

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2008-02309

BETWEEN

ANTHONY SCOTT

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Defendant

Before: Master Alexander

Appearances:

For the claimant:

Mr Kevin Ratiram

For the Defendant:

Ms Maria Belmar and Ms Rene Singh, instructed by Ms Kerri-Ann Oliverie

REASONS

I. INTRODUCTION:

1. This matter involves the wrongful arrest of the claimant by PC Ramnanan on 12th July, 2006 on a warrant issued for “Anthony Scott”. The claimant was taken to the cells of San Fernando Magistrate Court and then to the Golden Grove Prison, Arouca. He believed that he was arrested in connection with previous charges, laid on 2nd November, 2005, for the illegal possession of marijuana and cocaine to which he had pleaded guilty and was ordered to pay a fine and in default be imprisoned and which said fines he had not paid. The claimant was in fact arrested pursuant to a warrant for the arrest of another “Anthony Scott”. On the 18th August, 2006 (some 38 days later) his mother, Venus Scott, paid the fines and he was released. Subsequently, on checking the receipts, he realised that the fines were with respect to charges laid in 2004 for possession of a drug relate device laid against someone carrying his name. He claims that he was arrested and imprisoned as a result of mistaken identity and was

unlawfully deprived of his liberty for a period of 37 days. I am required to assess the claimant's damages for wrongful arrest and false imprisonment of 37 days.

2. The claimant sought these reliefs by way of claim form and statement of case filed on 25th June, 2008. Jones J entered judgment against the defendant in default of defence on 24th April, 2009. In the circumstances, the defendant led no evidence at the assessment and the claimant's evidence went in unchallenged.
3. The evidence related simply to the arrest under a warrant that did not apply to the claimant but under the mistaken identity.

II. FALSE IMPRISONMENT

4. In this jurisdiction, damages for false imprisonment are usually assessed on the basis of two basic elements: "injury to liberty" and "injury to feelings." Another critical element is **injury to reputation** as noted in *Walter v Alltools*¹ that, "*a false imprisonment does not merely affect a man's liberty it also affects his reputation.*"
5. In **Mc Gregor on Damages**, it was noted that, "[T]he details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status."²
6. In *Kamaldaye Maharaj v P C Hobbs and ors*³ Mendonca J (as he then was) stated that, "[I]n a case of false imprisonment a successful Plaintiff may recover damages for injury to liberty. Damages may also be recovered for injury to feelings, that is to say, indignity, mental suffering, disgrace and humiliation suffered by the Plaintiff as well as for any physical injury as well as injury to reputation. With respect to pecuniary loss, such loss which is not too remote is recoverable..."

¹ (1944) 61 TLR 39, 40 (CA)

² **Mc Gregor on Damages** 18th edition

³ *Kamaldaye Maharaj v P.C. Hobbs, P.C. Charles & the A.G.*, HCA No 2587 of 1998 @ page 10-11 per Mendonca J

7. These principles governing damages for false imprisonment were also outlined by Moosai J in ***Kamal Samdath Ramsaran v Romiel Rush and the Attorney General***⁴ thus:

*The principal heads of damage for false imprisonment would appear to be the injury to liberty, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status. Also damages may be given for any injury to reputation, for as Lawrence L J said in ***Walter v Altools*** (1944) 61 TLR 39, 40, “a false imprisonment does not merely affect a man’s liberty; it also affects his reputation.”*

8. Bearing in mind the principles on false imprisonment outlined above, I would now consider the evidence before me as follows:

Injury to liberty/feelings/reputation

9. With respect to the injury to his liberty, the claimant’s evidence is that he was unlawfully detained for 37 days. The claimant has advanced no evidence as to any injury to feelings or reputation on his imprisonment. In assessing damages all factors must be considered and the award is not to be compartmentalized as confirmed in ***Josephine Millet v Sherman McNicholls***⁵ where De La Bastide CJ warned of the absurdity of assessing damages for false imprisonment for 132 days by mathematical calculation or compartmentalizing different elements of the shock and trauma, “[W]e have already indicated in the case of *Bernard v Quashie* our disapproval of this mathematical approach to the assessment of general damages in a case of this sort. We are told that in England, juries have been instructed that they may adopt a specific hourly rate in assessing damages for wrongful detention. Well, we do not have juries in civil cases in this country, and I say unhesitatingly that this is an approach which this Court will not adopt or approve.”
10. In ***Josephine Millet*** (supra) it was submitted that damages should be considered in light of the initial shock suffered on being taken into custody and then the length of incarceration but De La Bastide CJ said, “[I]t is important that judges approach the assessment of damages in cases like this in the round. I do not think that one can divide the award strictly into different compartments, one for initial shock, the other for length of imprisonment and so on. All the factors have to be taken into account and an appropriate figure arrived at.”

⁴ Moosai J in *Kamal Samdath Ramsaran v Romiel Rush and the Attorney General* HCA No S-1597 of 1986 at page 43

⁵ *Josephine Millet v Sherman McNicholls*

11. In the instant case, there is an absence of the requisite evidence to assess the damages for false imprisonment. Without the necessary evidence, I am left with no other choice but to treat the assessment of damages as one for imprisonment *simpliciter*. In so doing, I considered:

- ***Kedar Maharaj v AG***⁶ where a claimant was detained/falsely imprisoned at the St Ann's Hospital for 29 days and was awarded \$280,000.00 on 2nd February, 2010. There were several aggravating factors and an award of \$50,000.00 was made in exemplary damages.
- ***Brahim Rampersad v AG***⁷ where Paray-Durity M awarded \$190,000.00 on 28th April, 2010 for 14 days false imprisonment and malicious prosecution, listing several aggravating factors.
- ***Kennty Mitchell v PC Hobbs and AG***⁸ where the police arrested the claimant believing there was a warrant for his arrest, when in fact there was not. He was arrested for 2 days 7 ½ hours and Jones J on 12th June, 2008 awarded \$100,000.00 for wrongful arrest and false imprisonment and a further sum of \$25,000.00 in exemplary damages.
- ***Felix Hyndman v The Attorney General***⁹ where Tam J in July 2001 awarded \$85,000.00 as general damages for assault, false imprisonment for 20 days and malicious prosecution, inclusive of aggravated damages and a further sum of \$25,000.00 for exemplary damages. The plaintiff was arrested and charged for possession of a dangerous drug i.e. cannabis sativa.
- ***Ted Alexis***¹⁰ where cocaine was planted on a plaintiff and he was imprisoned for 2 ½ months and was awarded \$100,000.00 for unlawful arrest, false imprisonment and malicious prosecution, inclusive of aggravated damages and \$25,000.00 as exemplary damages to mark the court's disapproval of the officer's conduct.
- ***Stephen Seemungal v The Attorney General***¹¹ where Boodoosingh J gave \$100,000.00 as general damages inclusive of aggravated damages and \$60,000.00 as exemplary damages for unlawful detention, on an invalid warrant, of 12 days.

⁶ *Kedar Maharaj v AG* CV2009-1832

⁷ *Brahim Rampersad v AG* HCA S-1578 of 2002

⁸ *Kennty Mitchell v PC Hobbs and AG* CV2007-03220

⁹ *Curtis Gabriel v The AG of T&T* HCA No S-1452 of 2003 decision given 4th June 2008.

¹⁰ *Ted Alexis v The AG of T&T & Ors* HCA No S-1555 of 2000 decision given 17th March 2008.

¹¹ *Stephen Seemungal v The Attorney General and John Rougier The Commissioner of Prisons* CV2009-1832

12. Counsel for the claimant suggested as reasonable the sum of \$400,000.00 - \$450,000.00 for damages, submitting that in the instant case the period of detention was longer than in the authorities he sought to rely upon.
13. Whilst I accept that the period of detention is indeed 37 days, in the other cases cited above there were other aggravating factors and other heads of damages that influenced the awards, which do not exist in the instant case at bar. Whilst there is a dearth of evidence before me to adequately assess damages for false imprisonment, there is no doubt in my mind that the police in arresting the claimant on the basis of mistaken identity acted in an “arbitrary” manner in depriving the claimant of the right to due process of law since they failed, in carrying out the arrest, to make proper investigation and inquiry to ensure as far as reasonably possible that they had arrested the right person. In the face of the deficiency in the evidence as to injury to feelings and reputation and/or of any indignity, mental suffering, disgrace or humiliation, I am forced to accept that there was none.

VI. AGGRAVATED AND EXEMPLARY DAMAGES

14. In *R v Governor of Brockhill Prison Ex p Evans*¹² it was noted that aggravated and exemplary damages will not be appropriate in cases where a claimant by reason of his peculiar circumstances will suffer less injury than an innocent person ‘of previous good character’ who at the time of unlawful incarceration was enjoying his liberty. In that case a prisoner, due to administrative oversight, spent an additional 59 days in prison and the court noted, “[I]t is accepted by the appellant that this is not a case for an award of aggravated or exemplary damages. Nor are we concerned with special damages. The judge accepted a submission on behalf of the Governor that there can be two elements to an award of damages for false imprisonment; damages to reputation, humiliation, shock, injury to feelings and so on which can result from the loss of liberty. In this case the second element is absent.”
15. In the instant case, I accept that the claimant was not in prison prior to his unlawful detention. I also note that he has admitted in his evidence that he had pleaded guilty to two previous charges and was fined, which said fines he did not pay although he faced, on default, a penalty

¹² *R v Governor of Brockhill Prison Ex p Evans* [1999] QB 1043

of imprisonment. He gave evidence that on arrest he offered no contest as he believed it was for the outstanding penalty he had previously failed to pay.

16. With respect to ‘aggravated damages’, this head of damages is discretionary and forms part of the compensatory measure of damages. In this case there is no evidence sufficient as to necessitate an uplift for aggravated damages and as such in my view, an award does not arise on the facts. The claimant admittedly thought that he was lawfully incarcerated and as such the mental components necessary for aggravated damages are not present.
17. This is also not a case for the award of exemplary damages whose object is to punish the defendant for outrageous behaviour and to deter him and others from repeating it. See the Privy Council case of *Takitota v The Attorney General of Bahamas*.¹³ See also *Rookes v Barnard*¹⁴ where it was noted that exemplary damages may be awarded where there is oppressive, arbitrary or unconstitutional action by the servants of the government. Further, it is clear that an award of exemplary damages can attach where an agent of the State uses his powers oppressively, illegally and/or to gain his ends since, “[I]n the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service.”¹⁵
18. In executing my responsibility to determine the compensation payable, I accept that the evidence was unchallenged. I also accept that there was no evidence of any aggravating factors in this case sufficient as to render it an apt case for an award of aggravated damages. In the circumstances, no award is made for aggravated damages or exemplary damages.
19. In the absence of aggravating factors, I consider as appropriate for the imprisonment of 37 days to award a sum of \$150,000.00 as damages to compensate for any distress and inconvenience caused by the deprivation of his liberty for that period. In this regard, I found particularly helpful the decisions of *Felix Hyndman* (supra) and *Kedar Maharaj* (supra), both of which included aggravating factors, unlike the case at bar.

¹³ *Takitota v The Attorney General of Bahamas* Privy Council Appeal No 71 of 2007 per Lord Carswell

¹⁴ *Rookes v Barnard* [1964] AC 1129

¹⁵ *Rookes v Barnard* Supra

X. CONCLUSION

20. It is thus the order of this court that the defendant do pay to the claimant –

- (i) General damages for wrongful arrest and false imprisonment in the sum of \$150,000.00 with interest at the rate of 6% per annum from 25th June, 2008 to 16th May, 2012.
- (ii) Costs on the prescribed basis in the sum of \$31,500.00

Dated 16th May, 2012

Martha Alexander
Master (Ag)