

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2015-02710

BETWEEN

DEXTER WILLIAMS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: Master Alexander

Date of Delivery: 27 October 2021

Appearances:

For the Claimant: Mr Shastri V.C. Parsad

For the Defendant: Ms Coreen Findley instructed by Ms Laura Parsad

DECISION

INTRODUCTION

1. By liability order dated 02 October 2017 (“the liability order”), Aboud J (as he then was) gave judgment to the claimant against the defendant for damages for wrongful arrest, false imprisonment and malicious prosecution, and for interest and costs to be awarded on the assessed sum. The liability order spelt out the false imprisonment period as being from 12:45 am on 18 May 2012 to 11:38 am on 19 May 2012. This effectively meant that the claimant was adjudged to have been falsely imprisoned for a period of **ten hours and**

fifteen minutes, as set out in the liability order. Despite the fact that the liability order was clear, both the claimant and defendant counsel argued that the period of false imprisonment was ten hours forty-five minutes and ten hours and fifteen minutes respectively. In my view, this was a non-issue and so ignored, as I was bound by the clear terms of the liability order. The claimant's loss of liberty was short but his prosecution continued for a much longer period, ending on 02 December 2013 when the charge was dismissed against him.

2. This claim was instituted on 07 August 2015 and the facts from which it arose were not contested. In brief, on 18 May 2012, the claimant was walking along the Naparima Mayaro Road, in the company of a friend, Mr Kareem Henry, when police arrested and took him to the Princes Town Police Station. He was charged for the offence of disorderly conduct, fingerprinted and placed in a cell. Sometime around 11:00am, the claimant was given stationhouse bail (i.e. his own bail) by a Justice of the Peace but the prosecution of the charge only came to an end on 02 December 2013, some eighteen months and fourteen days later.
3. Heavily contested was whether the claimant was entitled to any award for aggravated damages, given the silence in the liability order as to the grant of such an award. An examination of the pleadings show that the claimant expressly set out a case for aggravated damages. In fact, his particulars of damages referenced injury to reputation, indignity, mental suffering, disgrace as well as fear and anxiety from a groundless prosecution. There was no lack of clarity in his originating pleadings that he was seeking compensation for aggravated damages. However, claims for aggravated and exemplary damages do not necessarily mean that awards will be given for these heads of damages. I have noted the argument of counsel for the defendant that pointed to the silence of the liability order as to an award for aggravated damages and/or exemplary damages. In my view, this does not exclude an assessing court, which was mandated to assess general damages, from considering if there should be an uplift, based on the evidence. It also does not prohibit me from considering exemplary damages, once this loss was pleaded

and the evidence warrants such an award. Where these awards are not to be considered, judges tend to exclude them expressly from the contemplation of the assessing court. In the circumstances, I will consider the evidence before me and determine if it is a case deserving of an uplift for aggravated damages or not and if in the context of the facts and evidence, it would attract an award for exemplary damages.

EVIDENCE

4. In his evidence in chief, the claimant stated that on Friday 18 May 2012, sometime after 11:30pm, Mr Henry and he arrived at the junction of Victoria Main Road, where they attempted to flag down a taxi to take them to their respective homes in New Grant. As they were experiencing no success, they decided to walk along the main road in an easterly direction towards New Grant. Shortly thereafter, a marked police vehicle stopped on the left side of the road, opposite to the side of the road along which they were walking, and an officer, whom the claimant later learnt was PC Roger Nanan, enquired as to their reasons for walking on the street at that time of the night. The claimant politely greeted the officers and asked for a lift to New Grant, as the police clearly were headed in the same direction. PC Nanan answered in the affirmative and beckoned Mr Henry and the claimant towards the police vehicle who, happy for “the drop” or ride home, approached the vehicle.
5. On approaching the said vehicle, which was a Nissan Navarra pick-up van with a covered tray, PC Nanan exited and proceeded to open the trunk of the tray. PC Nanan then pointed to a large quantity of marijuana trees and told the claimant, “*See the weed in the back? ... that is yours.*” The claimant averred that he denied the accusation, querying how it could be his when it was already in the police vehicle. However, PC Nanan sarcastically asked why he (the claimant) was not understanding what he was saying and repeated the accusation. PC Nanan then asked the claimant what was the matter and whether he wanted, “*to hop in or not?*” The claimant stated that he was afraid to refuse to enter the

said vehicle and/or feared that his refusal would cause him to be charged for resisting arrest, so he acquiesced to PC Nanan's forceful offer. He described the incident thus, "*I was scared and I did not know what to expect. I didn't know if I was going to be charged with Possession of marijuana.*"

6. The claimant averred that he was made to sit in the tray of the vehicle with the said marijuana and his personal effects given to Mr Henry who continued walking towards his home. His wrists were handcuffed, tightly, to a rail on the tray, which had no seatbelts or seats. He described the handcuffs on his wrists as painful and uncomfortable and of being driven past his house twice, as the officers continued to patrol different areas, before being taken to the police station. He avowed that he was driven around for approximately an hour and a half to two hours, whilst handcuffed inside the tray in an inhumane manner. However, Aboud J (as he then was) ruled that the claimant would have spent approximately half an hour in the tray of the vehicle, and not almost two hours as he stated in his evidence. The claimant stated further that at the station, he was kept in a filthy, garbage littered, unkempt cell, without lighting, which reeked of faeces. The officers did not allow him a phone call or offer him something to drink or eat. He also was not told of the reason for his detention or if he would be charged with an offence for several hours later. Around 3:00 am, whilst being fingerprinted, an officer informed him that he was not being charged with any narcotics but for behaving in a disorderly manner. At that point, he was advised against retaining an attorney, as the charge was a minor one. On Saturday 17 May 2012, around 11:00 am, he spoke with the Justice of the Peace, who granted him station bail for the charge of behaving in a disorderly manner. He left the station around 11:30 am. His matter came up for hearing approximately six times in the magistrate's court, where he was self-represented, before being dismissed.
7. The claimant stated that he did not behave in a disorderly manner and, at all material times, he acted in a respectable and co-operative manner to the police. However, PC Nanan wrongfully arrested, charged and prosecuted him, without reasonable and probable cause. He claimed that the conduct of the police in arresting, imprisoning and

prosecuting him was arbitrary, oppressive and/or unconstitutional. It was his evidence that prior to the wrongful arrest and other torts, he was of good character, well-known in his community and had no previous convictions. Following the wrong done to him, he suffered injury to his character and reputation and was put through considerable trouble, shame, humiliation, embarrassment, inconvenience, anxiety, stress and expense. He averred to being labelled in his community as a criminal, a societal misfit and a menace; and that his neighbours no longer socialized with him. The entire experience left him feeling uncomfortable and depressed and he felt ostracized from his community and, *“no longer part of the group anymore.”* He averred that since the incident, his reputation has not recovered and his life has never been the same. He gave evidence that he encountered, *“tremendous difficulty in obtaining employment”* after his arrest, which *“put strain on my pocket and crippled me financially”* but provided no corroborative evidence as to the difficulties experienced in getting employment. Of note, the claimant was arrested in the presence of his friend, Mr Henry, and I accepted his evidence of distress, humiliation, embarrassment and depression by his prosecution. He averred that his arrest and prosecution caused irreparable damage to his character and reputation but called no evidence to corroborate this reputational damage.

LAW AND ANALYSIS

FALSE IMPRISONMENT

8. The primary heads under which general damages for false imprisonment are determined are *“injury to liberty”* and *“injury to feelings”*, with the loss of dignity being central to such damages. This is inclusive of humiliation, mental suffering and disgrace, with any attendant loss of social status.¹ In my view, all elements are satisfied for the award of compensation for wrongful arrest and false imprisonment. I found his evidence was credible and accepted that he suffered mentally and emotionally from the incident.

¹ Mc Gregor on Damages 16 Edition para 1850

MALICIOUS PROSECUTION

9. As to his prosecution, there was no disputing that it was baseless and without reasonable or probable cause; and it lasted for eighteen months and fourteen days. Of note, however, was that he remained on bail throughout until the charge was dismissed. To satisfy the existence of the tort of malicious prosecution, the claimant must show the existence of four ingredients². These elements are: a prosecution of him by the defendant (i.e. a criminal charge set in motion); the prosecution ended in his favour; the prosecution was without reasonable and probable cause; and the prosecution was malicious. All elements existed in this matter as confirmed by the liability order.
10. To determine damages for malicious prosecution, an assessing court will look for evidence of: injury to reputation; injury where a person is in danger of losing his life or liberty; and for money spent in defending the charge.³ There is no contest on the facts that the criminal law was set in motion against the claimant, without reasonable basis for the charge and the prosecution ended in his acquittal. Further, it ended with the claimant's reputation in shambles and, indeed, so damaged that he no longer felt as part of the community group that comprised his social network. He remained with the scar of being a menace to society and even his financial pocket suffered.

AGGRAVATED DAMAGES

11. It is trite law that aggravated damages aim at compensating for the defendant's bad behaviour that causes a claimant distress, humiliation and loss of dignity. These damages are discretionary and form part of the compensatory measure of damages, usually as an

² Clerk & Lindsell on Torts 20th edition at page 1070, para 16:09; *Wills v Voisin* (1963) 6 WIR 50 at 57A

³ McGregor on Damages, 17th edition at paragraph 38-002 on page 1405

“uplift”⁴. It means that they may or may not form part of the global compensatory award⁵, as each case would be based on its own context and the evidence produced.

12. I considered the defendant’s argument that because the trial judge did not specifically mention aggravated damages, an assessing court was locked off from exercising its discretion. I did not accept this argument for reasons advanced above and in fact, upon a full and careful consideration of the facts and evidence before me, I concluded it was a fitting case for an uplift. To arrive at the appropriate global compensatory award, I was careful to bear in mind that the award in each case would be influenced by the unique facts and circumstances and what was reasonable and just. The evidence of embarrassment and loss of dignity was credible and I could not ignore an uplift of the award in consideration of it. This was also not a case where there was thin evidence or where the claimant was flagged as a non-truth teller. To this end, I also considered that whilst the claimant was released on his own bail within a relatively short timeframe, the length of the baseless prosecution was not as short. Before turning to the comparators to guide my award, I will discuss exemplary damages.

EXEMPLARY DAMAGES

13. The claimant’s counsel argued that PC Nanan knew, or ought to have known, that there was no evidence to implicate the claimant in the commission of this or any offence. However, with malice and without reasonable cause, he arrested and/or prosecuted him. Counsel pointed out that PC Nanan then advised the claimant that the charge was minor so he did not need legal representation, thereby denying the claimant of his right to legal representation. As evidence of malice and lack of reasonable cause, PC Nanan misled the claimant into believing that he was detained for possession of weed and, aware that he

⁴ *Commissioner of Police for the Metropolis v Gerald, The Times 26 June 1998* which stated that it includes, “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. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued”

⁵ *Herman Lightbourne v Lionel Joseph Est Cpl No 411 and Public Transport Service Corpn HCA No 2402 of 1982*

was innocent of the charge, PC Nanan maliciously laid the charge, knowing there was no basis or evidence to support it. The defendant and its servants and/or agents and/or employees also failed or refused to conduct any or any proper investigations before proceeding with the charge against him. The defendant and its servants and/or agents and/or employees then gave evidence, with the full knowledge that it was untrue and that the claimant would be prosecuted for the charge. The claimant stated that PC Nanan was reckless as to the discharge of his duty as a police officer, as it related to the arrest and prosecution of the claimant.

14. It defies logic that a claimant, despite being arrested for allegedly being in possession of marijuana, would be charged, subsequently, with the offence of behaving in a disorderly manner. The police officers' assertions, on the night of the arrest, for depriving the claimant of his liberty seemed by the wave of a wand to magically turn into a lesser charge of behaving in a disorderly manner. I can only assume that this change occurred because they were fully aware that their allegation of possession of marijuana was dishonest, fraudulent, fabricated and/or contrived and totally without any evidentiary foundation or reasonable cause for the laying of any such a charge. To save face, the police gave him a case of disorderly conduct. There is no dispute that the police unlawfully arrested and deprived the claimant of his liberty on what was nothing less than a knowingly false and contrived allegation of being in possession of marijuana. The police officers were fully aware that they had no bona fide evidence to raise any reasonable or probable suspicion against the claimant. The police then proceeded to drive him around the area, without even informing him that he was under arrest or cautioning him or advising him of his applicable legal rights and privileges as a citizen of this country.

COMPARATORS

15. Counsel for the claimant recommended a global award of \$140,000 and exemplary damages of \$35,000 whilst counsel for the defendant suggested an award of \$30,000. It

was felt that some of the cases relied upon by the defendant's counsel were not useful comparators, especially those that related only to short periods of false imprisonment⁶. Further, I was unable to source the authority of *Herschelle Stewart v AG*⁷ provided by counsel for the defendant so could not rely on the alleged award made therein, as there was no written decision available. The following authorities relied upon by both counsel were found to be useful comparators:

- *Azard Ali v AG*⁸ where the claimant was arrested for larceny of a circuit board, handcuffed and placed in a vehicle from his place of business and taken to the San Fernando Police Station but was not charged or prosecuted. For a detention of six hours, he was awarded general damages for false imprisonment of \$80,000 and \$25,000 as exemplary damages.
- *Allister Richards v AG*⁹ where a claimant was charged with careless driving and there was no deprivation of liberty. The prosecution of the charge ended in his favour and he was awarded \$70,000 for malicious prosecution.
- *Richard Darsoo v PC Pierre and AG*¹⁰ where a claimant who was involved in an altercation in a straightener's yard was charged for using obscene language, resisting arrest and being in possession of a broken bottle for the purpose of committing an indictable offence. He spent approximately six and a half hours in detention and was prosecuted for a period of eight years. In that case, the claimant's action for false imprisonment was statute barred but the award for malicious prosecution took into account the period of imprisonment. He was awarded general damages of \$70,000 for malicious prosecution with an uplift for aggravation, special damages of \$6,800 and exemplary damages of \$10,000.

⁶⁶ *Larry Baila v AG* CV2015-00249 involving three and a half hours detention, where there was no maliciousness or mala fides found on the part of the officers and the claimant was awarded \$12,000

⁷ *Herschelle Stewart v AG* delivered on 24 June 2019 where for false imprisonment of eighteen hours, with the arrest being done in public so causing embarrassment and humiliation to the claimant who had no previous convictions, an award was made of \$50,000

⁸ *Azard Ali v AG* CV2012-04736 delivered by Charles J on 08 June 2017

⁹ *Allister Richards v AG* CV2016-02922 delivered by Donaldson-Honeywell J on 01 June 2018

¹⁰ *Richard Darsoo v PC Pierre and AG* CV2016-04653 delivered by Kokaram J on 16 March 2018

- **Ramharack v AG¹¹** where the claimant was charged with escaping lawful custody and using obscene language and kept in custody for four hours and was awarded \$70,000 for malicious prosecution and \$25,000 for detention.
- **Mustapha Ghanny v AG¹²** where the claimant was charged with the offences of using obscene language and resisting arrest and the charges were dismissed about two years after the charge. The trial judge characterised the offences as minor public order offences but considered that the claimant was a businessman whose reputation was affected by same. He was awarded \$45,000 for false imprisonment and \$35,000 for malicious prosecution as well as \$60,000 for exemplary damages.
- **Ricardo Jack v AG** and **Peter Griffith v AG¹³** where both claimants were detained for twenty-four hours relative to a dead body found at the side of the road; and was denied the opportunity of legal representation during that period. They were awarded \$50,000 each as general damages for false imprisonment inclusive of an uplift for aggravated damages.

16. In making my award, I was mindful that the present claimant spent ten hours and fifteen minutes falsely incarcerated and endured the prosecution of a minor offence for eighteen months and fourteen days, which ended in his case being dismissed. I considered and accepted his evidence that went to aggravated damages. My award below was made glibly or dismissively of the context in which it was made. In this regard, I found the cases of **Ricardo Jack** and **Peter Griffith** where the awards related to false imprisonment for twenty-four hours, during murder enquiries, but there were no charges brought against them or prosecution commenced. They were released and another person was charged for the murder. In my view, this was detention for murder enquiries without any charge being laid against them while our claimant was wrongfully arrested, charged and prosecuted for a minor offence. In my view, the cases of **Ricardo Jack** and **Peter Griffith**, actually support a higher award being made to our claimant than the awards in those

¹¹ *Ramharack v AG* CV2015-01925 delivered by Donaldson-Honeywell J on 25 October 2018

¹² *Mustapha Ghanny v AG* CV2015-01921

¹³ *Ricardo Jack v AG* CV2014-02841 and *Peter Griffith v AG* CV2014-02842

cases. In **Azard Ali**, it was a claim for false imprisonment only and the offence, for which that claimant was detained, was more serious than our claimant's minor charge. Further, in **Azard Ali**, the exemplary award was influenced by the context of that claim, where the arrest was done in full view of his employees and customers and the arrest was deemed arbitrary, oppressive and unwarranted. In the instant matter, while our claimant was arrested in the presence of his friend, and it was arbitrary, oppressive and unwarranted, that arrest took place late at night and there was no evidence provided of a public viewing of the arrest. Further, the period of detention in **Azard Ali** was less than in the present case so our claimant, who was arrested for a slightly lengthier period but for a minor offence, can at least attract an award at the level in **Azard Ali** but not higher.

17. I was of the view, also, that several of the cases above were useful comparators, with the defendant's counsel recommending an award pegged to **Mustapha Ghanny**. Of note the award in that case was two-pronged and consisted globally of the sum of \$80,000 in general damages and \$60,000 in exemplary. In **Mustapha Ghanny**, there were clear similarities noted with the present case, as that claimant's charge was minor and his detention was for seventeen to eighteen hours. I rejected counsel for the defendant's argument, however, that the prosecution of the present claimant "was relatively short" with the case being dismissed in a little over a year. The prosecution actually continued for over a year and a half, which in my view was not short. She also argued that the torts would not have harmed the claimant's reputation in any significant manner, so he should get \$30,000 in compensation. I rejected this argument, which notably was not supported by any evidence. In my view, this argument was far from the truth and contrary to the evidence provided, which pointed to embarrassment, shunning and diminishing of respect in his community. In our claimant's case, whilst the offence was a minor one and his prosecution lasted for over eighteen months, it did not mean that these features automatically equated with little to no harm being done to the claimant's reputation. I also was of the view that it was immaterial that our claimant was not a businessman as in **Mustapha Ghanny** and/or that it meant that his reputation would have taken less of a

bruising from his wrongful arrest, false imprisonment and prosecution because he was a groundsman. Deprivation of one's liberty, especially in contrived circumstances, cannot easily be dismissed as unlikely to cause harm or any significant harm. A damaged reputation does not depend on one's employment and I accepted as credible that in small communities, respect once lost is often hard to regain. The other comparators that informed my decision were *Richard Darsoo* as well as *Ramharack*. In all the circumstances of the facts and evidence of this case, I felt it fair to award global compensation in the sum of \$75,000 with an uplift for aggravation. I also concluded that an award of exemplary damages of \$30,000 would meet the justice of this case.

DISPOSITION

18. It is ordered that the defendant do pay to the claimant –

- (i) General damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of an uplift for aggravated damages in the sum of \$75,000 with interest at the rate of 2.5% per annum from 13 August 2015 to 27 October 2021.
- (ii) Exemplary damages in the sum of \$30,000.
- (iii) Costs on the prescribed basis in the sum of \$26,497.60.

Martha Alexander

Master of the High Court

MARTHA ALEXANDER
MASTER OF THE SUPREME COURT OF
TRINIDAD AND TOBAGO