

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2009-3303

Between

WENDELL BECKLES

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

JOHN ROUGIER

THE COMMISSIONER OF PRISONS

Second Defendant

\*\*\*\*\*

Before Master Patricia Sobion Awai

Appearances:-

*Mr Mark Seepersad for the Claimant*

*Mr Duncan Byam for the First Defendant.*

## REASONS

### BACKGROUND

1. This is a rehearing of an assessment of damages by order of the Court of Appeal dated May 4, 2016.
2. The unfortunate circumstances of the case were captured in the opening paragraphs of the previous assessment judgment dated May 22, 2012 which for convenience is reproduced below.

*1. This is a case without precedent. The circumstances which gave rise to it are deeply disturbing. The claimant needlessly spent just short of eight years of his life at the Remand Yard, Golden Grove Prison, deprived of his liberty without justification. This was not a case of wrongful conviction, or of incarceration following a judicial order that was subsequently overturned for some reason. It was an unlawful incarceration that 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 the claimant was literally as we say "lost in jail".*

2. *It seems no one in charge asked the obvious question, when is Beckles going back before a magistrate or a judge or simply why is he still here. The claimant said he himself told the officers at the remand yard that he had been discharged by the magistrate. It does not appear that anyone checked his assertion for almost eight years. He, perhaps doubting himself and his recollection and understanding of what happened before the magistrate, asked on several occasions when he was next due to return to court. Again no one took his query seriously enough to check, for almost eight years.*
  
3. *As a result of this unconcern, the claimant remained in custody until an application for habeas corpus was filed on his behalf. When this claim for damages for false imprisonment followed, the state neglected to put in a defence. Judgment in default was entered. That notwithstanding, because of indications given at the early procedural hearings, the State was allowed to rely on the Statute of Limitations on the assessment of damages.*

### **UNDISPUTED FACTS**

3. The particulars of the unlawful imprisonment of the claimant as set out in paragraph 3 of the Statement of case are not in dispute.

#### *Particulars*

a) *The (Claimant) having been charged with the offence of arson in 1999 was committed to stand trial at the High Court on the 8th February, 2000. The Claimant remained incarcerated awaiting trial before the High Court.*

b) *In 2001 the Director of Public Prosecutions referred the Claimant's matter back to the Magistrates Court for the taking of further evidence.*

c) *On 18th December, 2001 the Learned Magistrate Her Worship Gail Gonzales discharged the Claimant, as accused on said charge of arson.*

d) *The Claimant remained at the Golden Grove Prison from 18th December, 2001 until 8th September 2009, without any lawful justification for same. On said date the Claimant was released by the First Defendant.*

## **THE EVIDENCE**

4. The claimant gave evidence through his witness statement filed on December 2, 2016 and he was not cross examined.
5. The only other evidence was a letter dated September 7, 2009 from the Clerk to the Peace, Port of Spain to The Commissioner of Prisons with a copy of the Magistrate's Court Extract attached, which was admitted into evidence by consent.
6. The claimant's evidence was as follows.
7. The claimant understood that he was discharged by the Magistrate on December 18, 2001 and he told the police that he had been freed. However, the police took him downstairs and informed him that he had to go back to the jail. At the jail, the claimant told the officers that he had been released by the magistrate but he was told that he had to return to his cell.
8. The claimant waited in jail for his name to be called to be given his next court date, but this never came. He kept telling the officers that he had been discharged but no one paid him any attention.

9. After a while, the claimant began to get scared frustrated and confused, questioning whether he had really heard the magistrate correctly. Some officers started to tell the claimant that he was a mad man and this led to inmates coming around him and interfering with him. The claimant got into many fights while in jail because he felt inmates were trying to take advantage of him. He used to keep to away from other inmates to avoid the fighting. The prison officers themselves never hit or beat him and he said he had no problem with them.
  
10. The claimant's parents never visited him in prison and he believed it was because they did not want to see him and just decided to leave there.
  
11. After a while in prison, he began to suffer from depression and he remained in his cell and did not take airing. He was put in a "mad man cell" alone. At first he did not mind being alone but it eventually affected him. He started to believe he might never get out of jail and he would die there. He felt like everyone abandoned him without reason, and would spend many nights wanting to cry.

12. He recalled his Golden Grove remand cell as being the worst he was ever in. He shared a 10 x 10 feet cell with up to 12 men. The cell was dark, damp and smelly. The men slept on either foul smelling carpet or cold hard concrete. There was no toilet, no water and no light in the cells. The cells were hot and stuffy and the claimant, who suffered from asthma, started to wheeze while in jail.
13. When he was put in the "mad man cell", the conditions were even worse because inmates would pelt excrement mess in the corridor and spit on one another. He was kept there for most of the 8 years that he was imprisoned.
14. In the Port of Spain jail where he was first kept, the cell was even smaller measuring about 8 x 8 feet but there were fewer inmates in the cell. The conditions were similar to Golden Grove.
15. Before he was imprisoned, the claimant worked for contractors as an electrician. At one time he worked on a CLICO building on St Vincent Street for which he was paid \$150 daily. Around the time of his arrest, work had slowed down and he worked for only two weeks in each month. He was mainly paid in cash and so he had no pay slips. In any case, he

had lost all his documents while he was locked up. He asserted that he could no longer work because he was diagnosed with a heart condition upon leaving prison. He lived on public assistance.

16. The claimant felt bad when people looked at him and talked about how he was in jail for so long. People did not believe that he was in jail for so long and had never been convicted of anything.

#### **THE LIMITATION ISSUE**

17. Before me, the claimant raised the issue whether the defendant, not having filed a defence, could rely on the limitation period to limit its liability for the claimant's false imprisonment to a period of 4 years prior to the date of filing the claim.
18. This issue was determined by order of the docketed judge made on October 4, 2010 by which the State was allowed to rely on the Limitation period of four years.
19. In a written decision dated October 20, 2010, the judge outlined the context in which the issue was determined. The Defendant had raised the limitation issue at a hearing of its application



for an extension of time to file a defence, which was heard simultaneously with the Claimant's application seeking to enter a judgment in default of defence. Leave was granted to the claimant to enter judgment while the limitation issue was deferred for further consideration. Thereafter the assessment proceeded before the learned judge on the basis of a 4 year period of unlawful detention, the statutory limitation having been applied.

20. There was no appeal from the limitation order and in my view that order remained binding on the parties at the assessment before me.

21. Further I noted that the claimant appealed the decision of the judge contained in the order made on March 22, 2012 i.e. the assessment order. The order of the Court of Appeal dated May 4, 2016 set aside the order of May (sic) 22, 2012 and remitted the assessment for rehearing before a Master. The Court of Appeal's order did not touch and concern the order dated October 4, 2010 i.e. the limitation order.

22. In all the circumstances, I declined to reconsider the limitation issue raised by the claimant since the matter was already determined by the judge who

had conduct of the matter and the order made on October 4, 2010 was binding on both parties.

## **THE LAW**

### *Measure of damages*

23. Mc Gregor on Damages 15th at paragraph 1619 defines the measure of damages for false imprisonment to include the following:

- i. Injury to liberty i.e. loss of time considered primarily from a non-pecuniary viewpoint
- ii. Injury to feelings i.e. the indignity, mental suffering, disgrace and humiliation and loss of social status
- iii. Physical injury, illness or discomfort or effect on health
- iv. Pecuniary loss.

### *Damage to reputation*

24. Re damage to reputation, the dictum in **Terrence Calix v the Attorney General of Trinidad and Tobago**

[2013] UKPC 15 is instructive:

*"... lowly status should (not) of itself diminish the compensation that someone should receive". While the damage of reputation to a popular public figure might be more significant, it "does not mean that the less well-known or well-regarded person will suffer no*

*reputational damage if subject to malicious prosecution”.*

This principle is of equal application to damage to reputation consequent on unlawful imprisonment.

*Are awards in constitutional cases relevant to tort cases?*

25. In **Subiah v Attorney General** [2008] UKPC 47, Lord Bingham of Cornhill explained that in constitutional cases, a victim would be compensated using ordinary principles. At paragraph 11 he said:

*“Those who suffer violations of their constitutional rights may apply to the court for redress.... Such redress may, in some cases, be afforded by public recognition of the constitutional right and its violation. But ordinarily,.....constitutional redress will include an award of damages to compensate the victim. Such compensation will 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 ask itself whether an additional award should*

*be made to vindicate the victim's constitutional right."*

Thus, awards made in constitutional matters are relevant to awards in comparable tort cases since awards in both cases are determined on the basis of ordinary principles.

### **ANALYSIS OF THE EVIDENCE**

#### *Loss of Liberty*

26. Based on the upholding of the limitation period, the duration of loss of liberty for which the claimant must be compensated is 4 years i.e. from September 8, 2005 to Sept 8, 2009.

27. The claimant's initial arrest and detention in 1999 on an arson charge was lawful. The unlawful detention commenced on December 18, 2001 when he was discharged by the Magistrate. However as noted before, the claimant will not be compensated for the period from December 18, 2001 to September 7, 2005 because the statutory limitation period was upheld.

#### *Indignity and mental suffering*

28. There can be no doubt that the claimant suffered mental distress and indignity during his

incarceration. He felt scared, frustrated and confused knowing he had been discharged by the magistrate but not been released from prison. He was kept in dark, damp and filthy conditions in overcrowded cells. He was called a madman and placed in solitary confinement. Inmates tried to take advantage of him and he had frequent fights with them. He felt abandoned and depressed. This continued for 4 years before he was released as a result of habeas corpus proceedings brought on his behalf.

*Loss of reputation*

29. The claimant's reputation has been adversely affected by his lengthy incarceration. People do not believe that he had no conviction. He was affected when people looked at him and talked about him. Even though he might not be a well known person, he was entitled to receive compensation for reputational damage: **Terrence Calix v the Attorney General of Trinidad and Tobago** supra.

*Ill health*

30. The claimant, an asthma sufferer, used to wheeze as a result of the stuffy conditions in jail. I accepted this unchallenged evidence particularly since the claimant would have been hardpressed to

produce medical reports in support due to his incarceration.

31. The claimant also stated that since his release he was diagnosed with a heart condition. He produced no medical reports and no nexus was established between the heart condition and his incarceration. I therefore did not take account of this condition in assessing the claimant's damages.

*Loss of earnings*

32. The claimant worked as an electrician for \$150.00 per day. At the time of his arrest, he estimated that he worked about half of each month. No documents were produced because he received no pay slips and other documents were lost.
33. While I found the claimant's evidence to be credible and it was unchallenged, I took into account that the claimant was in lawful custody from 1999 and the unlawful imprisonment for which the defendant is liable commenced in September 2005.
34. Bearing in mind that loss of earnings is a claim in special damages, I found that the evidence of such loss did not meet the required level of proof since

it could not be said therefore that the claimant was deprived of his employment by reason of the unlawful detention. In fact, the unlawful detention occurred some 6 years after he last worked.

#### *Aggravating factors*

35. Some aggravating factors in this case were:

- the filthy and overcrowded prison conditions
- the claimant's long periods in solitary confinement
- prison officers dubbing the claimant a mad man
- prison officers for years ignoring his pleas that the magistrate had freed him
- treatment by other inmates who threatened him and picked on him
- the stuffy cell caused him to wheeze due to his asthmatic condition.

#### **GENERAL DAMAGES**

36. In determining the appropriate level of award, it is useful to examine similar cases from this jurisdiction. I did not limit myself to cases of false imprisonment but also considered constitutional matters involving unlawful detention since the compensation must be determined on the same principles: **Subiah v Attorney General** supra.

37. The claimant relied in particular on 3 cases, namely

**Stephen Seemungal v Attorney General** CV2009-894

**Kedar Maharaj v Attorney General** CV2009-1832

**Ulric Merrick v Attorney General** CA146of 2009.

In those cases the periods of detention ranged from 12 days to 36 days and the awards for general damages ranged from \$100,000.00 to \$280,000.00.

38. Apart from the above cases, I also considered the following cases in which claimants endured longer periods of incarceration:

**AG v Selwyn Dillon** CA 245 of 2012

The claimant remained unlawfully incarcerated for 20 years. His constitutional rights to due process and protection of laws were breached for the entire period of incarceration. He was placed in an absolutely inappropriate place during his detention, namely Carrera Island Prison and he never received any treatment or care as a mentally ill person nor did he ever benefit from any case or detention review assessments/evaluations.

He was awarded \$2,500,000.00 in compensatory damages for inconvenience, distress and suffering



and an additional \$200,000.00 to vindicate his constitutional rights.

I noted that the period of detention in this case far exceeds the claimant's detention in the present case.

**Mukesh Maharaj v Attorney General** Civ App 118 of 2010

Following a trial for murder, 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 some 5 years after his guilty plea and a tribunal recommended his release in 2004. He was eventually released in 2009, 5 years later. On appeal, the claimant was awarded \$450,000.00 in 2015 for deprivation of liberty. No vindicatory damages were awarded by the Court of Appeal.

39. Although the period of unlawful detention was similar to the present case, there was considerable evidence in this case of inhumane prison conditions, taunts by officers, fights with inmates, feelings of abandonment and distress and

fears that he would die in prison. In the **Mukesh Maraj** case no such evidence was led.

40. In all the circumstances, I considered the sum of \$800,000.00 to be a fair award for general damages (inclusive of aggravated damages) in this case.

#### **SPECIAL DAMAGES**

41. As noted above, I found that there was inadequate proof of loss of income resulting from the claimant's unlawful incarceration from 2005. Therefore the claim for loss of earnings was not upheld.

#### **EXEMPLARY DAMAGES**

42. In the well-known case of **Rooks v Bernard** [1964] AC 1129, it was stated that exemplary damages could be awarded where government servants have committed oppressive, arbitrary or unconstitutional acts.

43. The first question was whether in this case there was any justification for an award of exemplary damages. This was beyond question a most egregious case of neglect and carelessness by prison authorities with dire consequences for the victim who was robbed of 4 years and more of his life. It was incumbent on the court to strongly express its

condemnation of such administrative incompetence with a substantial award of exemplary damages.

44. The second question was to determine what sum would be appropriate. The case of **Aaron Torres** Civ App No 84 of 2005 provided some guidance on this issue. The court at paragraph 56 stressed that "restraint must be exercised in the assessment" and the award must be rational and proportional. Some factors identified by the court at paragraph 57 were: (a) blameworthiness, (b) degree of vulnerability (c) need for deterrence (d) other penalties inflicted or likely to be inflicted on the defendant for the same conduct (e) wrongful advantage gained by the defendant.

45. Bearing in mind in particular the degree of vulnerability of the claimant and the high need for deterrence, I considered that an award of exemplary damages of \$100,000 to be appropriate.

#### **INTEREST**

46. The claimant submitted that 2.5% per annum on general damages was appropriate. I allowed interest at that rate in light of recent case law in this jurisdiction, including **Fitzroy Brown v the Attorney General** CA251 of 2012.

**THE ORDER**

47. The court made the following order:

- 1) The first defendant shall pay the claimant general damages assessed in the sum of \$800,000.00 with interest at the rate of 2.5% per annum from September 11, 2009 to April 27, 2018.
- 2) The first defendant shall pay the claimant exemplary damages in the sum of \$100,000.00
- 3) The first defendant shall pay the claimant costs on the prescribed scale.

**Dated this 5th day of September, 2018**

**Master P. Sobion Awai**