

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2015-03936

BETWEEN

LESLIE JOSEPH

Claimant

AND

**MR STERLING STEWART
COMMISSIONER OF PRISONS**

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before: Master Alexander

Date of Delivery: 19 October 2021

Appearances:

For the Claimant: Mr Mark Seepersad instructed by Mr Terrence Davis

For the Defendant: Ms Monica Smith instructed by Ms Savitri Maharaj

DECISION

INTRODUCTION

1. This is a case of false imprisonment by mistaken identity. There are no claims relating to malicious prosecution, assault and battery or any other tort. The claimant's case was simply that he was arrested under a warrant of commitment issued for Anthony Joseph

and that he was not now, then nor was he ever known by or had used that name. The circumstances under which the unlawful imprisonment occurred are set out below and show a continuing series of failures and/or missteps by the authorities, which caused the commission of the tort.

2. On 09 December 2013, the claimant was escorted to the Arima Magistrate's Court to answer an **unrelated charge** of possession of cocaine for the purpose of trafficking, to which he pleaded guilty and was fined. He was a "free citizen" when the police arrested him on that same day whilst he was in the precinct of the Magistrate's Court. He was imprisoned for the period 09 December 2013 to 18 January 2014 or for approximately **forty days** (pleaded incorrectly as forty-one days). The claimant filed the claim on 16 November 2015 and the defendants filed a defence, which was struck out as disclosing no reasonable grounds for defending the claim. On 12 January 2017, judgment was entered against the defendants for damages to be assessed including aggravated and exemplary.

EVIDENCE

3. At the assessment, the claimant's evidence went in unchallenged by the defendant where he stated that he had explained to the police officers who arrested him and the presiding magistrate that he was not Anthony Joseph. His evidence was that prior to the arrest that forms the subject of these present proceedings, he was arrested on an unrelated charge for possession of cocaine, together with a group of six to seven other people found in an apartment. His arrest on that unrelated charge was under his correct name of Leslie Joseph and, at that time, he provided the police officers with his national identification card, which was in their possession at all material times. At the Arima Police Station, on 05 December 2013 he was asked, "Which Joseph are you?" and despite identifying himself by his correct name was told by an officer that he did not want to hear anything as, "You is Anthony Joseph and I have a warrant for you." He was placed in a cell.

4. On 06 December 2013, at the Arima Magistrate's Court, the claimant was remanded for tracing on the unrelated charge for cocaine, and was walking out of the courtroom, when the name Anthony Joseph was called. A police officer grabbed him, took him before the magistrate and told her that Anthony Joseph was before the court. This occurred although he indicated that he was not Anthony Joseph. The magistrate read out a warrant of arrest for Anthony Joseph for failure to pay a fine of \$1,000.00, and in default of payment, he would be sentenced to three months hard labour for "breaking and entering". He indicated to the magistrate that the warrant was not for him, as he was not Anthony Joseph. The magistrate directed the police officers to take the fingerprints of the claimant for comparison but this was not done. He was taken back to prison where he was kept for the weekend for tracing on the unrelated charge for cocaine possession.

5. On 09 December 2013, he was taken back to court for the unrelated matter, and after that was finished, the name Anthony Joseph was called and he was again taken before the magistrate. He again informed the magistrate that he was not Anthony Joseph but also told the magistrate that the police officers have his national identification card and that it could be checked to verify his identity. The magistrate then told the police officers in court to take him downstairs and fingerprint him to make sure that he was not Anthony Joseph. His fingerprint was not taken on that day. On the following day, he was brought before the magistrate and the charging officer was in court. The charging officer indicated that it was a 1999 offence and due to the passage of time, he could not verify the identity of the claimant. On that day, his fingerprints were not taken again and he was placed in a prison van and taken to prison. At prison, he was received in the name of Anthony Joseph, under a warrant of commitment for three months. He averred to being in shock that he could have been taken to prison to serve three months imprisonment in the name of someone else. Despite several complaints made at the prison concerning his incarceration under a different name, prison officer Leslie Stewart explained to him that there was nothing that could be done. His only option was to serve the wrong sentence, as there was a warrant in existence and he was imprisoned under that authority, even if

it was not for him. He brought this claim and at the trial, the judge allowed the defendants to check the claimant's fingerprint to ascertain whether he was Anthony Joseph. The results showed that he was not Anthony Joseph.

6. The claimant's evidence pointed to a failure by the defendants to conduct enquiries into or investigate his claims. He stated, "*I complain but no one listen*" and "*I tell the officers them that I doing a wrong jail. Most did not want to hear me.*" There was no evidence that the prison authorities reported the claimant's complaints or that anyone from outside the prison walls came to investigate his claim.
7. The issue for determination was the quantum of damages that the claimant is entitled to for his **forty days** wrongful imprisonment. To arrive at this award, I turned to the evidence of the wrongful arrest and law. Notably, there was no contest on several issues: the actual period of **forty days** false imprisonment; the failure to take his fingerprints on several occasions; and that the authorities had not taken any steps to address his complaints. It was also not disputed that it was only when the matter reached before the trial judge that the defendants, who were allowed time to check the claimant's fingerprints, confirmed that they did not match the fingerprints of Anthony Joseph.

LAW AND ANALYSIS

FALSE IMPRISONMENT

8. For false imprisonment, compensatory damages are awarded as of right once loss can be proved, which means that consequential and all losses are recoverable: see ***Uric Merrick v AG***¹. The general rule for assessing general damages for false imprisonment is that it is done under the heads of "injury to liberty" and "injury to feelings". Under these heads of damages are included inconvenience, loss of dignity, mental distress, humiliation,

¹ *Uric Merrick v AG* Civil Appeal 146 of 2009 delivered on 05 February 2013

disgrace and loss of social status². It is accepted also that a false imprisonment affects a claimant's reputation³, as reaffirmed in this jurisdiction in numerous authorities⁴. Generally, where a claim of false imprisonment arises, aggravated and exemplary damages are available, if appropriate. In several local cases, exemplary damages have not been found to be an appropriate award in the context of those peculiar facts before those courts: see *Uric Merrick*. In the instant case, the liability order mandated the inclusion of awards for these two heads of damages, which removed deliberation on the applicability of granting these awards from the discretion of the assessing court save on the sums to be awarded. In assessing compensation, I accepted that a claim for false imprisonment would involve many subjective factors, when considering injury to liberty and feelings, and that compensation can range reasonably within a wide bracket, so no two cases will attract the same award⁵.

9. Counsel for the claimant posited, however, that the present case related to what he called a "pure" false imprisonment tort, not a mixed tort, and asked that this court's approach to determining compensation be different. He argued that in cases involving false imprisonment only, the length of the imprisonment or detention would occupy the primary focus. As such, comparator cases involving mixed torts or constitutional awards are inapplicable to the instant case, and can lead to a skewed award. Notably, counsel for the defendants did not address any such distinctions in awards for false imprisonment and/or the need to adopt a different approach to the assessment at bar.
10. In the assessment, I noted that the claimant's evidence was thin and/or silent as to injury to feelings and reputation. The evidence rested on the injury to his liberty (detention period), his initial shock on realizing that they had falsely imprisoned him under the name

² Mc Gregor on Damages 16 Edition para 1850 states that, "*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.*"

³ *Walter v Alltools* (1944) 61 TLR 39, 40 (CA) which states that, "*a false imprisonment does not merely affect a man's liberty it also affects his reputation.*"

⁴ *Kamaldaye Maharaj v PC Hobbs, PC Charles & the AG* HCA No 2587 of 1998 at page 10-11

⁵ *Cassell & Co Ltd v Broome and Another* [1972] 1 AER 801 at page 836

of someone else as well as on the administrative failures in addressing his complaints. I will now examine if there is any validity to the issue raised by the claimant's counsel that the present type of false imprisonment occupies a unique space and whether the approach to such assessments should be different?

11. Under the banner of false imprisonment, various scenarios would arise which can all properly constitute the tort. There are cases where there is *ab initio* no lawful justification from the start and where the lawful justification is determined to be unlawful *ex post facto*. In the latter case, recovery for the wrongful detention flows from the exercise of some sort of power such as the arrest and continued prosecution. Counsel for the claimant argued that the latter type of false imprisonment is distinguishable from the former, so it would attract a different level of award, arising from the context or circumstances of the detention. Counsel argued that the type of false imprisonment in the instant case is one that attracts the highest of awards unlike cases where false imprisonment merely represents one head of loss (i.e. deprivation of liberty) together with malicious prosecution.
12. In my view, awards in false imprisonment cases will vary according to the circumstances and, as such, comparator cases should be similar. Further, there is no rule of thumb that a specific mathematical formula or fixed calculation regime is to be applied such as number of hours, days or months detained. It means that a court, when assessing a lengthier period of incarceration as opposed to a shorter period of imprisonment, will not weigh the two periods to determine proportionality or arrive at the award by doubling of the number of hours or days. The court will consider the injury to the liberty of the claimant but also to his feelings and reputation, with the evidence as to loss of dignity, humiliation, disgrace and diminution in social standing being factored into any award, if available. A court will also consider injury caused to the claimant's feelings brought on by the initial shock of the false imprisonment and that, overtime, the level of shock might subside, as a claimant adjusts to the circumstances of his incarceration. In my view, it will depend on the evidence led, as some persons may never adjust to the circumstances

brought on by a false imprisonment or never provide that evidence. Each case will depend on its context and the evidence produced, with meagre evidence being likely to attract the lowest awards.

13. In the instant case, I considered the length of detention, that is forty days, and that there was no lawful justification for the detention *ab initio* during the entire period under consideration. I concluded that assessing compensation in the instant case should be guided by similar cases and not be based on constitutional awards or mixed tort cases⁶, which would be of limited or low relevance. I noted counsel for the claimant's argument that the primary purpose of compensation in malicious prosecution cases is for the duration of the prosecution and deprivation of liberty as opposed to false imprisonment cases where there is no lawful justification and the emphasis is strictly on the duration of detention. He also argued that false imprisonment where there is unlawful deprivation of liberty without any lawful justification should attract a higher award than those in malicious prosecution cases. I do not necessarily agree with this broad submission, as the factual context of any case and its evidence will determine the compensatory award. However, I noted counsel's rationale for recovery of a higher sum in damages where there is injury to the private right to liberty in cases involving only false imprisonment. In such cases, there is no lawful justification and liability is strict. I also accepted that the present case is unlike malicious prosecution cases, where there is an abuse of power to detain, a prosecution set in motion, and the detention is backed by judicial authority.

COMPARATOR CASES

14. The claimant's counsel insisted that only cases involving false imprisonment are to be used, not constitutional awards, malicious prosecution and other torts. This was the approach used in *Uric Merrick*, where the Court of Appeal was invited to consider a

⁶ Mixed torts cases involve the commission of tortious conduct at different stages of detention and might involve wrongful arrest and false imprisonment arising out of the arrest but before judicial input, assault and malicious prosecution that lead to detention.

plethora of cases on false imprisonment and unlawful detention in constitutional law cases. **Uric Merrick** stated that as those cases bore little similarity to the appellant's case, they were of extremely low relevance as comparable awards. The Court of Appeal chose to use as comparators to arrive at a reasonable award of damages only three cases from the multiplicity of authorities provided⁷. I was minded to follow the approach in **Uric Merrick**, and use as guides cases of similarity to the present matter. To this end, I noted that, despite his strong arguments against using dissimilar cases, the claimant's counsel referenced **Bryan Barrington v AG**⁸, which he admitted was not exactly on point with the present case. The issue involved whether the detention was lawful based on the process followed. There was no evidence that the claimant was served with the detention order or that it was explained to him. The circumstances in **Barrington** did not equate with the present case and it was unclear why counsel referenced it in the present matter save to make the point that it followed the approach in **Seemungal v AG**⁹, which was relied on in this matter. In the circumstances, I placed little to no reliance on **Barrington**. My approach was to examine all authorities supplied but to be guided by those that were similar to the instant matter. I felt there were sufficient cases on false imprisonment that could lead to a reasonable and appropriate award in the instant matter. I considered:

- **Stephen Seemungal** supra where a claimant riding his bicycle on the Sangre Grande Main Road was stopped and searched by police and was arrested for possession of marijuana. He was taken before the magistrate on the following day where he pleaded guilty and was fined and given time to pay. Instead of being released, he was kept in custody and taken to the Golden Grove Prison, Arouca where he remained for 12 days. For false imprisonment of 12 days, he was awarded \$100,000 and \$60,000 exemplary damages.

⁷ Two of the three decisions used by the Court of Appeal were unwritten decisions BUT where the appellant had exhibited the pleadings and order of the trial judge: (i) CV2007-03032 *Frankie Lopez v AG* where for 13 days false imprisonment, general damages were awarded of \$150,000 (ii) CV2007-04388 *Victor Romeo v AG* where for 29 days unlawful incarceration general damages were awarded of \$210,000

⁸ *Bryan Barrington v AG* CV2015-03519 (oral decision/unreported) where for wrongful arrest and unlawful detention for two periods totalling 13 days, an award of \$141,121.49 was made

⁹ *Seemungal v AG* HCA 894 of 2009 delivered by Boodoosingh J (as he then was) on 18 May 2010

- ***Ohene Opoku v AG***¹⁰ where for 12 days imprisonment, he was awarded \$125,000.
- ***Kedar Maharaj v AG***¹¹ where for 29 days false imprisonment following an order for release on a habeas corpus application, an award was made of \$280,000 and \$50,000 exemplary damages. There were successive proceedings to bring an end to the false imprisonment including initially a psychiatric hospital tribunal that first ordered his release then constitutional proceedings where a judge ordered his release and the claimant was still not released. It took successful habeas corpus proceedings to end his false imprisonment.
- ***Uric Merrick v AG***¹² where there was a six-month sentence for possession of marijuana that was appealed. He was in prison in degrading conditions and some ten months later, he filed a withdrawal of the appeal and was expected to be released. At that point, he was informed that he would now have to begin serving his sentence. He filed a claim for false imprisonment for his detention for 35 days imprisonment and was awarded \$35,000 in damages with no exemplary and \$4,000 special damages. The trial judge computed his damages by using \$1,000 per day for the 35 days imprisonment. The Court of Appeal confirmed that the proper wrongful detention period was 36 days and increased the general damages award to \$200,000 inclusive of an uplift for aggravated, but made no award for exemplary damages.

15. Counsel argued that ***Uric Merrick*** confirmed a range for false imprisonment for the period 13 days to 29 days as between \$150,000 and \$280,000 and included aggravated but no exemplary damages. Counsel suggested an award in the instant case in the range of \$250,000 to \$320,000, which was updated to reflect present values, based on ***Uric Merrick***. He stated that such an award should be linked to ***Kedar Maharaj***, which had a reduced detention period. Counsel for the defendants recommended \$125,000 in compensatory damages inclusive of aggravated damages, without stating why. I rejected the ranges given by both counsel, as unreasonable and inappropriate in the context of

¹⁰ *Ohene Opoku v AG* Civ App No S63 of 2004

¹¹ *Kedar Maharaj v AG* CV2009-1832

¹² *Uric Merrick v AG* Civil Appeal 146 of 2009 delivered on 05 February 2013

the present matter. The range suggested by the claimant's counsel was inordinately high and unjustifiable, even if updated to reflect present values, and on the other hand the defendants' quantum was unreasonably and inappropriately low, especially as no justification was advanced for that figure. I found the award in *Uric Merrick* was relevant and useful in informing the present award, as it dealt with damages for false imprisonment only. In my view, *Kedar Maharaj* could be distinguished from the present case, given the barefaced breaches of judicial orders that existed therein before the false imprisonment ended. Undoubtedly, that court would have viewed very seriously the refusal of the authorities to comply with legitimate orders for the release of that claimant in making its award. The fact that the detention period in *Kedar Maharaj* was less does not justify on the present facts a higher award to our claimant, as the aggravating features were more extreme than in our claimant's case. To my mind, the present claimant could attract an award that was lower than that made in *Kedar Maharaj*, as that claimant had to pursue two different sets of legal proceedings to secure his release. Before making the award, I will examine aggravated damages.

AGGRAVATED DAMAGES

16. Aggravated damages serve to compensate for especially bad behaviour of the defendant, which causes distress, humiliation, loss of dignity, and are in addition to what a claimant is entitled to attract for other injuries. These damages are discretionary and form part of the compensatory measure of damages, as an "uplift" of general damages: see *Herman Lightbourne's case*.¹³ In our jurisdiction, the practice in cases of false imprisonment is to award aggravated damages as part of general damages¹⁴.
17. Counsel asked for aggravated damages to be awarded on specified features, which he identified as examples of "aggravation". Counsel identified as a relevant aggravating

¹³ *Herman Lightbourne v Lionel Joseph Est Cpl No 411 and Public Transport Service Corpn* HCA No 2402 of 1982
¹⁴ *Thaddeus Bernard and Another v Nixie Quashie Civil Appeal 159 of 1992 paragraph 29 page 9*

factor the claimant's evidence of the complaints to prison officers about the false imprisonment. Other relevant evidence of aggravation was the failure to investigate or report the claimant's complaint. Instead, the claimant was given the advice that nothing could be done about his situation except to serve the sentence. Counsel argued that this poor advice to the claimant was based on the existence of a warrant, which they failed to appreciate was not for the claimant so he ought not to be imprisoned under it. He also pointed to the defence that failed to address the unlawful justification for the detention and alleged reasonable grounds for the arrest, which served only to delay the proceedings. He classified these factors as constituting aggravating features in the case, as intervention could have ended the claimant's unhappy situation earlier¹⁵ and asked for a higher award than that given in *Uric Merrick*.

AWARD

18. What informs the award of compensation on any assessment would be the context of the case (its facts and evidence), the law and comparators, which I agree must be relevant. In my view, any pronouncement I am to make on comparators requires that I first examine them to determine their relevance to present proceedings. Of note was that the defendants provided no justification for the recommended quantum but simply identified a figure and pointed me to three authorities. One of the authorities was *Uric Merrick*, also relied on by the claimant, where the Court of Appeal had increased a lower court award from \$35,000 in general damages to \$200,000 inclusive of aggravated damages. The two other authorities provided by the defendants were not equated with the present case, and I assumed that they were selected as comparators because of the detention periods. The detention period in the first case mirrored that of the claimant's in our proceedings but related to the commission of two torts: *Glen Baptiste et al v Assistant Superintendent Anthony Gonzales et al* where for false imprisonment and malicious prosecution the claimants, Glen and Hasley Baptiste, who were in custody for forty-two

¹⁵ *Thompson v Commissioner of Metropolis* [1997] 2AER 762

days, were awarded \$45,000 and \$50,000 respectively. The second case was ***Nigel Superville et al v AG*** where for false imprisonment of fifty-two days and malicious prosecution, the first claimant was awarded \$180,000 in general damages inclusive of aggravated damages. Having reviewed the relevant authorities on false imprisonment, I concluded that a reasonable and appropriate award for compensation inclusive of aggravated damages was \$220,000.

EXEMPLARY DAMAGES

19. The claimant sought \$20,000-\$25,000 as exemplary damages and relied on ***Kedar Maharaj***. The defendants argued that this was not a proper case for a punitive award, as there was no intentional or malicious action on the part of the defendants. The false imprisonment was based on a case of mistaken identity. The liability order made on 12 January 2017 directed me to make an award for exemplary damages in this matter, which the defendants have not appealed. In ***Kedar Maharaj***, the court awarded exemplary damages, where there was a valid court order for release and the defendant had not complied. Counsel for the claimant argued that in the present case, exemplary damages should be awarded for breach of constitutional rights to due process and protection of the law, because of the arbitrary detention pursuant to a warrant for someone else so they had no lawful justification. He relies on ***Webster v AG***¹⁶ and ***Rookes v Barnard***¹⁷ and asked for an award of \$20,000-\$25,000, if appropriate compensation was granted.

20. It is clear that the conduct falls at the feet of the defendants and that the false imprisonment was based on a case of mistaken identity. I, therefore, accepted counsel for the defendants' argument that there should be no punishment for a mistake. Whilst that fact alone would not attract exemplary damages, the defendants did nothing to

¹⁶ *Webster v AG* [2015] UKPC 10

¹⁷ *Rookes v Barnard* [1964] 1AER @ 367 where three categories were set out for the award: (i) where there is oppressive, arbitrary or unconstitutional conduct by servants of government; (ii) where the defendant's conduct had been calculated to make a profit; and (iii) where it was statutorily authorised

rectify their mistake, which only compounded it. To my mind, a mistake alone should not attract a punitive award but, in the instant case, it was not only a mistake. Following the mistake, the defendants refused to take corrective steps; they refused to heed the complaints; they refused to do a simple fingerprint check, waiting until the claimant filed proceedings for redress to do so. These were not mistakes; these acts followed the mistake and reflected a nonchalant dismissal of the claimant's complaints by agents of the State, who directed him to serve the time for someone else then file suit. To my mind, ample opportunities were afforded the defendants to look into the claimant's complaints and it appeared to me that they intentionally chose not to investigate the complaints, even to the point of telling him to quietly serve someone else's sentence at the expense of his own liberty. In circumstances where a citizen is falsely imprisoned and that fact is brought to the knowledge of the authorities, it is unacceptable to suggest that his only recourse is to serve out his full sentence and then bring an action for compensation. This is a case where the claimant complained to the police, the presiding magistrate (more than once) and the prison authorities and despite that was ignored. Such response towards a citizen's liberty being taken away, with the full knowledge of agents of the State, was oppressive and arbitrary and points to systemic deficiencies that will not be tolerated. Fingerprinting the claimant would have saved the State, in time and resources, and simultaneously buttress a citizen's liberty. It is unacceptable to show a calm indifference about the claimant's loss of liberty and then dismissively point out that opportunities for redress exist somewhere down the road in our system.

21. In my view, exemplary damages operate to buttress civil liberties not to facilitate its continuing abuse.¹⁸ The behaviour of the defendants' servants amounted to a conscious

¹⁸ *Kaddus v Chief Constable of Leceistershire* [2001] UKHL 29 which stated that, "exemplary damages has played a significant role in buttressing civil liberties, in claims for false imprisonment and wrongful arrest. ... On occasion conscious wrongdoings by a Defendant is so outrageous, his disregard of the Plaintiff's rights so contumelious that something more is needed to show that the law will not tolerate such behaviour. Without an award of exemplary damages, justice will not have been done. Exemplary damages, as a remedy of last resort, fill what otherwise would be a regrettable lacuna."

wrongdoing, and was oppressive, arbitrary and unconstitutional¹⁹, which satisfies one of the three principles in *Rookes v Barnard* for such an award. To my mind, exemplary damages are punitive and, at its crux, serves to deter repetition of bad conduct. I also considered the principle of proportionality that requires any award to be proportionate to the defendant's conduct²⁰. In *Wade v AG*²¹, the Court of Appeal engaged in an exhaustive discussion of principles and cases relating to exemplary damages, condemning the approach of the lower courts in applying the award without explaining its justification for so doing. *Wade* explained that awards range from low-end to high-end for clearly identifiable reasons and that a more vulnerable claimant (such as a prisoner) would attract the highest award. Whilst *Wade* involved a mixed tort case, the principles and approach on exemplary damages were of general applicability. I concluded that the general damages award was sufficient and reasonable so any exemplary sum, in compliance with the liability order, will be small to mark my disapproval of the behaviour of agents of the State. I awarded exemplary damages of \$25,000.

DISPOSITION

22. It is ordered that the defendants do pay to the claimant –

- (i) General damages for false imprisonment inclusive of aggravated damages in the sum of \$220,000 with interest at the rate of 2.5% per annum from 11 November 2015 to 19 October 2021.
- (ii) Exemplary damages in the sum of \$25,000.
- (iii) Costs on the prescribed basis in the sum of \$49,269.86.

Martha Alexander
Master of the High Court

MARTHA ALEXANDER
MASTER OF THE SUPREME COURT
TRINIDAD AND TOBAGO

¹⁹ *Atain Takitota v AG of Bahamas* PC No 71 of 2007 delivered on 18 March 2009; *Quashie v AATT* HC 176/1988

²⁰ *Aron Torres v PLIPDECO* (2007) 74 WIR 431

²¹ *Darrell Wade v AG Civil Appeal* 172 of 2012