

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-00900

BETWEEN

**FITZROY BROWN
JUDAH RAMNARINE
JOSH RAMNARINE
LANCE MYER
AMIN HAMILTON
ASTON BAILEY
PETER ISACK
AGATE ISACK
CLAUDINE DUFRIN
KELEN FRANCIS
SHARON PATTERSON
KESTON PATTERSON**

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: Master Alexander

Appearances:

For the claimants: Mr Edwin Roopnarine

For the defendant: Ms Keisha Prosper instructed by Ms Zelica Haynes

REASONS

BACKGROUND

1. The first claimant is a spiritual leader of the St Michael's Spiritual Baptist Church while the other claimants are members of the said church. On 1st October 2008, the claimants who were participants of the church's yearly 3 night prayer service, commenced prayers in their church hall which continued into the early hours of the following morning. Thereafter the claimants bedded down in the church hall around the bedi (altar) and private prayer room.

2. On 2nd October 2008 around 2:30 a.m., the front door of the church was pushed in and several police officers and soldiers, armed with guns, rushed into the church, awaking the claimants and commanding them to face the wall with their hands behind their heads. The officers used their rifles to further desecrate the church and by entering the private prayer room, where no shoes are permitted. The claimants were roughly questioned which resulted in the second, third, fourth, fifth and sixth claimants (hereinafter referred to as “**claimants group 2**”) being handcuffed and taken by the officers to the Penal Police Station while the first, ninth, tenth, eleventh and twelfth (hereinafter referred to as “**claimants group 1**”) remained at the church (hereinafter together referred to as “the claimants”). No witness statements were provided for the seventh and eighth claimants; and counsel did not address these claimants in his written submissions. Therefore, there was no evidence before this court as to what they had endured. Further, only 5 claimants gave evidence in court; the first, second, fifth, sixth and eleventh. By the failure to bring evidence in support of their claim, they are taken to have abandoned their suit.
3. The officers assaulted and battered claimants group 2 on their way to the station, locking them in a cell when they arrived. These claimants were released at around 3:30 p.m. on the same day and were made to find their own way home. As a result of the ordeal, all the claimants claim to have suffered humiliation, embarrassment and mental distress.
4. The claimants issued legal proceedings against the defendant on 12th March 2009 claiming damages including aggravated and/or exemplary and/or punitive damages for trespass and false imprisonment. On 1st October 2010, Rajnauth-Lee J ordered judgment by consent for the claimants against the defendant.

GENERAL DAMAGES

5. The primary object of an award of damages is to compensate the claimant for the harm done to him. The secondary object is to punish the defendant for his conduct of inflicting harm. In making the compensatory award, account shall be taken of the aggravating features. The normal practice is that one figure is awarded as general damages. As noted in the case of *Thaddeus Bernard, Airports Authority of Trinidad v Nixie Quashie* CA Civ 159/1992,

de la Bastide CJ (as he then was) explained, “[T]hese damages are intended to be compensatory and include what is referred to as aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have suffered. Under this head of mental suffering are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.”

6. In determining the primary award to compensate the claimant, the Privy Council in ***Tamara Merson v the Attorney General of the Bahamas PC Appeal 61 of 2003*** recommended that a court ought to make a separate award of damages for the assault and battery and the false imprisonment. It was also recommended that a distinction should be made between compensatory damages (which would include aggravated damages) and exemplary damages and the elements attributable to these awards are to be identified. More recently Des Vignes J in ***Sean Wallace v The Attorney General of Trinidad and Tobago HCA 4009/2008*** applied the said recommendations.

FALSE IMPRISONMENT

7. A false imprisonment is a complete deprivation of liberty without lawful cause. Nowhere on the facts is there any lawful justification for the claimants’ detention. While all the claimants were detained at the church, the officers only arrested claimants group 2 and took them to the San Fernando Police Station, without telling them the reason for their arrest. From the facts, it is clear that all the claimants were falsely imprisoned and are entitled, therefore, to be compensated for loss of liberty as well as injury to their reputation and feelings, which includes the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social standing. See **McGregor on Damages** 18th edition paragraph 37-011.

Claimants group 1

8. It is the case of this group of claimants that around 2:30 a.m. on 2nd October 2008, they were awakened at their Baptist church by voices saying “Police! Don’t move!” With guns pointed at them, they were made to stand up and face the concrete wall with their hands above their heads and feet spread apart. These claimants claim to have been frightened and traumatized by the ordeal. They were searched and asked questions of where they were from, what they

were doing and whether they had anything illegal. They were asked for their identification cards which they did not have. The officers never read a warrant to them nor informed them of the reason for the search. These claimants stated that this incident has left them traumatized, emotionally upset and humiliated. According to their witness statements, they were detained at the church for about 1 ½ hours. To be noted in particular is the evidence in chief of the 62 year old first claimant who as the spiritual leader/pastor described his trauma thus, *“They never read a Warrant to me, they just bust the Church door and came in without saying the reason for the search ... They left and still didn’t say anything. I was traumatized ... I am still waiting to know the reason because I am embarrassed with the situation that took place by the police and army officers... I have always held myself as a spiritual leader and a guided light to all members of the society. The offending officers had never at any time before this incident ever question me or the other members who were present that night of (sic) any illegal activity or wrong doing. This incident has left me traumatized, emotionally upset, humiliated, embarrassed and I suffered mental distress and ridicule and ... I have found members of my church unwilling to attend nightly pray meetings after this incident.”*

9. Counsel for the defendant highlights an inconsistency in the evidence, pointing out in her submissions that the statement of case indicates that the officers imprisoned claimants group 1 at the church for 1 hour. This point plays a key role in the amount of damages to be awarded as the length of the unlawful imprisonment is a significant factor in assessing damages for wrongful imprisonment (see ***Millette v Sherman Mc Nicholl CA CIV No 14 of 2000***). Counsel suggests that since the statement of case was made closer in time to the incident, the events would have been clearer in the claimants’ minds at that time and as such the court should accept the time stated in the statement of case, being 1 hour’s imprisonment. She further submits that the claimants group 1 must be bound by their pleadings moreso since they have not followed the necessary guidelines for changing their statement of case.
10. Counsel for the claimants submitted that the inconsistency is one where the court is entitled to conclude whether the claimants were imprisoned for 1 hour or 1 ½ hours. I accept this and bear in mind that an average time may be stated in a statement of case, whereas a witness statement may contain more particulars. I, therefore, accept that the officers imprisoned claimants group 1 at the church for 1 ½ hours.

11. Counsel for the claimants group 1 suggested an award of \$40,000.00 inclusive of aggravation for their false imprisonment. He relied upon the following cases:

- ***Adesh Maharaj v AG of Trinidad and Tobago HCA S-788/1998*** where on May 2011, Pemberton J found that the detention of the plaintiff for 2 hours 50 minutes was worthy of general damages in the sum of \$20,000.00
- ***Sobers and DeFreitas v AG of Trinidad and Tobago CV 2008-02487*** where in June 2011 damages were awarded in the sum of \$7,000.00 for 1 hour false imprisonment.

12. Counsel for the defendant referred the court to the following cases:

- ***Baboolal v DeFreitas CV2008-02487*** where the court on 14th June 2011 awarded \$7,000.00 for a little over 1 hour false imprisonment and \$20,000.00 in exemplary damages.
- ***Adesh Maharaj v AG*** (supra).
- ***Sookhai v AG CV 2006-00986*** where the court awarded \$6,000.00 for ½ hour detention.
- ***Kowlessar v Kowlessar Civ App No 167 of 2005*** where \$8,000.00 was awarded for 3 hours detention.
- ***Morgan v AG HCA 1040/1997*** where the court awarded to the claimant the sum of \$4,000.00 for 3.5 hours detention
- ***Mootoo v PC Flaviney, Commissioner of Police HCA S48/1998*** where the court in August 2008 awarded \$1,500.00 to the claimant for 30 minutes detention.

Claimants group 2

13. This group underwent the same scenario as group 1. However, after being questioned, they were handcuffed and taken to the Penal Police Station. Around 2:30 p.m. they were allowed to leave without being charged for any offence. They were never told the reason for their arrest or of their right to get a lawyer and to telephone their families. Claimants group 2 also claimed to have been distressed and traumatized by the arrest.

14. Counsel for the claimants group 2 submitted that they were detained for approximately 12 hours. Counsel cited the following cases and suggested an award of \$120,000.00 inclusive of aggravation for false imprisonment of each of these claimants:

- ***Harricharan v AG of Trinidad and Tobago HCA 137/2000*** where in December 2006 damages, including aggravated damages, was awarded for false imprisonment in the sum of \$50,000.00. The plaintiff, who was charged with the offence of larceny of a motor car, was in custody for approximately 9-10 hours.
- ***Clement v AG of Trinidad and Tobago HCA No. 2218/2008*** where in July 2009 Gobin J awarded \$50,000.00 including an award for aggravated damages for a period of 17 hours.
- ***Bernard v AG of Trinidad and Tobago Civ App 159 of 1992*** where on 21st October 1998 the Court of Appeal awarded the plaintiff the sum of \$40,000.00 for being falsely imprisoned for 7 hours.

15. Counsel for the defendant did not contest the period of detention with respect to this group. She referred the court to the following cases:

- ***Henry v The AG of Trinidad and Tobago CV2007-03897*** where the court, in June 2011, awarded to the claimant the sum of \$35,000.00 in damages for false imprisonment for a period of 34.5 hours.
- ***Koon Koon v The AG of Trinidad and Tobago CV2007-02192*** where a claimant who was incarcerated for 2 days was awarded on 4th July 2010 the sum of \$35,000.00 inclusive of aggravating damages.
- ***Mario Richards v AG HCA S-1469/2004*** where the court awarded to the claimant the sum of \$25,000.00 in damages for 15 hours detention.

In light of the above, the defendant suggested that the first and eleventh claimant receive the sum of \$7,000.00 in damages for one hour detention and that the others, should receive \$20,000.00.

16. The claimants have claimed aggravated damages. Such damages can be awarded where there are aggravating features about the case which would result in the claimant not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. It also covers any conduct of those responsible for the arrest or the prosecution which shows that they had behaved in an insulting, malicious or oppressive manner either in relation to the arrest or imprisonment. To determine an appropriate award, I took into account the period and circumstances of the detention. Unlike in the cases submitted for consideration, their arrest and detention occurred in circumstances where the claimants were at church. I accept the claimants' evidence that the police officers and soldiers, bearing arms, forcefully entered into and desecrated their place of worship. I also accept the evidence of claimants group 2 that they were not informed of any charge at the time of their arrest.
17. It is, therefore, reasonable to accept that the claimants experienced some degree of trauma, shock and humiliation as a result of this ordeal. However, I do accept the submissions of counsel for the defendant that the first and eleventh claimants have not satisfied the evidential burden of showing that, some three years after the incident, they still experienced nightmares. All claimants in this matter will, however, be awarded aggravated damages for the fear and shock experienced during their time of detention.
18. In arriving at a just award, I bear in mind the decision of the Court of Appeal in *Bernard v AG of Trinidad and Tobago* (supra) where a 7 hour period of detention attracted an award of \$40,000.00. I also considered the decisions of *The Attorney General of Trinidad and Tobago v Ramanoop* [2005] UKPC 15 delivered on 23rd March 2005 where the applicant was arrested and detained for 2 hours and the Privy Council upheld Bereaux J's award of damages in the sum of \$18,000.00 for the deprivation of his liberty and *Nigel Morales v AG HCA 2133 of 2008/CV2008-02133* where Jones J in July 2011 awarded \$20,000.00 general damages inclusive of an uplift for aggravation for 2 hours false imprisonment. In the instant case scenario, the officers detained claimants group 1 for 1½ hours and claimants group 2 for approximately 12 hours. Based on the claimants' evidence and the cases provided by both parties, I consider it to be just and reasonable in all the circumstances of this case to award the claimants general damages for false imprisonment inclusive of aggravation in the following sums:

- Claimants group 1: \$20,000.00 each
- Claimants group 2: \$75,000.00 each

ASSAULT AND BATTERY

19. In the case of *Sedley Skinner v The Attorney General of Trinidad and Tobago CV 2006-3721 @ paragraphs 25 and 26* Pemberton J explained that an assault refers to, “*the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact*”. She defined battery as, “... *the application of force to another resulting in harmful or offensive contact*”. Thus, battery is an act by which a person intentionally or recklessly applies unlawful force to the complainant.
20. Claimants group 2 got assaulted and battered while in the army vehicle on their way to the Penal Police Station. In their evidence in chief, the respective claimants detailed the extent of injuries suffered by each. The second claimant stated that he received taps on his head, was terrified and in sheer shock by his experiences and to date still suffers with nightmares. The fifth claimant specifically stated in his witness statement that he had received a gun butt behind his neck and that his hair was burnt with a lighter by a soldier. He was also cursed by an officer for asking if the handcuffs could be slackened. His evidence is that in the jeep on the way to the station he was slapped and kicked continuously about the body, forcing him to seek shelter between the sixth claimant’s legs but the beating did not stop. He states that he received bodily injuries at the hands of these officers and that following his experiences in the church and the jeep; he remains to date mentally traumatized. The sixth claimant also testified to receiving physical injuries at the hands of the officers, which necessitated him seeking medical attention at the Mayaro Health Centre after the incident. He failed, however, to furnish this court with a medical report from the attending doctor at the health institution.
21. Counsel for the defendant submitted that while the claimants have outlined the nature of the assault in their witness statements, they did not provide the court with any real evidence by way of medical reports to assist in determining a reasonable figure to award in relation to the alleged injuries sustained. The claimants submitted, however, that the non-production of the medical reports should not affect the weight to be attached to their evidence to any great

degree. Rather, it is for the court to determine the extent to which the claimants were assaulted and battered based on the unchallenged and uncontroverted evidence of the witnesses which the defendant had an opportunity to cross examine.

22. I had an opportunity to hear the witnesses under cross examination and they appeared to me to be witnesses of truth. They were unwavering and credible in the recount of their experiences. I, therefore, accept that the claimants were hit about their bodies while being transported to the police station. Further, it is accepted that there was no permanent residual or serious injury from the battery. It is also reasonable that the claimants would have experienced fear and shock because of the ordeal. I also accept that the fifth claimant experienced the worst battery and this shall be reflected in his award.

23. The defendant referred the following cases to the court to assist in the determination of an award for assault and battery:

- ***Ravello v AG CV 2008-04611*** decided on 1st July 2011 where Aboud J awarded the claimant the sum of \$7,500.00 for assault and battery. The claimant alleged that he was pulled out of a car and cuffed in his side by the officers. He also stated that his head was locked and he was later put in handcuffs.
- ***Waldon v AG CV 2008-04317***, given 23rd March 2010, where Gobin J awarded \$7,000.00 where the claimant was struck twice on the head with a charge book and was struck on both ears, twice and was also kicked.
- ***Baldeosingh Mohammed and ors v AG CV2006-02222***, where the claimant was dragged from the police jeep, struck on the head twice with a large book and slammed against a concrete wall before being picked up by an officer and kicked in the genitals, whereupon he fell to the floor. The court awarded him \$12,000.00 in damages for assault and battery, taking into account that the injuries to the throat and scrotum would have been painful and lasted for some time given that these were particularly sensitive areas as well as the fact that he was handcuffed and unable to defend himself; was verbally abused and did nothing to provoke the attack.

- *Joseph v PC Alfred Melville HCA 160/1993* where the claimant was awarded \$10,000.00 in general damages for wrongful arrest and assault which resulted in the claimant suffering mild pains.

24. Bearing these in mind, counsel for the defendant suggested that the second claimant be awarded \$7,500.00, the fifth claimant be awarded \$10,000.00 and the sixth claimant be awarded nominal damages in the sum of \$3,000.00. Counsel for the claimants, also referring to the *Baldeosingh Mohammed* (supra), suggested the sum of \$12,500.00 for the sixth claimant and the sum of \$18,000.00 for the fifth claimant and asked that as that judgment was delivered in 2009, this court should take into account the effects of inflation.

25. To my mind, the injuries sustained by the claimant in *Baldeosingh Mohammed* (supra) were more extensive than these claimants save the fifth. It is my view that a gun butt to the base of the head would have been painful and a source of discomfort to the fifth claimant. This combined with kicks, cuffs and the use of a cigarette lighter to singe an area of hair would no doubt have shocked and traumatized the fifth claimant, especially as there is no evidence of this attack being provoked. Further, I consider the assault and battery in *Ravello* (supra) where an award of \$7,500.00 was made to be less severe than in the instant case. I am also mindful of the fact that the physical injuries suffered by the claimants are not the sole factor to be taken into account. As noted by Moosai J referencing *McGregor* (supra), “*beyond this, the tort of assault affords protection from the insult which may arise from interference with the person. Thus a further important head of damage is the injury to feelings, the indignity, mental suffering, disgrace and humiliation that may be caused.*” *Mahadeo Sookhai v The AG of Trinidad and Tobago CV2006-02986*. In the circumstances, this court notes the distinctions to be drawn between the cases quoted and the present facts in arriving at its award. In light of this, I am of the view that a reasonable award of damages for the assault and battery would be \$8,500.00 for the second claimant; \$13,500 for the fifth claimant and \$9,500.00 for the sixth claimant.

EXEMPLARY DAMAGES

26. As noted in *Rookes v Barnard* (1964) AC 1129, exemplary damages are awarded where the offender's behaviour amounted to oppressive, arbitrary and unconstitutional action. The instant case is a fit one for a further response from this court as the award of compensatory damages, given the nature of the defendant's conduct, can be perceived as inadequate. As noted in *Kuddus v Chief Constable of Lecestershire* [2001] UKHL/29, "[O]n occasion conscious wrongdoings by a Defendant is so outrageous, his disregard for the Plaintiff's rights so contumelious that something more is needed to show that the law will not tolerate such behaviour." I have decided to use exemplary damages as a remedy of last resort to give justice and to plug what would otherwise be a regrettable lacuna in the instant case.
27. To my mind, the behaviour of the servants or agents of the defendant is so unpalatable, it must not be condoned. As emphasized by Tam J in *Felix Hyndman v AG of Trinidad and Tobago* HCA T-71/1996, "*A person's liberty is sacred. To be deprived of it through the wrongful actions of one who has sworn to protect and serve the community, compounded by the bringing of a false criminal charge is wholly unacceptable and must not be tolerated under any circumstances.*" In the instant case, there was no false criminal charge but the actions of these officers are just as unacceptable.
28. This court strongly condemns the actions of the police and soldiers in this matter. Today it is a Baptist church, what will it be tomorrow? Are there no boundaries? I bear in mind that these were simple people, innocently conducting their religious rituals when they were subjected to this act of wrongful detention and arrest. In such a small society as ours, where persons' reputations are so easily tarnished by rumour and hearsay; the highhanded actions of these officers must be frowned upon by the court. It is unacceptable that officers of the State can act in a disrespectful, abhorrent and repulsive manner towards citizens generally but more particularly so even when they are in a place of worship. This is not a home, an office, the street, where such actions have been known to happen - it is a church where devotees had congregated and were lawfully conducting their rituals when the invasion and desecration occurred. A person's right to worship is sacrosanct. Such actions must not only be

condemned but it must be made clear that the courts, as guardians of our democracy, rights and freedoms, will not tolerate this oppressive behaviour by agents of the State.

29. In the case of *Ricardo Watson v AG of Trinidad and Tobago* HCA1668/2006 exemplary damages to the toll of \$12,500.00 was awarded. In *Baboolal v DeFreitas* (supra) Master Mohammed in June 2011 awarded \$20,000.00 each to 2 claimants as exemplary damages. As much as I recognize the need for moderation in making awards of exemplary damages and the need to take account of the awards that I have already made by way of compensation, which included an element of aggravated damages, I still must emphasize my condemnation of the highhanded and callous actions of the police officers and soldiers and act to deter the officers concerned and others from repeating such conduct. With these considerations in mind, I consider an award of \$20,000 each to be sufficient to register this court's condemnation of the conduct of the relevant officers.

INTEREST

30. The award of interest on damages is discretionary pursuant to **section 25 of the Supreme Court of Judicature Act Chap 4:01**. The basis of this award is that a claimant has been kept out of his money by a defendant who has had the use of it himself so ought to compensate the claimant for this. See *Jefford v Gee* [1970] 1 AER 1202. The defendant submitted that the claimants receive 2.5% interest on general damages and 1.25% on special damages based on the mean deposit rates for short term investments and annexed an extract from the Central Bank on deposit rates of Commercial Banks for the period 2006 to November, 2011. There was no sufficient explanation advanced as to why this inordinately low rate of interest must attach or why this court should depart from the prevailing practice in awarding interest. Counsel for the claimants submitted interest at the rate of 6% on special damages and 12% on general damages. There is no claim for special damages by these claimants so the recommendations by both counsel are disregarded. Taking into account the prevailing interest rates and the varying awards in recent times, I considered it appropriate to exercise my discretion and award interest on the general damages at the rate of 9 % per annum from the date of service of the claim form.

ORDER

31. It is thus the order of this court that the defendant do pay -

- A. (i) To the first claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of \$20,000.00
- (ii) To the second claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of \$75,000.00 and for assault and battery in the sum of \$8,500.00
- (iii) To the fifth claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of \$75,000.00 and for assault and battery in the sum of \$13,500.00.
- (iv) To the sixth claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of \$75,000.00 and for assault and battery in the sum of \$9,500.00.
- (v) To the eleventh claimant general damages for false imprisonment inclusive of an uplift for aggravated damages in the sum of \$20,000.00

with each sum to attract interest at the rate of 9% per annum from 23rd March 2009 to 28th September 2012.

B. Exemplary damages in the sum of \$20,000.00 each to the first, second, fifth, sixth and eleventh claimants.

C. Costs assessed in the sum of \$38,035.53.

Dated 28th September, 2012

Martha Alexander

Master

Judicial Research Assistant: Ms Kimberly Romany