

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2010-04134**

**BETWEEN**

**PETER DEACON**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

**Before: Master Margaret Y Mohammed**

**Appearances:**

**Ms C Mohan for the Claimant  
Mr N Byam for the Defendant.**

**DECISION-ASSESSMENT OF DAMAGES**

**Introduction**

1. The claimant having obtained judgment on liability against the defendant for damages for malicious prosecution and false imprisonment has place before the court his evidence to determine (a) the measure of damages which he should be awarded for his imprisonment of 225 days and (b) whether the circumstances surrounding his imprisonment support an award of aggravated and/or exemplary damages as pleaded. The issue of liability was not contested by the defendant and permission was granted to the claimant to obtain a

judgment in default of defence. The facts and the evidence at the assessment of damages were uncontested with the claimant alone giving evidence without being cross-examined.

2. For the reasons set out hereafter I have determined that a reasonable award of damages for this claimant is the sum of \$900,000 which includes an element of aggravated damages with interest at 9% per annum from October 13, 2010 to September 26, 2012. I am also of the view that the conduct of the police officers must be condemned and I therefore award the sum of \$10,000 as exemplary damages. The sum of \$35,500 is awarded as special damages with interest at 6% per annum from October 29, 2004 to September 26, 2012. The defendant is also to pay the claimant prescribed cost in the sum of \$60,900 .

**Is the claimant entitled to an award of \$2,000,000 in general damages ?**

3. The Claimant was arrested on the October 29, 2004 for possession of cocaine contrary to the Dangerous Drugs Act at approximately midnight and granted bail on the June 9, 2005, after an application was made to a Judge in Chambers. His total period of detention was 225 days. The charges were dismissed on May 28, 2010 by his Worship Mr Prince making the period of his prosecution a little under 6 years.
4. The factors a court must consider in awarding damages for unlawful detention were stated by Chief Justice de la Bastide in **Josephine Millette v Sherman Mc Nicholls** <sup>1</sup> as:  
  
“ On the other hand it is obvious that one of the factors (and a very important one) to be considered in assessing damages for wrongful imprisonment is that length of imprisonment. That is probably the most important factor but there are others.”
5. Some of the other factors which a court considers were noted by Ventour J in **Steve Dyer v The Attorney General of Trinidad and Tobago** <sup>2</sup> where he said :

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<sup>1</sup> Civ Appeal No 14 of 2000 at page 5

“Some of the other factors are the conditions under which the Claimant was detained, the suffering and distress and the personal humiliation he endured over the period of his unlawful detention. Any form of imprisonment is likely to bring with it some form of suffering and distress.”

6. In paragraph 13 of the claimant’s witness statement he described the conditions in which he was kept at Golden Grove as:

“During the period of imprisonment at Golden Grove, I slept on the floor for eight (8) months. I had no access to a toilet and no clean supply of drinking water. I was placed in a cell with eight (8) hardened criminals. I received exposure to sunlight for one (1) hour once every two (2) days.”

7. In my view the conditions described by the claimant were cramped and filthy and while this claimant has not placed any evidence before the court to describe the impact of such conditions on him it is not unreasonable to assume that for a human being to be subjected to such conditions for a period of 225 days would have caused a high degree of physical and mental anguish and humiliation.

8. But this was not all. Paragraph 6 of the claimant’s witness statement sets out the nature of the arrest:

“ I was consequently arrested in the presence of my neighbours and wife and I was not allowed to change my clothes as I was only wearing a “boxer shorts” at the time.”

9. Paragraphs 8 and 9 set out the events which followed:

“8. One of the police officers then informed me that they were taking me to the San Fernando General Hospital because they believed that I had ingested the alleged drugs.

9. At the San Fernando General Hospital, a doctor refused to see me because of the manner in which I was dressed. Still in handcuffs, I was allowed to a change of clothes

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<sup>2</sup> CV 2007-02202 at para 34

and the doctor then proceeded to address the police officers, informing them that it made no sense to examine me because of the fact that I was still alive at the time. If I had ingested the drugs as alleged, my heart would have stopped from the overdose.”

10. Paragraph 10 of the claimant’s witness statement states the period of imprisonment as :

“ I was arrested on the 29<sup>th</sup> day of October, 2004. On the 9<sup>th</sup> day of June, 2005 I was released on bail which was granted by the High Court one week before the 9<sup>th</sup> day of June , 2005.”

11. Paragraph 19 confirms the period of prosecution as :

“ On the 28<sup>th</sup> day of May, 2010 the matter was dismissed by his Worship, Mr Prince, who was sitting at the San Fernando Magistrate’s Court. A true copy of the extract from the Magistrate’s casebook is hereto attached and annexed as “**P.D.2**”.

12. The aforesaid evidence was unchallenged. In this jurisdiction the awards for damages in claims made for false imprisonment and wrongful arrest have varied depending on the period of imprisonment and the circumstances in which each claimant was kept and treated by the State. In determining the appropriate award of damages I considered the following authorities submitted by the claimant :

**(a) Clement v The Attorney General of Trinidad and Tobago and Ors<sup>3</sup>**

The Claimant was awarded \$50,000 on July 29, 2009 for damages for wrongful arrest and imprisonment for 17 hours as well as including an award for aggravated damages. The police officers invaded the claimant’s home without any legal authority to do so, he was assaulted in the process of resisting arrest and wrongfully charged for attempting to protect the privacy of this home and he was led away from his home without being afforded the opportunity to dress.

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<sup>3</sup> HC 2218/2008

**(b) Chandrardat Soogrim v The Attorney General of Trinidad and Tobago<sup>4</sup>**

The Claimant was detained for 7 ½ hours and claimed for damages for wrongful arrest and false imprisonment as well as for breach of his constitutional right to retain and instruct without delay a legal advisor of his choice and to hold communication with him. General damages were awarded in the sum of \$30,000 on December 17, 2010.

**(d) Dwain Henry v The Attorney General & Ors,<sup>5</sup>** a decision delivered on February 18, 2011 in which the Claimant was awarded \$16,000 as damages for wrongful detention for 4 hours.

**(e) Adesh Maharaj v The Attorney General of Trinidad and Tobago<sup>6</sup>**

The Claimant in this matter was detained for 2 hours and 50 minutes and was awarded \$20,000 on May 13, 2011 for false imprisonment and any distress and inconvenience. Interest was also awarded at the rate of 10% per annum from the date of the filing of the constitutional motion to the date of the judgment and at the rate of 12% per annum from the date of judgment to the date of payment.

**(f) John Henry v The Attorney General of Trinidad and Tobago<sup>7</sup>** the Claimant was awarded \$35,000 as damages, inclusive of aggravated damages, for detention for 34 ½ hours on July 29, 2011.

**(g) Nigel Morales v. The Attorney General of Trinidad and Tobago<sup>8</sup>** a decision delivered on July 29, 2011 in which the Claimant was \$20,000 as damages, inclusive of aggravated damages, for detention for 2 hours.

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<sup>4</sup> HCA 990/05 CV2007-3755

<sup>5</sup> CV 2008-03079

<sup>6</sup> S-788 of 1988

<sup>7</sup> CV 2007-03897 delivered June 29, 2011

<sup>8</sup> CV 2008-02133

**(h) Baptiste and Ors v Bereton and The Attorney General of Trinidad and Tobago<sup>9</sup>**

the second and fourth named Claimants spent approximately 13 days imprisoned and were awarded \$25,000 each on October 13, 2011. Additionally, the third named Claimant, who spent only 1 day imprisoned, was awarded \$15,000 for damages for malicious prosecution.

13. The aforesaid authorities concerned awards made during the period July 2009 to October, 2011. I have noted that there has been no authority in this jurisdiction where a claimant was falsely imprisoned for a period of 225 days and having recognized the absence of such authorities, despite strong protestation from counsel for the claimant, I still afforded counsel for the defendant the opportunity to file submissions to assist the court. None were filed. However, I found the authority of **Dyer v The Attorney General of Trinidad and Tobago<sup>10</sup>** a decision of Ventour J delivered on November 10, 2011 where the period of incarceration was 186 days and the conditions in which the claimant were kept were similar to that of the claimant in the instant case to be instructive.

14. In **Dyer** the claimant was arrested and charged with indecent assault and motor vehicular infringements. On the same day, he was taken before the Magistrate Court in Point Fortin. Some 3 years later, the matters were determined at the Magistrate Court, ordering the claimant to imprisonment with hard labour and the payment of fines. He failed to pay the fines and was taken to the Golden Grove Prison to begin serving the sentence. One year later, he was released with good conduct. The claimant was again arrested one month later and taken before a magistrate with respect to another charge of wounding with intent to do grievous bodily harm. Warrants of commitment were issued with respect to the previous cases and he was re-arrested and imprisoned. The claimant was made to serve additional time in prison of 186 days. The claimant stated that at the Golden Grove Prison, he was locked up in the blue section dorm approximately 60 x 20 feet with approximately 60 people. They each had their own bed but all 60 persons had to share 3 toilets and 4 showers. He had no privacy which was distressing, humiliating

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<sup>9</sup> HCA No. 1842 of 1997

<sup>10</sup> CV.2007-02202 delivered on 10<sup>th</sup> November 2011.

and embarrassing. There were fights among the prisoners because of the cramped conditions and he was assaulted several times. The place was very smelly and filthy. For a period of 186 days unlawful detention Ventour J awarded damages for unlawful arrest and imprisonment in the sum of \$250,000.00 inclusive of aggravated damages and interest at the rate of 6% per annum.

15. The common thread in all the aforesaid authorities is the deplorable conditions of the cells at the police stations, Golden Grove Prison and State Prison where the respective claimants were kept. I do not agree with the premise of a mathematical application of \$1,000 for each hour of wrongful detention as submitted by counsel for the claimant since the circumstances of each case turns on the evidence placed before the court. In this case from the evidence I consider an appropriate award to be \$900,000 to include aggravated damages for the claimant's false imprisonment and malicious prosecution having regard to:

- (a) The claimant was humiliated in front of his family and his neighbours. He was led away from his home in his underpants without being afforded the opportunity to dress. This was not the extent of his humiliation. He was taken in his underpants to the San Fernando General Hospital, a public health institution to be examined by a medical doctor who refused to see him in his underpants. It was only then the claimant was allowed to dress. I consider the failure to allow the claimant to dress to be wholly unnecessary.
- (b) The claimant was charged and prosecuted for a little under 6 years for a relatively simple offence for which no evidence was found by the police since they failed to search his home and failed to obtain any evidence from the hospital that he had ingested the cocaine and consequently in possession of cocaine.
- (c) The claimant was detained for a very lengthy period of 225 days in deplorable conditions. This was completely unacceptable.

- (d) The claimant lost his income which adversely affected his family financially. His wife was forced to seek employment since the claimant was the sole breadwinner.
- (e) The claimant was unable to see his sons (aged 3 and 4 years) which strained his relationship between him as a father and sons.
- (f) The lengthy period of imprisonment and prosecution must have tarnished his name in his neighbourhood.

**Should the claimant be awarded exemplary damages?**

16. This is an appropriate case for an award of exemplary damages to be made and I award the sum of \$10,000 as exemplary damages. In **Rookes v Barnard**<sup>11</sup> a court may awarded exemplary damages if :

- (a) There is oppressive, arbitrary or unconstitutional action by the servants of the State;
- (b) Where the defendant's conduct has been calculated to make a profit for himself; or
- (c) Where expressly authorized by statute.

17. When the evidence is examined the conduct of the arresting police officers warrant an award of exemplary damages. Paragraphs 8 and 9 of the claimant's witness statement quoted above indicate that the officers had no evidence that the claimant had ingested any drugs. Paragraph 11 of the said witness statement stated:

“No search was conducted at my house before I was charged, nor was I medically examined”.

18. It is clear to me that the officers had no reasonable cause to arrest the claimant for possession of cocaine and their actions to pursue the charges for 4 ½ years must constitute an oppressive act.

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<sup>11</sup> (1964) AC 1129



### **Has the claimant proven his special damages?**

19. I am satisfied that the claimant has proven his special damages in the sum of \$ 5,500 for legal fees and \$30,000 for loss of earning. The claimant has pleaded the sum of \$5,500 as legal fees and loss of earnings of \$1,800 per week for 32 weeks in the sum of \$57,600.00. The claimant was not able to produce any bills from his attorney who represented him at the Magistrate's court since he has misplaced them and his attorney has died. In **Ramnarine Singh and anor v The Great Northern Insurance Company Limited and Johnson Ansola**<sup>12</sup> Mendonca JA stated at paragraph 97 that:

“ From these cases it seems clear that the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff's claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reasons.”

20. It was not disputed that the claimant made several appearances before a Magistrate and before a Judge in Chamber for his bail application. At paragraph 18 of the claimant's witness statement the claimant explained his challenge for failing to provide his receipts for this expense as :

“ I also incurred legal expense for my High Court bail application and for each court appearance, in the amount of \$5,500. I misplaced my receipts for the legal fees. Mr Ian Anthony Grey was my previous Attorney at law and I have since tried to obtain copies of the receipts from his office, but was informed that since Mr Grey has died, they no longer have access to his receipts books”.

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<sup>12</sup> Civ Appeal No 169 of 2008 and Civ Appeal 121 of 2008

21. In this case the claimant's evidence is not open to criticism. He explained that he had receipts which he misplaced and that he even attempted to get copies from his former attorney who had died and he was unsuccessful. I have no reason to doubt the claimant. I award the sum of \$5,500 as legal fees.

22. In support of his claim for loss of earnings during his period of detention the claimant's testify at paragraph 15 of his witness statement :

“During this period of imprisonment, I lost income for thirty two (32) weeks at \$1,800 per week. I was employed by Mr Obadiah Asher to assist in the construction of his house. I was employed at the rate of \$300 per day for six (6) days per week. A true copy of the letter effecting same is hereto attached and annexed as “**P. D. 1.**”

23. Mr Asher was not called to corroborate the claimant's evidence and I consider the attachment P.D. 1 to be hearsay in the absence of any hearsay notice .However, I accept that the claimant was employed as a labourer at the time of his arrest and as a result of his detention he was deprived of his ability to earn an income during this period. I have no hesitation in making an award for loss of earnings for the period of the claimant's detention. However, taking into account public holidays, the intervening Christmas, Carnival and Easter period I am of the view that a sum of \$200 per day for 6 days per week for 25 weeks is a more appropriate award. I award the sum of \$30,000.

### **Order**

24. The claimant is awarded the following :

- (a) The sum of \$ 35,500 as special damages with interest at the rate of 6 % per annum from October 29, 2004 to September 26, 2012.
- (b) The sum of \$900,000 as general damages which includes aggravated damages with interest at the rate of 9 % per annum from October 13, 2010 to September 26, 2012.
- (c) Exemplary damages in the sum of \$ 10,000.

(d) Prescribed costs in the sum of \$67,258.92.

Dated this 26<sup>th</sup> day of September, 2012

Margaret Y Mohammed  
Master (Ag)