

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV2014-03962

BETWEEN

AZIM HOSEIN

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: Master Alexander

Date of delivery: February 11 , 2020

Appearances:

For the claimant: Mr Sunil Gopaul-Gosine

For the defendant: Mr Andrew Lamont and Mr Ebo Jones instructed by Mr Nairob Smart

DECISION

THE CASE

1. The claimant is a 70-year-old retired sergeant of police who approached this court for compensation for what he alleges was an egregious wrong perpetrated on him. The matter ensues from a charge of being in possession of a capuchin monkey ("the monkey"), without a permit. He claims that he is entitled to recover compensation as the police falsely imprisoned and then maliciously laid a charge against him for allegedly having custody of the monkey. He categorically denies that he was ever in possession of the monkey or that the authorities acted legally and justifiably in entering his property, imprisoning and charging him for being in

control of the monkey. The claimant's case is that around 3:00pm on July 17, 2014 the honorary game warden with a battery of estate police officers, packed into three vehicles, drove into his yard and entered his house. They arrested him and then later transported him to the Freeport Police Station where he was charged. On March 17, 2017 he obtained judgment on liability for the torts of false imprisonment and malicious prosecution, and came to this court to determine the amount of compensation he could recover for these wrongs.

EVIDENCE

2. The claimant provides evidence via a witness statement that he filed on June 06, 2018 to which he annexes several documents in support of his case. The claimant avers that he lives at 41 A Siewdass Road, Freeport in a two-storey dwelling house, where he occupies the upper floor with his family. He is the owner of the property, which is fenced with a sliding gate to the front. His nephew, Zaid Ali, occupies the downstairs portion of the dwelling house with his wife, Vicky, and their two children. It appears that the claimant and his nephew live in separate households but in the same building.

3. The documents in evidence *inter alia* include a receipt of the sums paid by the claimant to defend the charges, his bail bond, the application to keep protected animals at 41 A Siewdass Road, Freeport as well as two permits. The application to keep the protected animals is dated February 05, 2014 and was assumed to be in the possession of the Wild Life Section when the incident at the claimant's home unfolded. The permits are issued under the hand of the chief game warden or his servant/agent from the Wild Life Section, Forestry Division. They bear issue dates of August 04, 2014 and expiry dates of December 31, 2014 and clearly document the protected species, sexes and quantities permitted to be kept, the purpose and the renewal date of January 31, 2015. The permits are issued in the names of

Vicky and Zaid Ali, following the inspection and certification by the Wild Life Section, Forestry Division.

4. The following are the species of local animals/birds, sexes and quantities to which the permits relate:

SPECIES (LOCAL NAME)	QUANTITY	SEX
Scarlet Macaw	1	UK
Blue and Gold Macaw	1	UK
Capuchin Monkey	1	M
Purple Head Parrot	1	UK
Yellow Head Parrot	3	UK
Yellow Shouldered Amazon Parrot	1	UK
Red Head Corniure	1	UK
White Face Corniure	1	UK
Corniure	2	UK
Blue Finch	40	UK
Picoplat	15	UK
Caravat	1	UK
Semp	7	UK
Parakeet	11	UK
Chat	1	UK

5. The claimant avers that the game warden and his estate police officers entered his yard and dwelling house without his permission around 3:00pm on July 17, 2014 and arrested him. He avows that on his enquiry as to whether there was a warrant, officer EC Owen Hem-Lee grabbed him by his wrist and said, “you are under arrest, like you don’t know this is Minister Ganga Singh squad, we don’t need a warrant.” He was handcuffed and made to sit in the back seat of one of

the vehicles, with the glass windows wound up for approximately 2 ½ hours, without any fresh air. The heat in the vehicle was overwhelming, nearly causing him to faint. He maintains further that he was neither informed of the reason for his arrest nor of the offence he allegedly had committed. The officers also neither cautioned nor informed him about his constitutional rights. He asserts further that he was taken to the Freeport Police Station arriving around 5:56pm where he was fingerprinted. He was served with a “Notice to Prisoner” near midnight, which is when he found out that he was charged for being in possession of the monkey. He claims that he was falsely imprisoned from 3:00pm to 12:00 midnight (9 hours) after which he was granted bail. The prosecution of the claimant ended the following day when the matter was determined in his favour at the magistrate’s court.

6. He claims that the arrest, imprisonment and prosecution were done unlawfully and maliciously, as the game warden knew that the monkey belonged to his nephew, Zaid Ali, who lived in the downstairs portion of the house. He describes his arrest and detention as traumatic and emotionally distressing. He avers that the defendant impugned and maligned his character in public, causing him to be disgraced. In support of this averment, he states that the incident was posted on the website of the Ministry of Environment and Water Resources. It was reported on the radio, television, Facebook, Papa Bois Conservation¹, ABC News and the Sunday Mirror on July 27, 2014. Consequently, it is his evidence that he suffered untold embarrassment and humiliation during the ordeal. He puts it thus, “During this ordeal, many people came and went. I felt ashamed, embarrassed, belittled, degraded and humiliated. My character was stained for life.” He suffers still from the effects of the ordeal, which he describes as extraordinary distress, anxiety, embarrassment as well as mental, physical, emotional and psychological

¹ Papa Bois Conservation is an interactive environmental forum that advocates for the environment in Trinidad and Tobago and the Caribbean. It uses film and photography to bring awareness and education to the general public.

depression. He claims further that following his arrest and detention, he was unable to eat or sleep for many nights thereafter. He states that prior to his arrest he was planting crops but this occupation suffered, as he was unable to work in his garden. He gives evidence also that the arrest occurred in the Holy Month of Ramadan and, as a practicing Muslim, he was fasting. The incident rendered him unable to fulfil his religious obligations. The depression that followed the trauma was swift and stymied his ability to continue fasting for the rest of the month. This trauma, along with being plagued with the memories of what transpired, affected him mentally to the extent that he had to seek professional help from Dr Maharaj, a psychiatrist. Of note is that there was no evidence called in corroboration of this psychiatric help and no claim was made to recover any attendant fees arising from such treatment. Little weight, if any, is placed on this unsubstantiated claim.

7. He states further that while imprisoned, he was deprived of food and his medication for diabetes and high blood pressure. He avers that at the police station, he was not given a meal, unlike the other two prisoners present. He produces a station diary entry No 72, which shows the other two prisoners were given their dinner. The absent of any notation indicating that he was fed led this court to conclude that he was not.

THE LAW

COMPENSATORY DAMAGES

8. By this assessment, this court sat to determine the quantum to be awarded to the claimant as damages for malicious prosecution and false imprisonment. The applicable heads of damages in the present matter, as claimed, were compensatory inclusive of aggravated and exemplary. The sum claimed for malicious prosecution and false imprisonment was \$180,000.00.

9. To settle an award for malicious prosecution, the court considers that compensatory damages are awarded for all the natural and direct consequences of a defendant's wrongful act. In the instant case, where these damages are sought for malicious prosecution, they are awarded for injury to reputation; injury where a person is in danger of losing his life, limb or liberty; and for money spent in defending the charges. Generally, a claimant can recover for injury to his reputation and feelings such as for indignity, humiliation and disgrace caused by the fact of the charge being preferred against him. In essence, he can recover for the risk of conviction.
10. In discussing the issue of loss of reputation, the Privy Council in ***Terrance Calix v The Attorney General***² cautioned courts to consider the seriousness of the offence for which a claimant was prosecuted. Where, therefore, an offence was more serious, then greater damage should be assumed to have been caused to a claimant's reputation. The Privy Council also suggested that a money figure be placed on the damage to reputation, which should be increased if the prosecution was widely publicized. Further, a claimant with a bad reputation or previous convictions would have his damages for loss of reputation reduced as against one of good character. In the present case, the offence is not one of the highest form of seriousness but its impact is not to be trivialized. There was evidence also of wide publicity of the matter and of putting of the claimant's good character into jeopardy. It is noted also that the prosecution was not extensive, ending the next day, after his arrest, when the charges were dismissed in the magistrate's court.
11. To settle on an appropriate award for false imprisonment, this court did so by looking at two elements: "injury to liberty" and "injury to feelings or reputation"³.

² *Terrance Calix v The Attorney General of Trinidad and Tobago* [2013] UKPC 15 where the Privy Council quoted the authors of Clayton and Tomlinson on Civil Actions against the Police 3rd Edition (2004)

³ McGregor on Damages 16th Edition para 1850

McGregor states that how damages are worked out for false imprisonment is left much up to the judge's discretion, as it does not involve a pecuniary loss, but a loss of dignity and the like⁴. Consideration must be given to any indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status. There is a clear overlap in the areas for which general damages are awarded for false imprisonment and malicious prosecution, as noted by Mendonca JA⁵. The Privy Council recommended also that a distinction be made between compensatory damages (which would include aggravated damages) and exemplary damages and that the elements attributable to these awards should accordingly be identified⁶. In making the compensatory award below for general damages, account is taken of any aggravating features and the normal practice of applying one figure adhered to. To determine if an uplift for aggravation is required, this court considers the humiliating circumstances of being handcuffed and thrown into a police vehicle, where he was left for 2 ½ hours in the heat with the windows wound up. It also notes the claimant's evidence of humiliation and disgrace on his arrest given his claim that he possesses a good character.

12. There is no fixed formula for assessing the quantum of damages for false imprisonment, but there is a discernible trend on awards that may be deduced from decided cases. The assessment is contextual so each case turns on its own facts. Further, it considers that damages for false imprisonment overlap with malicious prosecution, therefore, cases where both are considered are preferable. In the case at bar, counsel for the claimant points this court to three cases, all of which present awards at the upper end of the spectrum. These are as follows:

⁴ McGregor on Damages 16th Edition para 1850

⁵ *Anthony Sorzano and another v The Attorney General of T&T* Civil Appeal No 101 of 2002

⁶ *Tamara Merson v the Attorney General of the Bahamas* PC Appeal 61 of 2003

- ***Azard Ali v The Attorney General of Trinidad and Tobago***⁷ where for detention of 6 hours, a claimant was awarded general damages of \$80,000.00 and \$25,000.00 as exemplary damages.
- ***Harridath Maharaj v The Attorney General of Trinidad and Tobago***⁸ where the claimant was a senior police officer with no criminal record who was approaching the end of a 30-year long career when arrested. He was detained for around 6-7 hours before he was released on bail and charges were laid against him. The detention though short caused him significant disquiet, discomfort and distress. He was awarded \$185,000.00.
- ***Imran Khan v The Attorney General of Trinidad and Tobago***⁹ where a claimant was awarded \$75,000.00 for being maliciously prosecuted for two offences. These were that the vehicle he was driving was being used contrary to the insurance certificate, in breach of regulation 8 of the Motor Vehicle and Road Traffic Act as well as for allowing the vehicle to stand on the road so as to cause unnecessary obstruction.

13. The defendant suggested that an award within the range of \$70,000.00 to \$90,000.00 is appropriate in the circumstances. In support of this, the defendant proffered one additional case for this court to consider namely:

- ***Darren Mc Kenna v AG***¹⁰ where the claimant, while walking along the Windward Road, Tobago, was arrested by one of two police officers in a jeep. They took him to the Scarborough Police Station where he was locked in a cell for 3 days before being granted bail. He was awarded \$40,000.00, which was inclusive of aggravated damages.

⁷ *Azard Ali v The Attorney General* CV2012-04736 delivered on June 08, 2017

⁸ *Harridath Maharaj v The Attorney General* CV2011-04213 delivered on March 15, 2016

⁹ *Imran Khan v The Attorney General* CV2012-04559 delivered on November 17, 2014

¹⁰ *Darren Mc Kenna v Estate Constable Leslie Grant #1662 and The Attorney General Of Trinidad And Tobago* CV2006-03114

14. In the view of this court, the cases provided by both counsel were not fully representative of the range of similar awards in these types of cases. The court bore in mind that a claimant is not to be doubly compensate, given that damages for false imprisonment overlap with malicious prosecution. This court also considered a recent case of the Court of Appeal ***The Attorney General of Trinidad and Tobago v Kevin Stuart***¹¹ where an award was made of \$50,000.00 for false imprisonment for a period of 33 hours. The trial judge awarded \$300,000.00 as general damages for wrongful arrest and malicious prosecution; \$50,000.00 as exemplary damages and \$1,800.00 as special damages. As to the award for general damages, the judge did not apportion any sums for false imprisonment or malicious prosecution but simply made a lump sum award. On appeal, the lump sum was reduced and the malicious prosecution claim was disallowed as well as exemplary damages since no malice or improper motive was found. In essence, the Court of Appeal allowed \$50,000.00 for 33 hours of false imprisonment inclusive of aggravated damages, which covered the period before he was charged and taken before the magistrate. The sum awarded as special damages was disallowed.

15. In considering the award for general damages, this court factored in aggravated damages based on the claimant's evidence. In ***Atain Takitota v The Attorney General of The Commonwealth of the Bahamas and Others***¹² the Privy Council was clear that in a case of unlawful detention, a court may:

[I]ncrease the award to a higher figure than it would have given simply for the deprivation of liberty, to reflect such matters as the indignity and humiliation arising from the circumstances of arrest or the conditions in which the Claimant was held. The rationale for the inclusion of such an element is that the Claimant

¹¹ *The Attorney General of T&T v Kevin Stuart* Civ App P162 of 2015 delivered July 25, 2017

¹² *Atain Takitota v The Attorney General of the Commonwealth of the Bahamas and Others* [2009] UKPC 11

would not receive sufficient compensation for the wrong sustained if the damages were restricted to a basic award. The latter factor, the conditions of imprisonment, is directly material in the present case and it would not be merely appropriate but desirable that the award of compensatory damages should reflect it.

16. On the present facts, there was no evidence of the claimant being kept in deplorable, sub-human conditions in a cell. He complains only of not being provided with a meal and of being deprived from taking his medications. This court considers that the deprivation of food and medication to a prisoner who suffers chronic conditions is serious, as adverse effects to his health could have resulted. In the present case, there is no evidence that it led to any adverse or negative impacts on the claimant, but this action is unacceptable. As a rule, aggravated damages are a supplement to basic damages to compensate for any particularly bad behaviour of the defendant that causes distress, including humiliation and loss of dignity. Aggravated features would cover any humiliating circumstances at the time of the prosecution, which point to the defendant's behaviour as being high-handed, insulting, malicious or oppressive in relation to the arrest or imprisonment or in conducting the litigation and trial¹³. Further, in the view of this court, this case is not one that reaches the threshold to attract an award for exemplary damages and no such award was made. In the circumstances of the present facts, this court awards \$75,000.00 as general damages for false imprisonment and malicious prosecution inclusive of an uplift for aggravation.

SPECIAL DAMAGES

17. The law is that special damages must be pleaded, particularized and proved, with each item of loss being linked to the malicious prosecution. The claimant pleaded legal fees of \$5,000.00 paid to his attorney. He provides a receipt dated July 18, 2014 so the claim is allowed in the sum of \$5,000.00.

¹³ *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498

DISPOSITION

18. It is ordered that the defendant do pay to the claimant as follows -

- i. General damages inclusive of an uplift for aggravated damages of \$75,000.00 with interest at the rate of 2.5% from October 29, 2014 to February 11, 2020.
- ii. Special damages of \$5,000.00 with interest at the rate of 1.25% from July 17, 2014 to February 11, 2020.
- iii. Costs in the sum of \$22,053.60.

Martha Alexander

Master