Regulation 16 (2) of the EPR. In my view it is more probable that

while there as an honestly held suspicion to arrest, there really was no valid reason to issue the authorization notice for that length of time.

22. I will deal in this judgment with the following issues:

    (a) Whether the power of arrest without warrant under Regulation 16 of the EPR imports the legal requirement of "reasonable suspicion". This will involve a brief examination of whether the declaration of State of Emergency/EPR legitimately sets the stage to expand the common law power of arrest.
    (b) Whether Police Corporal Budri suspected that Mr. Boney was about to act in a manner prejudicial to public safety or to public order or about to commit an offence against the EPR.
    (c) Whether DCP Richardson was satisfied that inquiries could not be completed within a period of 24 hours of Mr. Boney's detention and he properly exercised his discretion under Regulation 16 (3) to order his continued detention for a period of seven [sic] days.
    (d) If Mr. Boney was falsely imprisoned what would be the proper award in damages and should it include an award in exemplary damages?

The "Regulation 16" power of arrest and detention

23. The starting point in determining the legitimacy of Mr. Boney's arrest and detention is to examine the statutory power under which it was exercised. Police Corporal Budri exercised his power of arrest without a warrant pursuant to Regulation 16(1) of the EPR. Regulation 16 provides as follows:

    *"(1) Notwithstanding any rule of law to the contrary, a Police Officer may arrest without warrant any person **who he suspects** has acted or is acting or is about to act in a manner prejudicial to public safety or to public order or to have committed or is committing or is about to commit an offence against these Regulations; and such Police Officer may take such steps and use such force as may appear to him to be necessary for affecting the arrest or preventing the escape of such person.*

(2) Subject to these Regulations a person arrested by a Police Officer under sub regulation (1) may be detained in custody for the purposes of inquiries.

(3) No person shall be detained under the powers conferred by this regulation for a period exceeding twenty-four hours except with the authority of a Magistrate or of a Police Officer not below the rank of Assistant Superintendent, on either of whose direction such person may be detained for ***such further period****,* ***not exceeding seven days as in the opinion of such Magistrate or Police Officer,*** *as the case may be,* ***is required for the completion of the necessary inquiries****, except that no such directions shall be given unless such Magistrate or Police Officer, as the case may be,* ***is satisfied that such inquiries cannot be completed within a period of twenty-four hours***." [Emphasis Added].

24. It was argued by Counsel for the Claimant, following a long line of authority,[16] that the legislation could not have derogated from the fundamental requirement of "reasonable suspicion" of the commission of an offence before an individual can be arrested without a warrant. Those principles were recently restated by the Privy Council in **Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago** [2012] UKPC 16 as follows:

"i) The detention of a person is prima facie tortious and an infringement of section 4(a) of the Constitution of Trinidad and Tobago.

ii) It is for the arrestor to justify the arrest.

iii) A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence.

iv) Thus the officer must subjectively suspect that that person has committed such an offence.

[16] **Chandrawtee Ramsingh v A.G.** [2012] UKPC 16, **Mauge v AG** H.C.A. No. 2524 of 1997, **Barry Barrington v AG** CV2015-03519, **Abdul Kareem Muhamad v AG** HCA No. 3768 of 1990, **Francis Gomez v AG** CvA No.71 of 1993, **Cedeno v O'Brien** [1964] 7 WIR 192, **O'Hara v Chief Constable of the Royal Ulster Constabulary** [1997] AC 286 and **Ricardo Luke Fraser v AG** CV2014-03967.

v) The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.

vi) Any continued detention after arrest must also be justified by the detainer."[17]

See also **O'Hara v Chief Constable of the Royal Ulster Constabulary** [1997] AC 286, **Cedeno v O'Brien** [1964] 7 WIR 192 and **Francis Gomez v AG**, CVA No. 71 of 1993.

25. Counsel for the Defendant acknowledges this long line of authority but relies heavily on **Mc Kee v Chief Constable for Northern Ireland** [1984] 1 WLR 1358 where the House of Lords considered a similar provision but with respect to dealing with acts of terrorism under the Northern Ireland Emergency Provisions Act 1978. In that case the arresting officer Constable Graham was given instructions by his superior officer Sgt Jackson to arrest Mc Kee as a suspected terrorist. From what he was told, Officer Graham was firmly convinced that this information was correct. Mr. Mc Kee was arrested pursuant to section 11(1) of the statute which provided for the constable to arrest without warrant any person "whom he suspects" of being a terrorist. The trial judge was satisfied that the officer was convinced in his own mind that Mr. Mc Kee was suspected of being a terrorist and he himself so suspected it. The Court of Appeal allowed the appeal holding the view that Officer Graham's suspicion fell short of that required by the section. The House of Lords disagreed and reaffirmed that on a true construction of section 11(1) of the Northern Ireland (Emergency Provisions) Act 1978 what matters is the state of mind of the officer and no one else:

> "That state of mind can legitimately be derived from the instructions given to the arresting officer by his superior officer. The arresting officer is not bound and indeed may well not be entitled to question those instructions or to ask upon what information they are founded. It is, in my view, not legitimate in the light of the learned trial judge's findings as to Graham's state of mind at the time of the arrest to seek to go behind that finding and deduce from Detective Constable Moody's evidence as to questioning which took place sometime after the arrest what Jackson's state of mind may have been when he gave Graham his instructions. It is Graham's state of mind that matters and that alone. In my view the matter

[17] **Chandrawtee Ramsingh v The Attorney General of Trinidad and Tobago** [2012] UKPC 16, paragraph 8.

is concluded in favour of the appellant by the learned trial judge's findings to which I have already referred."[18]

Lord Roskill concluded that on a true construction of the statute the powers of arrest are not qualified by the word "reasonableness". The suspicion has to be honestly held but it need not be a reasonable suspicion as well.

26. Lord Roskill's analysis which has been the subject of comment in several subsequent leading authorities on the power of arrest examined the requirement of "reasonable suspicion" to justify an arrest without warrant. Importantly the authorities have consistently pointed out the difference between the requirement of mere suspicion and reasonable suspicion as stemming from a proper construction of the statutory power of arrest being exercised by the officer.

27. In any event the threshold for reasonable grounds for suspicion is low. See **Raissi v Metropolitan Police Commissioner** [2008] EWCA Civ 1237 and **Dumbell v Roberts** [1944] 1 All ER 326, CA. Lord Develin pointed out in **Hussien v Chong Fook Kam** [1969] 3 All ER 1626 the shades of difference between suspicion, reasonable ground for suspicion and prima facie proof. :

"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking; "I suspect but I cannot prove". Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable as a general rule that an arrest should not be made until the case is complete. But if arrest before that were forbidden, it could seriously hamper the police……There is another distinction between reasonable suspicion and prima facie proof. Prima facie consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all."[19]

28. In **O'Hara v Chief Constable of the Royal Ulster Constabulary** which considered section 12(1) of the Prevention of Terrorism Act 1984 the House of Lords unlike in **Mc Kee** had to

[18] **Mc Kee v Chief Constable for Northern Ireland** [1984] 1 WLR 1358 at 1361-1362.
[19] **Hussien v Chong Fook Kam** [1969] 3 All ER 1626 at 1630-1631.

consider whether the statutory requirement of "reasonable grounds for suspecting" was demonstrated by the arresting officer. Lord Steyn notably pointed out the difference between the requirements for "suspicion" as distinct from "reasonable grounds of suspicion" as being based on an exercise of statutory construction. Lord Steyn noted that the statutory provision under consideration in **Mc Kee** did not require that an arresting officer must have reasonable grounds for suspicion. Indeed it would be as Lord Steyn pointed out a "misuse of precedent to transpose Lord Roskill's observations made in the context of the subjective requirement of a genuine belief to the objective requirement of the existence of reasonable grounds".[20]

29. Lord Steyn couched his analysis of the powers of arrest against the constitutional theory of the independence and accountability of the individual constable. His comments on the requirements of reasonable suspicion deserve repeating:

> "Certain general propositions about the powers of constables under a section such as section 12(1) can now be summarised. (1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: *Hussien v. Chong Fook Kam* [1970] A.C. 942, 949. (2) Hearsay information may therefore afford a constable reasonable grounds to arrest. Such information may come from other officers: *Hussien's case,* ibid. (3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest. (4) The executive "discretion" to arrest or not as Lord Diplock described it in *Mohammed-Holgate v. Duke* [1984] A.C. 437, 446, vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers.
>
> Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of

[20] **O'Hara v Chief Constable of the Royal Ulster Constabulary** [1997] AC 286 at page 291.

section 12(1). It is accepted, and rightly accepted, that a mere request to arrest without any further information by an equal ranking officer, or a junior officer, is incapable of amounting to reasonable grounds for the necessary suspicion. How can the badge of the superior officer, and the fact that he gave an order, make a difference? In respect of a statute vesting an independent discretion in the particular constable, and requiring him personally to have reasonable grounds for suspicion, it would be surprising if seniority made a difference. It would be contrary to the principle underlying section 12(1) which makes a constable individually responsible for the arrest and accountable in law. In *Reg. v. Chief Constable of Devon and Cornwall, Ex parte Central Electricity Generating Board* [1982] Q.B. 458, 474 Lawton L.J. touched on this point. He observed:

> "[chief constables] cannot give an officer under command an order to do acts which can only lawfully be done if the officer himself with reasonable cause suspects that a breach of the peace has occurred or is imminently likely to occur or an arrestable offence has been committed."

Such an order to arrest cannot without some further information being given to the constable be sufficient to afford the constable reasonable grounds for the necessary suspicion. That seems to me to be the legal position in respect of a provision such as section 12(1)."[21]

30. It was Lord Hope who developed the analysis of "reasonable suspicion" by explaining the combination of the subjective and objective tests:

> "My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in

[21] **O'Hara v Chief Constable of the Royal Ulster Constabulary** [1997] AC 286 at 293-294.

his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.

This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."[22]

31. Having rationalized the requirement of reasonable suspicion in **O'Hara** it was important in that context to require the officer to show something more than just that he was merely executing orders of a superior officer which was the case in **Mc Kee**. An order to arrest cannot without some further information being given to the Constable be sufficient to afford the Constable reasonable grounds for the necessary suspicion. The departure then from **Mc Kee** rests upon the statutory power and the interpretation of that power. Whereas in **Mc Kee** it was safe to ground one's suspicion on the order given to the arresting officer by a superior with the badge of legitimate authority. It is not sufficient if the arresting officer must also demonstrate what information was given to objectively ground his suspicions – the test of reasonable suspicion.

[22] **O'Hara v Chief Constable of the Royal Ulster Constabulary** [1997] AC 286 at 298.

32. The judgments in **O'Hara** therefore make it plain that the objective and subjective tests of "reasonable suspicion" recently summarized by the Privy Council in **Ramsingh** do not apply to a statutory power of arrest on "suspicion" alone as in **Mc Kee**. Sir Clarke in **Raissi** also noted the difference in the legal requirement for "suspicion" as distinct from "reasonable ground to suspect" arising from the statutory powers being exercised. See paragraphs 10 and 11[23]. See also **Brady v Chief Constable of the Royal Ulster Constabulary** [1991] 2 NIJB 22.

33. Indeed in the Canadian jurisdiction there is further authority which makes the distinction between the requirement of "reasonable grounds to suspect" from "reasonable and probable cause to believe" and "reasonable suspicion". The latter being a lower standard and engaged the reasonable possibility rather than the probability of a crime being committed. See **R v**

[23] **Raissi v Metropolitan Police Commissioner** [2008] EWCA Civ 1237 per Sir Clarke at paragraphs 10 and 11:

> **[10]** The House nevertheless considered the issue of general public importance in respect of which leave to appeal had been given. Lord Steyn identified it as being whether an order by a superior officer to the arresting officer was itself sufficient to afford the constable a reasonable suspicion within the meaning of s 12(1). The House unanimously held that it was not. In support of the proposition that it was, the Chief Constable relied upon the decision of the House in *McKee v Chief Constable for Northern Ireland* [1985] 1 All ER 1, [1984] 1 WLR 1358. However, the statutory provision being considered there was s 11(1) of the Northern Ireland (Emergency Provisions) Act 1978, which provided "Any constable may arrest without warrant any person whom he suspects of being terrorist." Speaking for the appellate committee, Lord Roskill said at p 1361:
>
> > "On the true construction of section 11(1) of the statute, what matters is the state of mind of the arresting officer and of no one else. That state of mind can legitimately be derived from the instruction given to the arresting officer by his superior officer. The arresting officer is not bound and indeed may well not be entitled to question those instructions or to ask upon what information they are founded."
>
> **[11]** At p 291B-C Lord Steyn made it clear that in his opinion Lord Roskill's statement was not relevant to the true construction of s 12(1) of the 1984 Act because the statutory provision under consideration in the *McKee* case did not require that an arresting officer must have reasonable grounds for suspicion. He said that it was a misuse of precedent to transpose Lord Roskill's observations made in the context of the subjective requirement of a genuine belief to the objective requirement of the existence of reasonable grounds. Lord Steyn emphasised the point in this way at 291H to 292A:
>
> > "Section 12(1) authorises an arrest without warrant only where the constable 'has reasonable grounds for' suspicion. An arrest is therefore not lawful if the arresting officer honestly but erroneously believes that he has reasonable grounds for arrest but there are unknown to him in fact in existence reasonable grounds for the necessary suspicion, eg because another officer has information pointing to the guilt of the suspect. It would be difficult without doing violence to the wording of the statute to read it any other way."

Chehil (2013) 36 BHRC 427. This serves to demonstrate that where "reasonable suspicion" is a low threshold mere "suspicion" is even lower.

34. In **Mauge v The Attorney General and ors.** H.C.2524/1997 Mendes J as he then was noted:

> "In George v Rockett, the High Court of Australia in examining the difference between suspicion and belief said the following (at pg. 116):
>
> > The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture."

35. The proper interpretation of Regulation 16 is therefore essential to determining the proper test to be applied and the requirements of the level of suspicion in the mind of the arresting officer. The only local authority unearthed by the parties that deal specifically with a provision such as Regulation 16 under review is **Abdul Kareem Muhamad v AG** followed in **Barrington v AG** H.C.3519/2015.

36. The background of **Muhamad** was the events of the 1990 coup. Under consideration was the legality of the detention of the applicant whose arrest and detention was effected under the EPR in identical terms to Regulation 16. In that case the arresting officer, Officer Ghany, had acted on information he received. He intimated to the applicant that he was being arrested upon a suspicion of re-grouping members of the Jamaat Al Muslimeen and of attacking police officers. Justice Best observed that while the onus is on the arresting officer to justify the arrest and what is important is the suspicion in the mind of the arresting officer, it was held that the suspicion must be reasonable.

37. Best J formulated the test in these terms:

"It is incumbent upon the respondent to place before the Court credible evidence that the condition precedent for the invoking of Reg. 16(1) had been first satisfied in that the suspicion referred therein has been accused in the mind of the arresting officer on **reasonable grounds**. ...

The Courts have always maintained that the rule of law requires that the exercise of a discretionary power is subject to scrutiny by the Courts. The idea that there is an unfettered discretion, not subject to objective view, is contrary to law. It is solely an executive decision whether there be any further detention falling under Regulation 16(3). However, it is for the Courts to consider whether the facts relied upon for the exercise of that discretion by the executive fell within the purview of Regulation 16(3)."[24]

38. It is not clear whether any party in **Abdul Kareem Muhamad v AG** had argued that there was a distinction to be made from the requirements of the section of the EPR as to "suspicion" as distinct from "reasonable suspicion" or some other statutory test as required under other criminal statutes which were under consideration in all the authorities cited to Best J[25]. It appeared that both parties had accepted that the test of "reasonable suspicion" applied. **Mc Kee** was not brought to the Court's attention and the judge's summary of his views on the requirement of the subjective and objective test was quite correctly culled from those authorities and not from a textual analysis of the Regulations under review. An exercise which must now be conducted.

Regulation 16- A Textual Analysis

39. The legitimacy of the declaration of the State of Emergency and the Regulations are not in question. The Regulations were passed notwithstanding the inroads made into the fundamental human rights under the Constitution. The Regulations therefore legitimised the temporary

[24] **Abdul Kareem Muhamad v AG** HCA No. 3768 of 1900, page 9 and page 11.

[25] **Irish v Barry** (1965) 8 WLR 177, **Cedeno v O'Brien** [1964] 7 WIR 192, **Dunbell v Roberts** [1944] 1 ALL ER 326, **Liversidge v Anderson** [1941] AC 206 (HL), **Greene v Secretary of State for home Affairs** [1942] AC 284 (HL), **The State of Bombay v Atma Ram Sridhar Vaidya** [1951] SCR 167, **Minister of Home Affairs v Austin** [1987] L.R.C (Const) 567, **A.G of St. Christopher, Nevis and Anguilla v Reynolds** [1980] CA 637, **Nakhuda Ali v Jayaratne** [1951] AC 66 (RC), **R v Inland Revenue Comrs. Exp Rossminister** [1980] AC 952 (HL), **Chang Suan Tze v Minister of Home Affairs** (1989) LRC (Const) 683. These did not consider a statutory requirement of the power to arrest without warrant on "suspicion" as distinct from some other statutory test.

suspension of some fundamental liberties. Lord Hope recognized the approach to interpreting such legislation requires the Court to be mindful of the fundamental right of liberty and security of the person and the balance to be obtained by the Court between the competing individual and collective rights is that there is strict conformity with such legislation. In drawing reference to **In Re Emergency Powers Bill** the Court's duty is to strictly construe such legislation which makes inroads on the liberty of the person: "Any arrest sought to be justified by the section must be in strict conformity with it. No such arrest may be justified by importing into the section incidents or characteristics of an arrest which are not expressly or by necessary implication authorised by the section."[26]

40. The balance of competing rights is seen in the discussion on the power of arrest in **Irish v Barry** [1965] 8 W.I.R. 177, at 189 A-B per Scott L.J. (at p. 329):

> "The power possessed by constables to arrest without warrant, whether at common law for suspicion of felony, or under statutes for suspicion of various misdemeanors, provided always they have reasonable grounds for their suspicion, is a valuable protection to the community; but the power may easily be abused and become a danger to the community instead of a protection, the protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called on before acting to have anything like a prima facie case for conviction; but the duty of making such enquiry as the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable, does rest on them; for to shut your eyes to the obvious is not to act reasonably..."

41. The level protection afforded to the subject therefore lies in the nature of the test which has to be applied. In this context the interpretation of Regulation 16 is made against a backdrop of a keen sense of awareness of the constitutional dimension of the tradeoffs between individual

[26] **In Re Emergency Powers Bill** [1977] IR 159 at 173.

and collective rights. A powerful statement of the constitutional dimension in statutory construction is made in **Bennion on Statutory Interpretation**, Part XVII section 273:

> "Freedom from unwarranted restraint of the person has been a keystone of English law at least since Magna Carta was adopted by the Crown and nation in 1215. By this acceptance the monarch acknowledged that no free person should be seized or imprisoned, or stripped of rights or possessions, or outlawed or exiled, or deprived of standing in any other way, and that the monarch should not proceed with force against such a person, or send others to do so, except by the lawful judgment of that person's equals or by the law of the land, with the addition that to no one would the monarch sell, deny or delay right or justice. '... it is the duty of the courts to uphold this classis statement of the rule of law'.
>
> The fundamental principle, plain and incontestable, is that every person's body is inviolate. '... the individual's right to liberty, and the remedy of habeas corpus, lie at the heart of our law'. There is 'a canon of construction that Parliament is presumed not to enact legislation which interferes with the liberty of the subject without making it clear that this was its intention'. A statutory power to curtail a person's freedom of movement must be 'compellingly clear'. It follows that this principle in favour of physical liberty carries great weight, and an enactment is not lightly to be held to contravene it."

42. In this case however with the passage of EPR, the Court is dealing with legislation that has legitimately made inroads into fundamental human rights. In interpreting Regulation 16 textually there is the absence of the use of the word "reasonable" or "reasonable grounds". The literal meaning of the word "suspicion" means: "a feeling or thought that something is possible, likely or true."[27] I have already examined the authorities which demonstrate the significance in the omission of the word "reasonable" from Regulation 16.[28] For the draftsman to deliberately omit the words "reasonable suspicion" or "reasonable grounds to believe" or "reasonable grounds for suspicion" in this special type of legislation only for the Court to redraft it would be overstepping the remit of the Court's jurisdiction of interpreting the law.

[27] Oxford Dictionary of English 3rd Edition.
[28] Paragraphs 26-33 above.

43. Taking Regulation 16 in the context of the entire EPR the following is noteworthy. First the Commissioner of Police is vested with very wide powers under Regulation 4(1). Second, the draftsman was alive to the requirement of reasonableness in the exercise of discretionary powers as seen under Regulations 7(3) and 9(2). The powers to stop and search is on the basis of "reasonable grounds" or "reasonable suspicion". See Regulations 10(1) and 10(2). Thirdly, this deliberate inroad into the requirement of reasonable suspicion by merely requiring "suspicion" in the mind of the arresting officer is counterbalanced by restrictions on the power to detain upon such an arrest found in Regulation 16(3). Therefore unlike under the common law which permits a detention for a reasonable period of time,[29] the Regulation provides clarity and a statutory time frame. It recognises that if a person is to be arrested on mere suspicion he shall be held for no longer period than 24 hours. See Regulation 16(3) EPR.

44. Therefore the trade-off between the incursion into individual rights has been counterbalanced by the restriction on the individual's continued detention under Regulation 16(2) (3) EPR. It is therefore Regulation 16(3) which the Courts would jealously scrutinize to ensure that no further inroads into the liberty of the individual are made unless there is objective demonstrative evidence to justify the exercise of the power. In **Dallison v Caffery** [1964 2 ALL ER 610:

> "When a constable has taken into custody a person reasonably suspected of a felony, he can do what is reasonable to investigate the matter, and to see whether the suspicions are supported or not by further evidence. He can for instance take the person suspected to his own house to see whether any of the stolen property is there, else it may be removed and valuable evidence lost. He can take the person to the place where he says he was working for there he may find persons to confirm or refute his alibi. The constable can put him up on an identification parade to see if he is picked out by witnesses. So long as such measures are taken reasonably they are an important adjunct to the administration of justice. By which I mean, justice not only to the man himself, but also to the community at large. The measures, however, must be reasonable."

[29] **Dallison v Caffery** (supra).

45. Equally the powers exercised under Regulation 16(3) is a discretionary power, which must be exercised reasonably. Importantly, Regulation 16(3) is couched in the negative "No person shall be detained." It is the draftsman recalibrating the rights of the individual against arbitrary detention. The Defendant must therefore demonstrate that (a) any detention beyond 24 hours is required to complete inquiries and (b) is satisfied that such inquires cannot be completed within a period of 24 hours.

46. Importantly, the power to be exercised has been conferred not on any officer but on a judicial officer or a rank higher than the Assistant Superintendent. These are offices that must call for an account for the need to continue the detention beyond the first 24 hours. The "opinion" required under Regulation 16(3) then unlike a "suspicion" in my view must be reasonable. An opinion is a "view or judgment" formed.[30] There are a range of literal meanings of the word "opinion" from one not based on fact to an informed opinion of an expert. In my view faced with that range the Court would be correct to insist on such high ranking officials to act or form their opinions responsibly. It must be based on objective grounds and there must be satisfactory evidence of two matters (a) that the continued detention is required to compete the necessary inquiries and (b) that such inquiries cannot be completed within 24 hours. One would therefore expect a reasonable officer discharging such a power to be inquisitive rather than permissive, equally anxious to ensure the rights legitimately infringed by an initial arrest on "suspicion" is not compounded by "fanciful" or "speculative" or "instinctive" opinion without foundation.

47. The counterbalance of Regulation 16(3) in the use of the word "opinion" would suggest that unlike "suspicion" it is informed, that it is reasonable and that it is rational.[31] The drafter need not say "reasonable opinion". That would be unnecessary and in fact redundant. Suspicions being a lower category of belief or thought can be unreasonable and hence the development of the common law requirements embodied in the statute of "reasonable suspicion".

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[30] Definition in Oxford Dictionary of English 3rd edition:
"Opinion- a view of judgment formed about something not necessarily based on fact or knowledge.
- a statement or advice by an expert on a professional matter."

[31] See the discussion in the judgment of **Minister of Home Affairs v Austin** [1987] LRC (Const) at p 567 of the requirement of reasonableness in the exercise of a discretion to detain.

48. The draftsman in my view was certainly alive of the lowering standard to arrest and detain on mere suspicion in Regulation 16(1) but was keen to draw the line beyond the first 24 hours in Regulation 16(3) with a requirement of officers to discharge their discretion reasonably and not arbitrarily.

49. For these reasons I had culled the principles of law outlined earlier in this judgment. The Defendant must therefore demonstrate that Police Corporal Budri did hold an honest belief in the suspicion that Mr. Boney was about to commit an act that is prejudicial to public safety and that the DCP Mr. Mervyn Richardson properly exercised his discretion under Regulation 16(3) to order the continued detention of Mr. Boney upon demonstrating the requirement that (a) there was a need to compete the necessary inquiries and (b) that such inquiries could not have been completed within 24 hours.

50. These are questions of fact to be determined upon an assessment of the evidence of the Defendant's two witnesses. In assessing their credibility to determine which version of the events is more probable the Court will examine the internal and external consistencies or inconsistencies of the testimony. The Court will examine the evidence against contemporaneous documents, the pleaded case, and the inherent probability or improbability of rivaling contentions. See **Horace Reid v Dowling Charles** Privy Council Appeal No. 36 of 1987, **Mc Claren v Daniel Dickey** CV 2006-01661**, Marcus Shaw v AG** CV2015-02596 and **Anino Garcia v AG** Civ App No. 86 of 2011.

The lawfulness of the arrest of Mr. Boney

51. The Claimant subjected both the evidence of Police Corporal Budri and DCP Richardson to heavy criticism. With respect to Police Corporal Budri he contended that there was a lack of corroborating contemporaneous evidence of station diaries and pocket book entries. Mohammed J in **Marcus Shaw** recently examined the importance of entries in station diaries and pocket diaries. See Section 5(e) and 6 of the Standing Order No. 17 and Standing Order No. 16. Police Corporal Budri was also criticized for merely carrying out instructions to arrest Mr. Boney without himself being satisfied that there were reasonable grounds to suspect that Mr. Boney had committed or was about to commit any crime. Indeed at the scene of Mr.

Boney's home, Police Corporal Budri confessed that nothing that was seized aroused his suspicion. His testimony was criticized more for what it did not say than what it said.

52. Police Corporal Budri was repeatedly asked in cross examination if there was anything he had left out from his witness statement and he confirmed that he did not. This drew sharp criticism by Counsel for the Claimant of the lack of detail provided by Police Corporal Budri as to the information he had about Mr. Boney which aroused his suspicion or the information that was provided to him in his briefing from his superiors. There was nothing which the Court could objectively assess. Unfortunately his superior who would have given the instructions to arrest Inspector Singh died before the hearing of this trial and the Defendant was unable to file any witness statement on his behalf. The Court was therefore, through no fault of the Defendant, deprived of the evidence of that further information which would have laid a basis for the arrest of Mr. Boney.

53. Police Corporal Budri's cross examination on the circumstances surrounding the arrest of Mr. Boney was consistent with his witness statement, the defence and the station diary extracts. Admittedly his answers with respect to the absence of pocket diaries which he should have had as "his best defence" were evasive. However I do not form the view that his overall testimony is not creditworthy based on this blemish. In the future in matters such as these it is preferred that parties use the process of Part 28 CPR and seek specific disclosure to deal with issues such as the existence of pocket diaries rather than to wait in ambush to ask for it in cross examination, especially in relation to an incident which occurred years ago.

54. A key aspect of Police Corporal Budri's state of mind when he arrested Mr. Boney and the focus of cross examination and submission by the Claimant was the information which Police Corporal Budri had which would raise an honest suspicion. The Claimant argues of course that there was no evidence that Police Corporal Budri had any reasonable suspicion but even if the test was mere suspicion the Claimant forcefully argued that equally the Court is starved of any evidence to demonstrate that Police Corporal Budri was acting bona fide on his own belief or merely on instructions of other officers.

55. In my view Police Corporal Budri was unshaken on this aspect of his evidence: Police Corporal Budri was a police officer of some 20 years. In 2011 he was attached to the Besson Police

Station. For a period of two years he was posted to the Inter Agency Task Force. One of the mandates was to patrol the hills of Laventille to familiarize himself with persons of interest. Through these patrols and his own gathering of intelligence in the area he came to know of Mr. Boney as an individual to be involved in gang and criminal activity. This aspect of Police Corporal Budri's own knowledge of Mr. Boney as someone he came to know as involved in gang and criminal activity was not seriously tested in cross-examination. The centre piece of the cross-examination was with respect to the instructions Police Corporal Budri received on the day of the arrest.

56. He was summoned to Inspector Singh's office on 28th November 2011 who informed him that he was planning to execute a search on 29th November 2011 and that Police Corporal Budri and his team would be required to be part of that search. He also had information that Mr. Boney was stocking up on firearms and was planning some action against the State. Of course the key inquiry is into the state of mind of Police Corporal Budri on receiving this information. Incidentally the evidence of DCP Richardson sets the backdrop for such a search to have been executed as part of an ongoing investigation into an assassination plot. This was of course not mentioned to Corporal Budri but on receiving the information from his superior he "honestly believed the information provided because he knew the Claimant to be involved in criminal activities."

57. Was this then a case of an officer acting robotically simply carrying out instructions of his superior without question, without sifting the information, without applying some thought to the instructions and satisfying himself in his own mind not "yes he is guilty" but "yes this makes sense"? Under heated cross examination I am satisfied that Police Corporal Budri did hold an honest belief not based on simple instructions from his superior but based upon his own view of the Claimant and assessing that with the new information being received. First, it is plausible that for Inspector Singh to divulge this information a day before the search to Police Corporal Budri would suggest a level of confidence reposed in him and a good working relationship between the two high ranking officers. There was no basis to disbelieve this new information and in fact it fit a picture which Corporal Police Budri himself also had of Mr. Boney.

58. But this is not the end of the matter. Second, the next day a general briefing was conducted by Inspector Singh to Police Corporal Budri and the police officers and soldiers present. From the station diary, that would have been a large gathering of officers from different units. Inspector Singh indicated to the party that an operation was planned for the purpose of searching for arms and ammunition in the Africa, Laventille area under the EPR as he had information that Mr. Boney and other persons had arms and ammunition and were planning to use it to cause instability against the State. There was no mention in the briefing of an assassination plot. Indeed from the evidence of DCP Richardson there was anxiety over such a report but his remit was to investigate it.

59. Third, under cross examination Police Corporal Budri confessed that he knew of no further particulars when he left the station. This does not detract from his own suspicion. The search was executed by the officers and I am satisfied by his unshaken evidence that he did speak to the Claimant and he informed the Claimant after the search that he had reasonable cause to believe that he with other persons are engaged in actions likely to bring instability to Trinidad and Tobago. Mr. Boney was cautioned and he remained silent. He was told of his rights and privileges and there were no requests. The event was duly documented in the station diary.

60. Fourth, unfortunately Inspector Singh due to the passage of time could not provide evidence to contradict Mr. Boney's allegations of Inspector Singh's involvements in the arrest. However Police Corporal Budri made it clear that there was no warrant for the arrest and indeed from the evidence as to how the search was conducted, the powers were clearly being exercised under Regulation 16(1) of the EPR. It would be unnecessary and implausible to say to Mr. Boney that there was a warrant when the officers were legitimately exercising their powers under Regulation 16 without one. Further Police Corporal Budri displayed a level of familiarity with Mr. Boney and there was no hint of animosity or malice. In that respect it is difficult to imagine that Mr. Boney would not have been informed of his rights and properly escorted to the police station.

61. Fifth, there was nothing in the search[32] that aroused Police Corporal Budri's suspicion but there was nothing equally which dissuaded him from not believing the information received and his own suspicion. Clearly in my view from his cross examination heavy reliance was placed on Inspector Singh's information and Police Corporal Budri's own suspicion. However, if this was put through the rigour of examination of an objective standard it would not have amounted to a "reasonable suspicion".

62. **O'Hara** and **Cedeno** usefully examined this aspect of an officer acting on instructions. The concluded view is that such an action definitely does not amount to acting on an objectively reasonable basis. Mendes J as he then was in **Mauge** which was cited in **Ramsingh** provides a useful analysis of acting reasonably when information is being provided from another source:

> "It is quite possible to incline towards accepting a proposition on the basis of information provided by another and indeed, this is what justices of the peace must necessarily do in deciding to issue a warrant. They act on information provided by police officers who may themselves have obtained the information from other persons, but only after assessing that information and determining that it provides reasonable grounds for the required belief. But just as a warrant could not be lawfully issued in any particular case without evidence to establish the existence of reasonable grounds for the belief, simply because the police officer applying for the warrant has shown himself in the past to be trustworthy, likewise it would not be permissible to issue a warrant on the basis of information provided by an unidentified informer who declines to provide the source of his information. The justice of the peace must be provided with some basis to assess the reasonableness of the belief. He cannot act simply because the police officer entertains the requisite belief, far less can he act because an informer, whose credibility he does not even have the opportunity to assess, entertains a belief. And without being told of the basis of the informer's information or conclusion, the most which could be said of the material put before him is that the informer believes in the existence of the facts alleged. The position is not made any better because the police officer may think that his informant is trustworthy. Where the informant declines

[32] The officers seized the following items in the search of Mr. Boney's home: 3 cell phones, one desk diary, 3 PS movies, 1 PS3 player, 1 DVD, 9 CD's, his car a black Mazda 3 PBR 9926, one pair binoculars and a book entitled "The Art of War".

to disclose the source of his information, the officer is then forced not simply to depend on his own opinion of the trustworthiness and credibility of his informant, but also on his informant's ability to judge the trustworthiness and credibility of his own source. And the problem becomes multiplied if the informant got his information from someone who in turn got his information from someone else. Without any disclosure as to the source of the information, therefore, Corporal Hudson would not have been in any position to make any judgment on the reliability of the information he received. This is a very fragile basis upon which to determine whether the invasion of a person's privacy is justified. – see Lister v Perryman (1870) LR 4 HL 521."

63. However, to say Police Corporal Budri had no reasonable basis to found his suspicion does not mean he did not hold an honest suspicion. The lower threshold in this case only serves to demonstrate the legitimacy of an arrest for such a limited period of time necessary to conduct inquiries. The lowering of the bar to therefore arrest Mr. Boney only places a higher onus on the Defendant to justify his continued detention. Indeed according to Police Corporal Budri the items seized did not arouse his suspicion although one cannot say whether the contents of the DVD or CD were incriminatory. There were no arms or ammunition found. Nothing immediately in the search that would objectively justify the laying of a charge. In the context of the exercise, the conduct of the inquires must therefore demonstrate a legitimate and reasonable course of action.

64. This is however where in my view the evidence falls far short in justifying the continued detention of Mr. Boney after his initial interviews provided no useful information on 30th November 2011. Having regard to the limited justification to arrest, Mr. Boney should have been immediately released unless something objectively could have reasonably justified his continued detention.

The lawfulness of the continued detention of Mr. Boney

65. DCP Richardson is the only high ranking official in this case that could have legitimately exercised the power to detain Mr. Boney beyond 24 hours after his arrest under Regulation 16 (3) EPR. I have already examined the nature of the power to be exercised under Regulation

16(3) and for the reasons set out below have found the exercise of that discretion unreasonable and without any rational basis.

66. DCP Richardson issued the following authorisation order in the following words:

> "I MERVYN RICHARDSON Deputy Commissioner of Police of the Trinidad and Tobago Police hereby authorize the continued detention of ANTHON BONEY also known as BOMBEE of LP10 Africa, John John, Laventille for a period of seven (7) days commencing on the 30th day of November 2011 until the 5th day of December 2011.
>
> The continued detention of the said ANTHON BONEY also known as BOMBEE is required for the completion of necessary enquiries as to whether he is likely to act in a manner prejudicial to public safety or public order.
>
> I am satisfied that such enquiries could not be completed within twenty-four (24) hours."

67. Best J usefully pointed out that the onus is on the Defendant to place before the Court factual evidence that the conditions of Regulation 16(3) are satisfied.[33]

68. DCP Richardson's evidence is useful only to the extent that it set the context for the arrest of Mr. Boney among other persons. It is unhelpful when it comes to the specific reasons that objectively justified the continued detention of Mr. Boney save for an understandable state of paranoia in relation to an allegation of an assassination plot. DCP Richardson's evidence to justify Mr. Boney's continued detention is very thin:

> "I was informed by my Investigative Team that the Claimant had been detained in connection with the alleged plot. I was also informed that about 11 persons including the Claimant had been detained and interviews and investigations were being conducted with the said detainees. In this regard I was informed that they required more time to conduct

[33] "Upon reviewing the principles, I have come to the conclusion that it was encumbent upon Officer Lennard to place before the Court factual evidence as to how he became satisfied that the necessary inquires could not be completed within a period of twenty four hours, so that the purported exercise of the said discretion could be subjected to review by the Court. There is no evidence to suggest that the officer applied his mind to relevant facts and I find that his action on September 22 1990, amounted to an arbitrary detention of the applicant who was, in violation, of Chapter 1 of the Constitution, deprived of his rights to liberty and the right not to be deprived thereof except by due process of the law." **Abdul Kareem Muhammad v AG**

further investigations into the Claimant's role in the alleged plot and to interview the Claimant. The Investigative Team informed me that they could not have had all these interviews, including the interview of the Claimant, completed within the 24 hour period after his detention. I was so satisfied because, for example, there were about 11 persons, not just the Claimant, being detained and/or to be investigated and interviewed in connection with the alleged plot. Further, we also had to carry out further investigations in order to satisfy ourselves about the precise role of the Claimant in the alleged plot.

Acting on the advice of Ms. Seetahal SC and having satisfied myself on the basis of the information I had received, the continued detention of the Claimant was required because the persons detained including the Claimant were likely to act in a manner prejudicial to public order or public safety."

"During the seven (7) day period of detention of the Claimant investigations continued into the alleged plot and also specifically with regard to his role in the alleged plot and conspiracy. A number of other suspects were also interviewed. Based on the reports that I received from my team I was satisfied that the detention of the Claimant should continue for 7 days as the investigations and inquiries could not be completed within a period of twenty-four hours."

69. There is no information provided about the number of persons detained or when they were detained. The exercise of investigating this alleged plot which triggered this mass exercise began early in November. There is a paucity of details of the events that then took place as to who was detained, when or what information was obtained. The only evidence with reference to an interview of Mr. Boney was on 30th November 2011 a day after his arrest. There is no information as to why any interview was not conducted on the evening or night of his arrest. The only excuse proffered by DCP Richardson was that the detention was necessary as the police had "other persons to interview". I would imagine that for the police to rely on such an excuse would leave many languishing at the police's leisure. The immediacy of treating with Mr. Boney whose liberty was denied on mere suspicion has not been reflected in the evidence of DCP Richardson. There are no station diary extracts in evidence save for the 29th and 30th

November 2011. There are no interview notes of Mr. Boney which demonstrate any reasonable basis to continue to detain him.[34]

70. Importantly the Defendant had obtained leave to summon Superintendent Daniel who was an officer who was involved in the conduct of other enquiries into this matter and who also interviewed Mr. Boney. He refused to attend Court and the witness summary speaks volumes of the evidence that the Defendant is incapable of producing to this Court. Superintendent Daniel would have been the only witness to put before the Court the reason why the inquiries would not have been concluded and why a further period of 7 days was necessary. Counsel for the Defendant admitted that the witness was not co-operative. There is no acceptable explanation for this witness' absence especially where the Court granted a late application to the Defendant to file his witness summary.[35] The Court is entitled to draw an adverse inference[36] against the Defendant that there was no reasonable basis to detain Mr. Boney on the basis that other inquiries were then outstanding or that the Defendant needed 7 extra days to conclude the inquiries.

71. There is no reason to doubt DCP Richardson's bona fides in treating with a massive exercise of an allegation of such grave implications during a State of Emergency. One may sympathize with his task. However in analyzing the detention of Mr. Boney within the context of the constitutional dimensions discussed in this judgment, the Defendant has failed to satisfy this Court that the opinion to detain for a period of 5 days was reasonably held or there was

[34] The interview notes of 30th November 2017 were not tendered into evidence by the Defendant. But even those notes did not reveal any information to continue to detain the Claimant.

[35] The following principles were enunciated by Brown LJ in **Wisniewski (A Minor) v Central Manchester Health Authority** [1998] EWCA Civ 596:

> "(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
> (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party who might reasonably have been expected to call the witness.
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
> (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

[36] See **Wisniewski (A Minor) v Central Manchester Health Authority** (ibid).

reasonable basis to hold such an opinion. In fact there is no evidence to adequately explain why a period of 5 extra days was necessary at all, save for general inquiries or perhaps for the fact that it would expire on the date of the expiration of the State of Emergency.

72. For the foregoing reasons Police Corporal Budri did have an honest belief in the suspicion that Mr. Boney was involved in the alleged criminal activities to justify his arrest. However there was no proper explanation afforded to the Court to demonstrate that inquiries were necessary beyond the first 24 hours and that inquiries into Mr. Boney's involvement could not have been completed within 24 hours or that a total of 5 days was needed to do so. Mr. Boney's detention beyond the first 24 hours was therefore unlawful.

Damages

73. This Court has already noted that the initial period of Mr. Boney's detention was lawful. His compensation will only be limited to the period in which he was unlawfully detained after the initial 24 hours. Mr. Boney was unlawfully detained for five (5) days and the Defendant is liable to pay Mr. Boney damages for his false imprisonment of five (5) days.

74. A principal head of damages for false imprisonment is the injury to liberty, the injury to feelings and injury to reputation. In **Walter v Alltools** (1944) 61 T.L.R. 39 *"a false imprisonment does not merely affect a man's liberty it also affects his reputation."* See also **McGregor on Damages 19th Edition**, paragraph 40-012. The award of damages may also include aggravated damages. See **Thaddeus Bernard v Quashie** CA No 159 of 1992 and **Thadeus Clement v A.G** Civil Appeal No.95 of 2010.

75. Mr. Boney was arrested on 29th November 2011 and released on 5th December 2011. Mr. Boney in his witness statement[37] stated that upon his arrest, he was made to walk down the hill in 'broad daylight' to arrive at the police vehicle which was parked at the bottom of Africa Road and which was a 'considerable distance' away from his home. He further stated that his neighbours were protesting his arrest and that there were media personnel present which caused him to feel embarrassed, anxious and distressed. In cross examination, Police Corporal Budri stated that there was no media personnel when they arrived at Africa Road but he saw a picture

[37] Filed on 17th February 2017

in the papers that could have been that place therefore indicating that the media was present when Mr. Boney was being escorted away from his home.

76. He should have been released on 30th November after his interview. He was therefore unlawfully imprisoned for 5 days.

77. The conditions of Mr. Boney's detention are not in dispute. Mr. Boney contended that the cell in which he was placed in at the Belmont Police Station was dirty and had a foul odour. He stated that he did not have a bed and had to sleep on the cold concrete and further that he was not allowed to bathe nor brush his teeth during his period of detention. However, he was allowed to take his medications for his diabetes.

78. In **Ricardo Luke Fraser v The Attorney General** CV2014- 03967, the Claimant was arrested on the suspicion that the vehicle in which he was a passenger was stolen. The Court found that the Claimant was unlawfully detained for five (5) days and awarded damages in the sum of $100,000.00. However, the learned Judge took into consideration the aggravating factors in that case such as, the Claimant was not provided with a vegetarian lunch on his first day of detention, the police did not record the Claimant was diabetic even though the Claimant was hospitalised on the first day of his detention and the cell in which the Claimant was detained as the Central Police Station was not sanitary. The conditions of his detention were that the cell was filthy, he shared it with other inmates, he slept on a wet floor, there was cockroaches, no bathroom facilities, a man made hole and bucket to relieve himself and a high stench of urine and faeces. Notably, in the instant case however, there were no such distressing circumstances and Mr. Boney indicated that he was allowed to take his medication for his diabetes.

79. In **Stephen Seemungal v The Attorney General and the Commissioner of Prisons** CV2009-00894, the Claimant, who pleaded guilty to possession of marijuana and was fined $1000.00 (with time to pay) was kept in custody at the Golden Grove Prison and then the State Prison in Port of Spain for a period of nine (9) days. The Claimant stated that he shared a cell with 12 persons at the Sangre Grande Police Station and the smell was unbearable from the toilet that was used. At the Golden Grove Prison he shared a cell with 9 prisoners and the cell did not have a bed nor any toilet facilities which caused a constant foul smell in the cell. His prison

cell in the State Prison in Port of Spain was smaller and he and the other inmates had to fit "like sardines in a tin to sleep."[38] The cell was also very hot and rodents bit him at night. The Learned Judge awarded the sum of $100,000.00 which included aggravation for the mental suffering and anguish of the Claimant for the degrading conditions the Claimant endured.

80. The Defendant relied on the authority of **Thadeus Clement v The Attorney General** Civil Appeal No.95 of 2010. In **Thadeus**, the Claimant was a taxi driver who was charged with robbery and imprisoned for a period of six (6) days. The Claimant described his detention at the Remand yard as the "worst week in his life" and as though "he was reduced to being an animal."[39] The cell in which he was placed was filthy and there was a make shift toilet at the corner of the cell all of which caused the Claimant to feel nauseated. He slept standing up. He stated that his livelihood was affected by the incident since his reputation suffered and passengers refused to travel with him. The Claimant was awarded the sum of $160,000.00 as general damages and aggravated damages. These are all clearly cases that are more serious that the conditions under which Mr. Boney was detained.

81. The Defendant also relied on **Ramdial v The Attorney General** CV2009-02336 where the Claimant was detained for a period of 8 days and awarded the sum of $125,000.00 for false imprisonment. Counsel for the Defendant submitted that a sum of $100,000.00 was reasonable if the Claimant was entitled to damages for false imprisonment.

82. Mr. Boney's distress and injury amounted to sleeping on a cold floor and not bathing or brushing his teeth and placed in a dirty cell. He claims an uplift on his award of damages to take into account aggravated damages and exemplary damages in the total sum of $500,000.00. He submitted that the Claimant was humiliated, he was falsely accused under the guise of a hoax and the police deliberately leaked material to the media to continue his embarrassment and harassment.

83. From my assessment of the evidence there is no evidence that the police leaked any material to the media. The Claimant was not subjected to any unusual embarrassment save that of being arrested for which his colleagues protested his innocence. There was no evidence of any impact

[38] **Stephen Seemungal v The Attorney General and the Commissioner of Prisons** CV2009-00894, paragraph 7.
[39] **Thadeus Clement v The Attorney General** Civil Appeal No.95 of 2010, paragraph 19.

on his livelihood. The police acted genuinely under a suspicion of his involvement in acts that will destabilise the nation. There was no malice evidenced from Police Corporal Budri or then Deputy Commissioner of Police Mr. Mervyn Richardson in singling out Mr. Boney. There is no evidence of mistreating him at the station nor denial of access to attorneys or family. He obtained his meals. In my view Mr. Boney's claim for an award of $500,000.00 is unreal, exaggerated and out of all proportions to the circumstances of this case and other comparable cases.

84. In the instant case, it can be noted that though the Claimant had to endure unsanitary conditions in his cell at the Belmont Police Station and suffered embarrassment for his arrest, it was not to the aggravating extent as those indicated by the claimants in the aforementioned cases. This is also not a case for exemplary damages. In my view there is no oppressive, arbitrary or unconstitutional conduct by the Defendant.[40] A linchpin in the submission for exemplary damages was that the Claimant was arrested on a trumped up hoax and the police leaked information to humiliate him. The Claimant has led no evidence of either of these matters. A grave allegation of leaking material to the press ought not to have been made conscientiously in the absence of any evidence to prove such acts by the Defendant. The fact is the media will do its job and will get its information. To jump to the conclusion as Counsel for the Claimant has in this case to say that police leaked it is wholly unwarranted and without foundation. Further in my view even in the absence of the report of the assassination plot from DCP Richardson's evidence there is no reason to doubt the credibility of his evidence that there was a legitimate threat which caused him to spring into action. It is also noteworthy that the report of the plot was disclosed by the Defendant under Part 28 and the Claimant failed to make any application to this Court for its production and inspection.

85. Following awards in **Harold Barcoo v The Attorney General of Trinidad and Tobago and Inspector Phillip Browne** HCA No 1388 of 1989 and **Dover v AG** CV2010-00108 in my view a suitable award will be in the sum of $70,000.00 in general damages. It is not a suitable case for any award for aggravated or exemplary damages.

[40] **Rookes v Barnard** [1964] 1 AER.

Conclusion

86. In the aftermath of many acts of terror which have threatened public safety, democratic societies legitimately react to protect its citizens and their values of human security and their right to peace. The requirement that officers have reasonable suspicion or reasonable ground for their suspicion before they restrain an individual and deprive them of their liberty no doubt has evolved over time equally as a valuable protection of the society's value of freedoms. In recognizing the lower threshold of mere "suspicion" which is honestly held to justify an arrest is no license to continue to detain the individual without subjecting the justification for such continued detention to the scrutiny of a level required of public officials executing public functions underpinned by the principles of reasonableness. The Courts being charged to delineate the boundaries of a rights based democracy will insist on the proper and reasonable limits of discretion and authority of public officials.

87. This case of Mr. Boney as presented demonstrates through an action of false imprisonment the balance between individual and collective rights in times where there is a threat to our public safety under declared State of Emergency. To paraphrase Lord Hoffman freedom from arbitrary detention is a proud legacy of our shared values and equally threats to public safety lie not only in attacks against citizens security and well-being by criminal acts but also acts of the State which irrationally deprives its citizens of their cherished private rights and individual freedoms[41].

Vasheist Kokaram

Judge

[41] **A and others v Secretary of State for the Home Department** [2004] UKHL 56 per Lord Hoffman at paragraph 96