

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV2017-03165

**IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND
TOBAGO CHAPTER 1:01**

AND

**IN THE MATTER OF THE FUNDAMENTAL RIGHTS AND FREEDOMS GUARANTEED
AND ENSHRINED BY CHAPTER 1 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE ACTION AND/OR DECISION OF THE FAMILY COURT OF
TRINIDAD AND TOBAGO TO ISSUE A WARRANT FOR THE ARREST OF THE
APPLICANT**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION 14
OF THE CONSTITUTION AND ORDER 55 OF THE RULES OF THE SUPREME COURT
OF JUDICATURE ACT, 1975 BY TERRY ANDREWS BEING AN INDIVIDUAL WHO
ALLEGES THAT PROVISIONS OF CHAPTER 1 OF THE CONSTITUTION INCLUDING
THE PROVISIONS OF SECTIONS 4(A), (B), (C), (D) AND (G) AND 5(2) (A), (B), AND
(H) THEREOF HAVE BEEN, ARE BEING, OR ARE LIKELY TO BE CONTRAVENED IN
RELATION TO HIM BY REASON OF THE DECISION AND/OR ACTION OF THE
FAMILY COURT OF TRINIDAD AND TOBAGO TO ISSUE A SUMMONS TO COMPEL
HIS ATTENDANCE AT COURT AND A WARRANT FOR THE ARREST OF THE
APPLICANT**

BETWEEN

TERRY ANDREWS

Applicant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

Before: Master Alexander

Delivery date: November 6, 2019

Appearances:

For the Applicant: Mr Peter Taylor

For the Respondent: Ms Daniella Boxill instructed by Ms Lianne Thomas

DECISION

INTRODUCTION

1. The facts in this case were unfortunate and regrettable, as different State players acted in ways, which led to an arrest of the applicant that was unlawful and an infringement of his constitutional rights. This matter was seeded in Family Court proceedings, where by order dated October 2, 2012 he was ordered to pay the sum of \$250.00 per week for maintenance of his minor child and \$750.00 per term for school fees until the minor child commenced primary school (“the order”). The applicant claimed that he was diligently abiding by the terms of the order, when on August 07, 2013 the mother of his minor child filed a summons alleging that he was in breach of the order, with a return date on the summons of September 19, 2013. The warrant was issued by the Family Court before the above-mentioned return date. On the said September 19, 2013, around 6:07 am two police officers went to the applicant’s home with a warrant issued out of the Family Court and arrested him for breach of the order.

2. The applicant’s case was that he had been unlawfully detained, and imprisoned cumulatively from approximately 6:09 am to 11:00 am. Upon his arrest at home, he was taken to the Belmont Police Station, where he was transported to the Family Court and placed in a cell. He was kept there from 8:00 am to 10:30 am before being escorted upstairs in handcuffs by four uniformed policemen in full view of members of the public, attorneys

and court staff, and then brought before the magistrate. The magistrate pointed out that the applicant was not in breach of the order and immediately ordered his release; she stated also that the warrant was issued in error. The magistrate then apologized to the applicant for what had transpired.

3. Arising from these facts, the applicant filed suit alleging that the actions and/or omissions of the respondent's servants and/or agents led to his wrongful arrest, false imprisonment, humiliation, embarrassment, emotional and psychological distress and constituted an infringement of his constitutional rights under sections 4 and 5 of the Constitution. He filed his amended fixed date claim form and amended statement of case on October 03, 2017 for declaratory orders, damages and costs. By consent order dated July 23, 2018 of Kangaloo J, judgment was entered against the respondent.

EVIDENCE

4. The applicant was the only witness and provided a wealth of documentary evidence. These documents included various receipts from the Family Court in relation to payments made, the summons, and a letter from the administrative secretary to the Chief Justice acknowledging that there were consistent payments made by the applicant with an attendant apology for the oversight. There was also a letter from the Ombudsman stating that the Family Court through its manager acknowledged that it was responsible for the applicant's arrest and incarceration and had submitted a report to the Chief Justice, which said report was provided.
5. As to the applicant's evidence, he averred that he was never arrested or convicted of any offence before this unlawful arrest. At the time of the arrest, he was 36 years and suffered a significant level of emotional and

nervous distress. In his affidavit evidence, he averred thus, *“I was so hurt and humiliated. I suffered a nervous and emotional breakdown following that ordeal and I had to be sent on one month’s leave by my boss. What made it worse was that someone who worked at Huggins was in Court the same time I was there and saw me and went back and told people in work that they saw me in Family court in handcuffs.”* This caused him to seek professional counselling, which his employer arranged, through the Employee Assistance Programme (EAP). Further, his employer sent him on one month’s leave. It was his evidence also that, while he lived alone in a downstairs apartment of his family home, his arrest unfolded in the presence of family members who were outside at the time. He, therefore, sought compensation for five hours unlawful detention and imprisonment, monetary compensation to vindicate the infringement of his constitutional right as well as aggravated and exemplary damages.

6. The respondent counter-argued by trying to drill holes in the applicant’s evidence. It was submitted that the applicant’s arrest was not arbitrary but was pursuant to a warrant that was executed on September 03, 2013. Further, because he lived alone in the downstairs portion of the home, at the time of his arrest he was not in the company of anyone to be seen and so embarrassed. Counsel pointed out that the claimant admitted that the arresting officer permitted him to freshen up and dress before escorting him outside. Counsel also pointed out that the applicant failed to mention in his affidavit that there was an outstanding payment of \$1,500.00, which he was encouraged to pay by the magistrate and which he thought was “bail money.” Counsel sought to reference the apologies issued by the magistrate and Chief Justice, which the applicant admitted gave him a good feeling. It was submitted also that the applicant did not provide any evidence to support his claim that his arrest and detention caused him to be sent on leave and for counselling. The letter he supplied from the EAP

and psychologist bore no explanation as to why he needed to partake in the programme or see a psychologist and he did not call his employer or any other witness to corroborate his evidence. Counsel also lay blame for how the applicant was making his payment at the Family Court at his feet, in that he never specified or directed the cashiers how to apply the payments (i.e. maintenance or school fees). It was accepted by the respondent that the period of detention was four and a half hours and an award of \$25,000.00 was recommended to cover the detention and constitutional infringement.

DAMAGES IN CONSTITUTIONAL MATTERS

7. The Privy Council in the case of ***Attorney General v Ramanoop***¹ outlined the approach for assessing damages in constitutional matters. Accordingly, the court must use a comparable common law measure of damages and an assessment of the claim on its facts to determine if an additional award needs to be granted in order to vindicate the claimant. The Board stated at paragraphs 18 and 19 thus:

18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.

¹ *Attorney General v Ramanoop* [2005] UKPC 15

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award.

8. The Privy Council also went on to explain that this additional award, in most cases, will cover the same ground as would a punitive award, but it is not in a strict sense an award for retribution and punishment. Thus, the Board advised that the labels of “punitive damages” or “exemplary damages” should not be applied to this additional award.
9. Commenting on the *Ramanoop* approach above, Lord Bingham in *Subiah v The Attorney General*² stated that it was proper to consider aggravating factors but it was unnecessary that these be identified separately. The Board was of the view that such compensation should be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim’s constitutional right.

² *Subiah v The Attorney General* [2008] UKPC 47

10. To assist with arriving at an appropriate award to the applicant for breach of his constitutional right, this court bore in mind the principles set out above as well as his affidavit evidence and that given during cross-examination. To this end, it considered the circumstances of his arrest, his evidence as to the humiliation and embarrassment he felt on being “paraded” and handcuffed in public along the corridor of the Family Court, where he was recognized by a colleague. It considered that it was an administrative error, on the part of the Family Court, that was responsible for what transpired, and that rightly, apologies were issued to the applicant, by both the presiding magistrate and later the Chief Justice. It was not prepared to accede to the submissions of counsel for the respondent that because these apologies made the applicant feel “good” or that he too erred in not specifying how the money being paid into court should be applied under the two orders against him, that these sufficed to justify a minimal award of \$25,000.00. While this court agreed with counsel for the respondent that the period of detention or imprisonment was small, it considered that the deprivation of a citizen’s liberty was serious. Thus, it was not to be glossed over lightly, particularly in circumstances where the effects of the arrest and detention had a specific negative impact on the applicant. In this regard, it was noted that counsel for the respondent pointed out that the applicant failed to call evidence to corroborate his claim that he had been sent on sick leave and for counselling because of the ordeal. It also accepted that the letters from the psychologist and the EAP failed to state specifically that he had participated in the programme because of the impact of his arrest and detention. This court noted, however, that his enrollment in the programme immediately followed his arrest. That aside, the court accepted that the evidentiary standard to support his evidence was not met and there was no explanation given for failing to call witnesses to

assist in proving his damages. However, this court could not find that the applicant was being untruthful when he gave evidence that he was embarrassed, hurt and humiliated given that he endured a “public” arrest and detention because of a “mistake” by the court. Counsel for the respondent niftily argued against his claim of humiliation. She thus opined that as the applicant was home alone during his arrest, he could not have been humiliated in the presence of family members, especially as at that time, he was not in handcuffs. Counsel’s submission was not accepted. This court accepted the evidence of humiliation and outrage felt by the applicant at his arrest, and that as he was removed by officers from his home, in full view of family members who had congregated in the yard, it would have been acutely embarrassing. The fact that he was not handcuffed was considered, but that alone could not erase or exclude his evidence of humiliation on his arrest.

CASES

11. In considering the compensation for his four and a half to five hours detention, this court looked at the cases provided by both parties.

Respondent’s authorities

- *Cliff Persad v The Attorney General*³ where for eight hours detention, general damages for unlawful arrest and false imprisonment were awarded for \$30,000.00.
- *Charran Francis v The Attorney General*⁴ where for eight hours detention, general damages for unlawful arrest and false imprisonment were awarded for \$35,000.00.

³ *Cliff Persad v The Attorney General* HCA S-1971 of 2002 delivered in November 07, 2008 by Sobion-Awai M

⁴ *Charran Francis v AG* HCA No 518 of 2003 delivered on June 30, 2009 by Rampersad J

- *Chandardat Soogrim v The Attorney General*⁵ where for eight hours detention, general damages for false imprisonment were awarded for \$30,000.00.
- *Solomon Maximo Haynes v The Attorney General*⁶ where for nine hours detention, general damages for false imprisonment and malicious prosecution were awarded of \$28,000.00.
- *Ivan Neptune v The Attorney General*⁷ where for seven and a half hours detention, general damages for false imprisonment were awarded of \$25,000.00.
- *Larry Baila v The Attorney General*⁸ where for eight hours detention, general damages for false imprisonment were awarded of \$12,000.00.

Applicant's cases

- *Dinesh Nandlal v The Attorney General*⁹ where for two days detention, general damages for wrongful arrest and false imprisonment were awarded of \$140,000.00 including an uplift for aggravated damages.
- *Indira Beharry v The Attorney General*¹⁰ where a claimant who disobeyed a summons to appear was arrested four years later. The court found that the warrant, arrest, detention and imprisonment for approximately three hours were illegal. The matter was sent before Sobion-Awai M for an assessment of damages, and by

⁵ *Chandardat Soogrim v AG* CV2007-3755 delivered on December 17, 2010 by Tiwary-Reddy J

⁶ *Solomon Maximo Haynes v AG* CV2008-04038 delivered January 14, 2011 by Kokaram J

⁷ *Ivan Neptune v AG* CV2008-03385 delivered November 14, 2011 by Des Vignes J

⁸ *Larry Baila v AG* CV2015-00248 delivered September 29, 2017 by Mohammed J

⁹ *Dinesh Nandlal v AG* CV2016-02762 delivered on February 19, 2018 by Mohammed J

¹⁰ *Indira Beharry v AG* CV2014-03235 delivered on June 9, 2017 by Mohammed J

consent order entered on July 2, 2018, the claimant was awarded \$40,000.00 inclusive of aggravated damages and interest.

- *Richard Darsoo v PC Pierre and The Attorney General*¹¹ where for approximately six and a half hours detention, general damages were awarded of \$70,000.00 for malicious prosecution with an uplift for aggravation, special damages of 6,800.00 and exemplary damages of \$10,000.00.
- *Roodal Arjoon v The Attorney General*¹² where for sixteen days incarceration in unsanitary, overcrowded conditions, general damages of \$35,000.00 were awarded for unlawful arrest, detention and assault inclusive of an uplift for aggravation. Exemplary damages were awarded of \$20,000.00.
- *Trishuana Scarlett v Senior Superintendent Vincel Edwards and The Attorney General*¹³ where seven officers forcefully entered and unlawfully trespassed upon the claimant's property at 5:30 am. She was pregnant at the time and two officers entered her bedroom, awoke her and wrongfully arrested her. She was detained for thirty-six hours at the Fraud Squad, where she was interrogated and suffered physical and mental distress. She was awarded general damages inclusive of an uplift for aggravation of \$65,000.00, exemplary damages of \$10,000.00 and nominal damages of \$2,500.00 for trespass to the person.

¹¹ *Richard Darsoo v PC Pierre and The Attorney General* CV2016-04653 delivered on March 16, 2018 by Kokaram J

¹² *Roodal Arjoon v The Attorney General* CV2015-01346 delivered on February 20, 2018 by Rahim J

¹³ *Trishuana Scarlett v Senior Superintendent Vincel Edwards and The Attorney General* CV2016-03548 delivered on June 21, 2016 by Rahim J

DISCUSSION

12. The majority of cases provided by counsel for the applicant dealt with periods of detention that were in excess of those of the applicant save for **Indira Beharry** who was granted a larger award, than the case at bar, for fewer hours of detention. **Indira Beharry** could be distinguished as the amount awarded was given by consent. Further, while the other cases were of recent vintage, they provided little assistance to this court. The closest case provided was **Darsoo** and that claimant was detained for approximately six and a half hours, so received an award of \$70,000.00. On the other hand, the cases provided by counsel for the respondent were more dated but provided a range of awards for periods of detention that were calculated in terms of hours. These cases assisted in the calculation of the general damages, which justly could be awarded in the range suggested by counsel for the respondent.

13. Consideration was given to the constitutional infringement and whether an additional award should be applied, as vindictory damages. To this end, counsel for the applicant submitted that this additional award should be in the range of \$50,000.00 and relied on a statement of Boodoosingh J¹⁴ in justification:

While there is no evidence of mal intent or deliberate failure on the part of the prison authorities in so doing, the failure can only be put down to recklessness or negligence in the absence of any explanation or reasons given.

When an important right such as the liberty of the individual is involved with the gravity of the resulting breach, the court cannot ignore such

¹⁴ *Quincy George v Attorney General* CV2011-03875 delivered on July 24, 2014 by Boodoosingh J

inaction on the part of persons responsible for securing the rights of incarcerated persons who are in a position of dependence.

14. Based on the above, this court considered that the present applicant was in a position of total dependence on the Judiciary, which, according to his counsel, failed “spectacularly” to protect his rights. It was, therefore, incumbent on this court to consider, if apart from the usual compensation, an additional award was necessary to vindicate the applicant’s constitutional rights. In the view of this court, the award of compensation alone was not sufficient so an additional award would be appropriate in this case. However, this additional award should not be in the substantial size as that given in **George**¹⁵. The period of detention was considered as well as the apologies, which were given without hesitation and immediately offered on the error being discovered. So while it was considered necessary to make the additional award; it was not for punitive purposes, but to emphasize the gravity of the breach and the importance of the constitutional right infringed. In the circumstances, an additional award of \$15,000.00 would suffice to do justice in the present case.

DISPOSITION

15. It is ordered that the respondent do pay the applicant:

- 1) General damages inclusive of an uplift in the sum of \$30,000.00 for the period of unlawful detention with interest at the rate of 2.5% per annum from September 19, 2013 to November 6, 2019.
- 2) Vindictory damages in the sum of \$15,000.00.
- 3) Costs in the sum of \$7,645.09

Martha Alexander
Master

¹⁵ *Quincy George v Attorney General (Supra)*