

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2019-03977

BETWEEN

AKIL ANDERSON KEVIN SAMUEL

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: Master Alexander

Date of Delivery: 13th October 2021

Appearances:

For the Claimant: Mr Abdel Q Mohammed

For the Defendant: Ms Rachael Lyncia Jacob instructed by Ms Avaria Niles

DECISION

INTRODUCTION

1. This matter involves a claim for false imprisonment, malicious prosecution and assault and battery. The claimant filed the claim on 02 October 2019 against the Attorney General of Trinidad and Tobago (“the defendant”) and served it on 07 October 2019. There is no contention between the parties that the claimant was detained from 05 November – 09 November 2015 at the Point Fortin Police Station. There is also no contention between the parties that the claimant was remanded into custody at the

Golden Grove Prison on 09 November 2015 and then he was released on 26 February 2016 without charge. Parties also agree that the claimant was detained for a period of one hundred and sixteen days.

2. By his claim, the claimant sought *inter alia* damages for unlawful arrest, false imprisonment, malicious prosecution, and /or assault and battery including aggravated and exemplary damages, interest and costs. The defendant entered an appearance on 22 October 2019 but failed to file a defence. On 20 January 2020, Aboud J (as he then was) granted permission to the claimant to enter judgment in default against the defendant. The assessment proceeded on 10 June 2020, where the claimant's evidence went in unchallenged by the defendant. The issue for determination was the quantum of damages that the claimant is entitled to for his detention during the period 05 November 2015 to 26 February 2016. To arrive at this award, the context in which the wrongful arrest unfolded and evidence as to what transpired during that period would be critical.

THE FACTS

3. It was the claimant's case that on 05 November 2015, he was wrongfully and without reasonable cause arrested by servants and/or agents of the defendant while he was at the Egypt Village Government Primary School. The arrest took place in full view of his daughter, students, teachers and parents. He was imprisoned for a period of four days from 05-09 November 2015 and, thereafter, charged with the offences that he:
 - a) Case No 2194/15 – On the 08 day of April 2015 at Point Fortin robbed Bally's Clothing Store of one safe valued \$6,000.00 and \$54,000.00 cash;
 - b) Case No 2195/15 – In the night of Sunday 12 April 2015, at Southern Gardens, Point Fortin, did break and enter the dwelling house of Kevon Lucas with an intent to commit an arrestable offence therein namely to steal and did steal therein one 40 inch TCL television valued at \$4,500.00, one Acer laptop valued at \$3,000.00

valued together at TT\$14,500.00 (sic), the property of Kevon Lucas contrary to section 27(a) of the Larceny Act Chapter 11:12.

4. The claimant was remanded into custody at the Golden Grove Prison for a period of three months and twenty-one days that is from 09 November 2015 to 26 February 2016 (the date of dismissal of the matter), as he was unable to secure bail. The claimant was never placed on an identification parade and the stolen items were not found in his possession. At the trial of the above offences, the witnesses testified that they never saw the claimant at the scene of the alleged crime. In fact, in case number 2194/15 the evidence showed that the claimant did not match the description of the person alleged to have committed the robbery. Further, in case number 2195/15, the virtual complainant testified under oath that the claimant was not the person who had broken into his dwelling house as alleged. The claimant was found not guilty of the offences for which he was charged. The claimant's case as advanced before this court was that the servants and/or agents of the defendant framed him and/or fabricated evidence against him, which now entitled him to the damages sought for injury sustained. The claimant also pleaded that he suffered an assault and battery at the hands of the servants and/or agents of the defendant whilst he was unlawfully in their custody. It would appear that whilst detained at the Point Fortin Police Station, he was assaulted by PC Carter and PC Bajan and also subjected to battery, when he was struck with a station diary book three times and pushed down some stairs near the prisoner's dock.

5. At the assessment, the first issue that fell to be determined was what quantum of damages would be reasonable compensation for the false imprisonment and detention of the claimant during the period 05 November 2015 to 26 February 2016, which amounted to approximately one hundred and sixteen days. The second issue was what would constitute appropriate damages for the assault and battery suffered by the claimant. In issue also was a claim for exemplary damages against the defendant its servants and/or agents. The evidence being unchallenged, I will turn to the law.

LAW AND ANALYSIS

FALSE IMPRISONMENT

6. As a rule, the main heads for determining general damages for false imprisonment are “injury to liberty” and “injury to feelings”, as such damages do not relate to a pecuniary loss. McGregor on Damages explains that loss of dignity is central to such damages and would be inclusive of humiliation:

*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.¹ (emphasis mine)*

7. In the present case, there was no contention as to injury to liberty, as the arrest and the length of the false imprisonment were not in dispute. There was evidence of injury to feelings, given the very public nature of the arrest and that it unfolded in the presence of his daughter and others at her school. Apart from the two basic elements of injury to liberty and feelings, damage to a claimant’s reputation was also a relevant head of consideration. Generally, it is accepted that a false imprisonment affects a claimant’s reputation and this was confirmed in **Walter v Alltools**². Locally, the reputation limb was emphasized in **Kamaldaye Maharaj v PC Hobbs and Ors**³ and **Kamal Samdath Ramsarran v Romiel Rush and AG**⁴. **Kamaldaye Maharaj** supra states:

[I]n a case of false imprisonment a successful Plaintiff may recover damages for injury to liberty. Damages may also be recovered for injury to feelings, that is to say, indignity,

¹ Mc Gregor on Damages 16 Edition para 1850

² *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.”

³ *Kamaldaye Maharaj v PC Hobbs, PC Charles & the AG* HCA No 2587 of 1998 at page 10-11

⁴ *Kamal Samdath Ramsarran v Romiel Rush and AG* HCA S-1597 of 1986 at page 43

mental suffering, disgrace and humiliation suffered by the Plaintiff as well as for any physical injury as well as injury to reputation. With respect to pecuniary loss, such loss which is not too remote is recoverable...

8. Further, ***Kamal Samdath Ramsarran*** supra outlined the principles governing damages for false imprisonment thus:

The principle of damage for false imprisonment would appear to be the injury to liberty, that is, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, that is, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status. Also damages may be given for any injury to reputation ...

9. As regards injury to feelings and reputation, the evidence of the claimant was that he was at a Parent Teachers Association meeting when plainclothes police officers approached him, took him away from the principal's office, and handcuffed him in the presence of his daughter and other students of the school. He averred that despite repeatedly stating that he was innocent, the police officers said, "*yuh wanted for several robberies in the southern district*" then placed him in a marked police vehicle. His daughter, on seeing him being arrested, began crying and shouted, "*where you all taking my daddy!*" He stated further that the arrest took place around 10:15am in full view of other parents, teachers and schoolchildren. He stated also that he felt extremely embarrassed by the public arrest, which unfolded in the presence of his then six-year-old daughter. Even further, he described how humiliating and emotionally distressing it was for him, as he was pained by the thought of his daughter being laughed at or ridiculed by her fellow schoolmates. He also stated that onlookers were staring at him, as he was arrested, and that he felt as if they were viewing him as a notorious criminal. Throughout the arrest, he protested his innocence and was ignored by the arresting officers.

10. I also considered the circumstances of his incarceration and his evidence of being denied a call to his grandmother on the day of his arrest or thereafter. He also averred that the following morning, he was taken out of the holding cell, handcuffed to a chair in the charge room and interviewed by PC Carter and PC Bajan who repeatedly asked him, "*what you do with de fucking vault and where Keston?*" I accepted his evidence that the experience was emotionally distressing and traumatic and that the injury to his feelings continued when he was subjected repeatedly to the beatings, kicks, cuffs, curses and threats during being interviewed, despite protesting his innocence. His evidence was clear and credible that during his arrest and prosecution, he suffered mentally and emotionally and to date, "*continue to feel hurt and depressed by their conduct ... [which was] horrible, inhumane and disgusting*". His evidence was accepted. In my view, the public arrest of the claimant on the school compound would have left indelible scars on the minds of the claimant and witnesses to the incident, and would have caused irreparable injury to his feelings and reputation. Instead of turning up on the school compound to embarrass him, the exercise of some restraint and good sense would have avoided such irreparable damage. In the circumstances, I accepted that his shame, humiliation and psychological damage could be ongoing.

MALICIOUS PROSECUTION

11. The claimant's case was that his prosecution was baseless and without reasonable or probable cause. He stated that he endured the stress and anxiety of two groundless prosecutions against him for one hundred and sixteen days and was remanded in custody for the entire period of prosecution. During his entire detention, he was not allowed to have a bath and endured conditions in holding cells that were filthy, debasing and degrading. His evidence was that he and his family suffered distress, humiliation, embarrassment and depression by the prosecution and that it caused irreparable damage to his character and reputation.

12. As a rule, for the tort of malicious prosecution to be established, the claimant must show the existence of four ingredients⁵. 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. The onus of proving every element rests on the claimant. Damages for malicious prosecution are awarded for - injury to reputation; injury where a person is in danger of losing his life or liberty; and for money spent in defending the charges.⁶ There is no contest on the facts that the criminal law was set in motion against the claimant, there was no reasonable basis for the charges and the prosecution ended in his acquittal. At the end of the baseless prosecution, the claimant's reputation was damaged and he was left to live with that stigma and humiliation for the rest of his life. He asked for damages for false imprisonment and malicious prosecution in the sum of \$450,000.00 inclusive of an uplift for aggravation and provided several cases for consideration. Before I examine the cases provided by parties, I will discuss aggravated damages as it is not an independent award in these matters.

AGGRAVATED DAMAGES

13. Aggravated damages aim at compensating for any particularly 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. Aggravated damages are discretionary and form part of the compensatory measure of damages. Aggravated damages are awarded as an "uplift" of general damages and so form part of the global compensatory award: see ***Herman Lightbourne's case***.⁷ Aggravated damages are not blended in with an award from exemplary damages (discussed below), but are a distinct and separate head of damages. Indeed, courts have been clear that overlapping notions and practices

⁵ Clerk & Lindsell on Torts 20th edition at page 1070, para 16:09; *Wills v Voisin* (1963) 6 WIR 50 at 57A

⁶ McGregor on Damages, 17th edition at paragraph 38-002 on page 1405

⁷ *Herman Lightbourne v Lionel Joseph Est Cpl No 411 and Public Transport Service Corpn* HCA No 2402 of 1982

of mixing of these damages are misconceived and erroneous practices. The most touted statement on this is that of Auld LJ to wit:

*Under this head of what I have called “mental suffering” are included such matters as the affront to the person’s dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort. If the practice has developed of making a separate award of aggravated damages, I think that practice should be discontinued.*⁸

14. On aggravated damages, I found instructive the twinned judicial statements below:

No 1

*Such damages can be awarded where there are aggravating features about the case, which would result in the Plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. Aggravating features can include humiliating circumstances at the time of arrest or the prosecution, which show that they had behaved in a highhanded, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.*⁹

No 2

*[Such damages] are meant to provide compensation for the mental suffering inflicted on the Plaintiff as opposed to the physical injuries he may have received. Under this head of what I have called mental suffering are included such matters as the affront to the person’s dignity, the humiliation that he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.*¹⁰

⁸ *Commissioner of Police for the Metropolis v Gerald, The Times 26 June 1998*; see also *Bernard v Quashie* Civ App No 159 of 1992

⁹ *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498 at page 516 per Woolf MR

¹⁰ *Thaddeus Bernard v Nixie Quashie* CA No 159 of 1992 per Chief Justice de la Bastide

15. Based on the facts and evidence proffered, I concluded that this was an ideal case to attract an award of aggravated damages. To arrive at the appropriate global compensatory award, I was careful to bear in mind that in each case it would be influenced by the unique facts and circumstances and what award was reasonable and just. I considered the facts of the public arrest on the school compound in the presence of his daughter, her classmates, other members of the school population, parents and visitors as well as the disregard shown to his protestation of innocence. I considered the evidence including the circumstances of his incarceration where the mental torture continued, the length of the prosecution and that it showed there was not a scintilla of evidence to support the arrest and prosecution. The defendant provided cases to guide my award and asked that it be in the range of \$180,000.00 to \$200,000.00 whilst the claimant recommended \$450,000.00.

COMPARATORS

16. In the present matter, parties provided numerous cases, where the periods of incarceration and prosecution shared no equivalency, as they were wide apart. I noted all comparators although a few served little usefulness and were given little if any weight. In two instances, the cases recommended were not decisions given in writing¹¹. It was unfortunate and a source of inconvenience that attorneys-at-law in their submissions sought to rely on unwritten decisions or unreported judgments that could provide no useful assistance to the court. Further, there were comparators provided where the period of prosecution was less than what was endured by the instant claimant, but counsel for the defendant recommended that the awards be equivalent. I sought to find the justification for such a position by the defendant so looked at any distinguishing features. I accepted that each case must turn on its own facts. To my mind, the more serious the charges, a longer prosecution and more aggravating features would attract a

¹¹ *Sheldon La Fortune v AG CV2017-00891* by Pierre M and *Waldon v AG CV2008-04317* by

high-end level award, as compared to a case with less serious charges and a shorter prosecution. In my view, the comparators generally were useful, save the unwritten decisions, and I identified clearly below those cases that specifically guided my award. I also gave the rationale for relying on certain cases and/or the yardsticks for arriving at the award in this matter. Considered only were the following cases cited by the parties:

(i) Gang Cases

- ***Joel Walker v AG***¹² where the claimant was charged under the Anti-Gang Act and detained for approximately **fifty-six days** and was awarded **\$220,000.00** for compensatory damages inclusive of aggravated damages.
- ***Darryl Bishop v AG***¹³ where during a State of Emergency, twenty police officers entered the claimant's business place, arrested and then charged him with being a gang member. The defendant claimed that he was suspected of carrying out narcotics and firearms offences and detained him for **forty-five days**. He was awarded **\$250,000.00** in general damages for malicious prosecution inclusive of aggravated damages and \$50,000.00 for exemplary damages.
- ***Michael Douglas v AG***¹⁴ where during a State of Emergency officers entered the claimant's home around midnight without a warrant and arrested him for being a suspected member of a Beetham Gang. The court inferred malice because of the lack of reasonable and probable cause for the arrest. The claimant spent **forty-one days** in custody and was awarded **\$200,000.00** in general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of aggravated damages and \$30,000.00 exemplary damages.
- ***Keon Quow v AG***¹⁵ where the claimant was charged with being a gang member, which the prosecution failed to prove, and the court expressly found malice because there was a lack of reasonable cause for the charge. The claimant spent **thirty-five days** in custody

¹² *Joel Walker v AG* CV2015-03439 delivered on 07 December 2018 by Madame Justice Mohammed

¹³ *Darryl Bishop v AG* CV2015-003348 delivered on 15 May 2018 by Rahim J

¹⁴ *Michael Douglas v AG* CV2015-02892 delivered on 02 October 2018 by Rahim J

¹⁵ *Keon Quow v AG* CV2015-02893 delivered on 02 March 2018 Donaldson-Honeywell J

and was awarded **\$200,000.00** in general damages for false imprisonment and malicious prosecution inclusive of aggravated, and exemplary damages of \$30,000.00.

- ***Onnell Dyer v AG*¹⁶** where during a State of Emergency the claimant, who was a passenger in a car when it was stopped in a roadblock, was arrested and charged for being a gang member. He claimed that the arrest damaged his reputation but brought no witnesses to support his case, which was discontinued for insufficient evidence. He was detained for **thirty-four days** and was awarded **\$40,000.00** in general damages for malicious prosecution. The court declined to award any uplift for aggravation or exemplary damages, as the evidence was meagre and no witnesses were called to support the claim.

(ii) Two Years Plus Detention Cases

- ***Mukesh Maharaj v AG*¹⁷** where following a murder trial, the claimant was ordered to be detained at the St Ann’s Hospital or such other appropriate place “until the President’s pleasure is known.” The claimant was detained for approximately **five years** after his guilty plea and a tribunal recommended his release in 2004. He was released eventually in 2009, **five years later**. On appeal, the claimant was awarded **\$450,000.00** for deprivation of liberty, without any vindictory damages.
- ***Mark Blake v AG*¹⁸** where the claimant and his brother were arrested, placed on ID parades and later charged with robbery, kidnapping and wounding with intent. The State offered no evidence and did not cross-examine the claimant. He was discharged on both counts and claimed that the charges were based solely on a defective ID parade. The claimant was detained for **three and a half years** and was awarded **\$450,000.00** for malicious prosecution inclusive of aggravated.
- ***Wendell Beckles v AG and John Rougier Commissioner of Prisons*¹⁹** where following a Court of Appeal order dated 04 May 2016, there was a rehearing of an assessment of damages and the claimant was awarded \$800,000.00 in general damages and

¹⁶ *Onnell Dyer v AG* CV2015-03207 delivered on 20 September 2017 by Kokaram J (as he then was)

¹⁷ *Mukesh Maharaj v AG* Civ App 118 of 2010 delivered in 2015

¹⁸ *Mark Blake v AG* CV2010-03388 delivered on 30 January 2013 by Boodoosingh J (as he then was)

¹⁹ *Wendell Beckles v AG & Anor* CV2009-3303 delivered on 05 September 2018 by Sobion-Awai M

\$100,000.00 in exemplary damages. The claimant was deprived of his liberty without justification, spending **just short of eight years** at Remand Yard, Golden Grove Prison. His unlawful incarceration began through the failure on somebody's part to communicate the order of a magistrate, which would have led to his release. It was allowed to continue because it appears that the claimant was literally "lost in jail".

(iii) Under One Year Detention Cases

- ***Curtis Gabriel v AG*** ²⁰ where a claimant was incarcerated for **eighty-four days** and only brought before a magistrate eight days after his arrest and spent a further **seventy-six days** imprisoned owing to his inability to secure bail. He was awarded **\$125,000.00** for wrongful arrest, false imprisonment and malicious prosecution inclusive of aggravated damages and \$50,000.00 as exemplary damages for assault.
- ***Jamol Dunbar v AG*** ²¹ where the claimant who was arrested on 11 August 2014 and charged with robbery with aggravation, but only taken to magistrate court on 13 August 2014. He was denied bail, as the magistrate needed information from Interpol since he was a foreign national. He was detained in prison until 16 October 2014 and although he was granted bail on 28 August 2014, he could not access it. The court found that he was entitled to be compensated for false imprisonment before being brought before the magistrate (i.e. for two days) and for malicious prosecution for the entire duration of his detention of approximately **sixty-five days**. He was awarded **\$230,000.00** in general damages for wrongful arrest, false imprisonment and malicious prosecution inclusive of an uplift for aggravation, and \$30,000.00 for exemplary damages.
- ***Ted Alexis v AG*** ²² where cocaine was planted on the claimant by the police and he was imprisoned for **two and a half months**. He was awarded **\$100,000.00** for unlawful arrest, false imprisonment and malicious prosecution inclusive of aggravated damages and \$25,000.00 as exemplary damages.

²⁰ *Curtis Gabriel v AG* HCA No S-1452 of 2003 delivered on 04 June 2008 by Rajkumar J (as he then was)

²¹ *Jamol Dunbar v AG* CV2017-02511 delivered on 02 April 2019 by Rahim J

²² *Ted Alexis v AG & Ors* HCA No S-1555 of 2002 delivered on 17 March 2008

- **Anisha Raffick v AG²³** where a claimant was arrested and charged with possession of cocaine. He spent **twelve days** in custody but his prosecution before the Magistrate's Court was for a period of two years before the charges were found to be fabricated. He was awarded \$220,000.00 in general damages for false imprisonment and malicious prosecution inclusive of aggravated as well as exemplary damages of \$20,000.00.

ANALYSIS OF COMPARATORS

17. I bore in mind throughout my analysis of the above cases that each case pleads its own unique facts and circumstances and do no more than provide a guide on what ought to be a reasonable award to the claimant at bar. It meant that the present claimant's award should be based on the facts and circumstances of his case and evidence presented. Therefore, I sought to conduct a clear and careful comparisons of all cases, noting distinguishing features and basis for the award in any given case so I could arrive at just and appropriate compensation. As damages for these torts go towards compensation for injury to feelings, emotions and reputation, I felt a careful analysis was necessary to do justice rather than an arbitrary pegging of the current award to cases simply based on paired detention periods. Some arrest, charges and detention would cause more injury than others so careful scrutiny of facts and circumstances would be critical.
18. The "gang cases" above consisted of shorter detention and/or prosecution periods but attracted high awards. In my view the gang cases dealt with charges that were more serious than in the present cases and would likely have had a more devastating and scarring impact on a claimant's reputation and, as such, the awards could be distinguished on those bases. Where the evidence as to damages was thin and a claimant in a gang case was awarded a small award then that was justifiable in the context of that case: see **Onnell Dyer** supra. In **Onnell Dyer**, the claimant was detained for thirty-four days, provided limited evidence and was awarded \$40,000.00 for a charge of being a gang

²³

Anisha Raffick v AG CV2017-01077 delivered on 11 October 2018 by Madame Justice Mohammed

member. The claimant at bar was not faced with a charge for being a gang member, which carries with it implications likely to be very damaging to a person's reputation once evidence could be provided. The claimant at bar was charged with two cases of robbery but was detained for a lengthier period than claimants in the gang cases. Moreover, the features of his arrest and detention and evidence of injury to feelings and reputation would have been searing on his life. To my mind, given the length of his detention and unique facts of his case, he could attract a higher award than the gang cases where detention was shorter and/or the evidence limited. I rejected the pairing to the gang cases by both parties, which resulted in the defendant's suggestion of an award with an upper limit of \$200,000.00 and the claimant's suggestion of \$450,000.00. In my view, the claimant could attract an award outside of the range suggested by the defendant and below that suggested by the claimant's counsel. In fact, I do not consider that the gang cases were fair and appropriate comparators with the present matter on any level.

19. The cases, where detention periods were lengthy and/or in excess of two years and attracted huge awards, related to facts and circumstances that were unique and distinguishable from the present claimant's case. The range of awards in those cases were \$450,000.00-\$800,000.00. In my view, the affront to the liberties and injury to feelings and reputations of those claimants, based on the excessive detention, bore no equivalency to the present matter. I could find, therefore, no justifiable reason to pin the instant claimant's award to these high-end awards. They are clearly and unequivocally distinguishable.

20. I find of some equivalency the case of **Jamol Dunbar** but noted that the detention period was shorter than in the case at bar. **Jamol Dunbar** was arrested at work in full view of customers and co-workers. His hands were handcuffed behind his back and later, he was charged with robbery with aggravation. There were some similarities with the current case but his detention period was way shorter than our claimant's. I accepted that the circumstances of the arrest in **Jamol Dunbar** and the injury to his feelings and reputation spanned a reduced period between the arrest and release. However, the injury and

affront often continue long after the prosecution of the charges end. To my mind, the present claimant faced two charges of robbery that were baseless and without any evidence to substantiate them being provided and pursued. The prosecution continued and only ended one hundred and sixteen days later. The instant claimant's arrest was carried out on a school compound, where his daughter was present and likely traumatized by the experience. I considered the injury to his feelings and reputation by his public arrest and the length of his detention and his prosecution, which were not contested. In the present context, I concluded as appropriate and fair to award \$285,000.00 as general damages for false imprisonment and malicious prosecution inclusive of an uplift for aggravated damages.

ASSAULT AND BATTERY

21. As a rule, assault and battery²⁴ involving personal injuries would entitle a claimant to compensation, which is determined in the same way as personal injury cases²⁵. Essentially, a claimant can recover both pecuniary and non-pecuniary damages for the torts. General damages would be assessed using the principles in *Cornilliac v St Louis*²⁶ so will be determined on the evidence provided.

22. The evidence of the claimant being cursed at, threatened and intimidated by officers at the station went in unchallenged. The claimant also pleaded that he suffered personal injuries early on the morning of 06 November 2015 from approximately forty-five minutes of beating. He stated that he was slapped with a big station diary box three times and

²⁴ An assault is any act that intentionally or possibly recklessly causes another person to apprehend immediate and unlawful personal violence. Battery is a term used to mean the actual or intended use of unlawful force to another person without his consent. Where an assault involved a battery, it matters not whether the battery is inflicted directly by the body of the offender or through the medium of some weapon or instrument controlled by the action of the offender. To constitute this offence, some intentional act must have been performed. See *Fagan v Metropolitan Police Comr* [1969] 1 QB 439, [1968] 3 All ER 442

²⁵ *Mahadeo Sookhai v The Attorney General* CV2006-00986

²⁶ *Cornilliac v St Louis* (1965) 7 WIR 491 (a) nature and extent of injuries sustained (b) nature and gravity of the resulting disability (c) pain and suffering endured (d) loss of amenities and (e) extent to which pecuniary prospects were materially affected.

was slapped and cuffed about the head, neck, chest and back about fifteen times. He suffered lacerations to the left wrist and hand. The beating resulted in severe headaches, swelling about his ribs and face, dizziness and despite his complaints, he was left in the cell for four more days without medical attention. On 26 February 2016, he was being escorted in handcuffs from the courtroom, down the stairs when he was pushed down the stairs by PC Aqui. When he got up from the floor, he was slapped repeatedly and cuffed about his body by the said officer who also squeezed the handcuffs tighter on his left wrist, causing it to become swollen as he had steel implants in that wrist. After complaining about the incident involving PC Aqui, he was taken to the Point Fortin Hospital for medical treatment where he was diagnosed with soft tissue injuries to his wrist. A medical was attached to his witness statement so went in via a hearsay notice, so the evidence was not tested under cross-examination. The claimant averred to feeling pain immediately upon both incidents of beating but provided no evidence of enduring continuous pain and suffering from his injuries. There was also no evidence of long lasting or permanent loss of the pleasures or amenities of life. There was also no evidence that the claimant's injuries led to his pecuniary prospects being adversely affected.

COMPARATORS

23. The claimant sought \$50,000.00 for assault and battery and the defendant suggested an award in the range of \$20,000-\$25,000.00 would be fair and reasonable compensation, with both parties providing comparator cases.
- ***Lester Pitman v AG***²⁷ where a claimant was beaten in the condemned division of the prison by officers using closed fists, and with one using his riot staff. He suffered soft tissue injuries, was awarded \$90,000.00 general and \$30,000.00 exemplary damages.
 - ***Emraan Ali v AG*** where a claimant suffered bruising and swelling to the face, head, chest, shoulder, instep and hand; haematoma and swelling of the left side of his face; and

²⁷

Lester Pitman v AG CV2009-00683 delivered on December 18, 2009 by Jones J

swelling to right side of the head and was awarded \$55,000.00 as general damages for assault and battery.

- **Chet Sutton v AG²⁸** where a claimant in prison suffered a sustained attack for at least fifteen minutes resulting in jaw injury, requiring a soft diet, and soft tissue injuries about the body. He received blows from the officers booted feet, hands and baton, which were inflicted on his head, face, chest, back and arms. He had bruising, abrasions, welts and swelling. His right cheek was tender and swollen and his jaw was unable to open so he was placed on a soft diet for two weeks. He was awarded general damages of \$70,000.00 inclusive of an uplift for aggravation.
- **Shahleem Shazim Mohammed v AG²⁹** where from a beating by prison officers, a claimant suffered injury to the face, swelling to the neck and an injury to one knee. He complained of continuous headaches. He was awarded \$25,000.00 in general damages and \$45,000.00 as exemplary damages.
- **Jamal Sambury v The AG³⁰** where a prisoner, who was assaulted by prison officers, suffered swelling to the right knee and left elbow joints and was awarded \$20,000.00. The assessor found that the claimant was lacking credibility and did not successfully prove all injuries claimed.
- **Russell Seaton v AG³¹** where a claimant suffered: soft tissue injuries to the left wrist, left knee and to the upper back; multiple superficial abrasions to left elbow; soft tissue injury with swelling to the left forehead and bruising to the right forehead and he was awarded \$45,000.00 inclusive of aggravated damages. That court did not award a sum for exemplary damages.
- **Leon King v AG³²** where the claimant suffered bruises about the body and a laceration to the forehead and was awarded \$35,000.00 as general damages with an uplift for aggravated and \$20,000.00 as exemplary damages.

²⁸ *Chet Sutton v AG CV2011-01191* delivered by Alexander M on September 30, 2015

²⁹ *Shahleem Shazin Mohammed v AG CV2010-04096*

³⁰ *Jamal Sambury v AG CV2011-02720* delivered in 2014

³¹ *Russell Seaton v AG CV2009-03667*

³² *Leon King v AG CV2009-04757*

- ***Terrell Toney v AG***³³ where the claimant suffered soft tissue injuries to both forearms and left thigh and a shallow laceration. He was awarded \$25,000.00 as general damages inclusive of an uplift for aggravation and \$20,000.00 as exemplary damages.
- ***Randy St Rose v AG***³⁴ where the claimant suffered a swollen knee and forearm and was awarded \$25,000.00 as general damages inclusive of an uplift for aggravated damages and \$20,000.00 as exemplary damages.
- ***Baldeosingh Mohammed and ors v AG***³⁵ where the claimant was dragged from the police jeep, struck on the head twice with a large book and slammed against a concrete wall before being picked up by an officer and kicked in the genitals, whereupon he fell to the floor. The court awarded him \$12,000.00 in damages for assault and battery, taking into account that the injuries to the throat and scrotum would have been painful and lasted for some time given that these were particularly sensitive areas. Also considered was that he was handcuffed and unable to defend himself; was abused verbally and did nothing to provoke the attack.

24. The claimant in this matter suffered injuries to his wrist; suffered the indignity of having a charge book slammed into his face and of being shoved down some stairs and was cursed and threatened. He would have experienced pain and headache after the beating and I considered that the assault and wrongful beating were unprovoked and unwarranted. Whilst not seriously debilitating, the beating would still have been painful. In the circumstances, I found as reasonable to make an award of \$40,000.00.

EXEMPLARY DAMAGES

25. Exemplary damages are punitive in nature and so aim to punish or deter a tortfeasor and others from repeating conduct that is oppressive, arbitrary or unconstitutional as done

³³ *Terrell Toney v AG* CV2010-00513

³⁴ *Randy St Rose v AG* CV2009-04756

³⁵ *Baldeosingh Mohammed and ors v AG* CV2006-02222

by servants of the government: **Atain Takitota v AG of Bahamas**³⁶. The seminal authority is **Rookes v Barnard**³⁷ which outlines three categories which will attract such an award. In **Rookes**, Lord Devlin pointed out that exemplary damages are different from ordinary damages and will usually be applied (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. The instant case falls into the first category. Exemplary damages must also be proportionate to the defendant's conduct and not extortionate or unfairly prejudice the defendant³⁸. If in the court's view, the general damages award was insufficient to mark the court's disapproval of the behaviour of agents of the State, then exemplary damages will be awarded. High awards are reserved, usually, for cases where there was a claim for assault and battery. The claimant sought \$60,000.00 in exemplary damages and the defendant suggested an award of \$25,000.00-\$30,000.00. Parties relied on the cases above in addition to **Corneal Thomas Jamol v PC Llewellyn Bethelmy #16347 7 AG**³⁹ where a prosecution without reasonable and probable cause attracted \$20,000.00 in exemplary damages.

26. In arriving at the award, I considered the statement of Lord Nicholls in **Kaddus v Chief Constable of Lecestershire** that, "[T]he availability of 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."⁴⁰ In the instant case, exemplary damages of \$40,000.00 would be given to show this court's distaste for the defendant's behaviour.

³⁶ *Atain Takitota v AG of Bahamas* PC No 71 of 2007 delivered on 18 March 2009; *Quashie v AATT* HC 176/1988

³⁷ *Rookes v Barnard* [1964] 1AER @ 367

³⁸ *Aron Torres v PLIPDECO* (2007) 74 WIR 431

³⁹ *Corneal Thomas Jamol v PC Llewellyn Bethelmy #16347 7 AG* CV2012-05160

⁴⁰ *Kaddus v Chief Constable of Lecestershire* [2001] UKHL 29

SPECIAL DAMAGES

27. The law on special damages is clear, with a claimant being required to plead, particularize and prove his claim. In his statement of case, the claimant sought to recover legal fees of \$7,500.00 for defending the charges brought against him and provided a receipt, which was a legitimate loss that flowed from the tort. He was awarded \$7,500.00.

DISPOSITION

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

- (i) General damages for unlawful arrest, false imprisonment and malicious prosecution inclusive of aggravated damages in the sum of \$285,000.00 with interest at the rate of 2.5% per annum from 07 October 2019 to 13 October 2021.
- (ii) Special damages in the sum of \$7,500.00 with interest at the rate of 1.25% per annum from 29 February 2016 to 13 October 2021.
- (iii) Damages for assault and battery in the sum of \$40,000.00 with interest at the rate of 2.5% per annum from 07 October 2019 to 13 October 2021.
- (iv) Exemplary damages in the sum of \$40,000.00.
- (v) Costs on the prescribed basis in the sum of \$36,269.13.

Martha Alexander

Master of the High Court

**MARTHA ALEXANDER
MASTER OF THE SUPREME COURT OF
TRINIDAD AND TOBAGO**