

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011-00312

BETWEEN

CURTIS BARKER
JASON TITUS

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

DECISION

Before Master Patricia Sobion Awai

Appearances:-

*Mr. Campbell and Mr. R. Persad instructed by Mr. A. Rampersad
for the Claimants*

*Mr. Byam and Mr. Isaac instructed by Mr. James for the
Defendant.*

BACKGROUND

1. In May and June 1994, Curtis Barker and Jason Titus (the Claimants) were arrested by police officers and charged with six offences including receiving stolen property i.e. a motor vehicle, shooting at a police officer and other firearm offences. A preliminary enquiry was heard before a Magistrate from June 3, 1994 to November 29, 1995 including some 55 appearances. At the conclusion of the preliminary enquiry, the Claimants were committed to stand trial in the Assizes.
2. On February 1, 1999, the State filed an indictment against the Claimants. The matter was heard in the Assizes on March 8, 1999 and the Claimants were found guilty on March 16, 1999. Both Claimants were sentenced to 7 years hard labour.
3. On October 5, 2001, the Court of Appeal quashed the convictions and sentences.
4. Barker remained in custody from May 9, 1994 until October 5, 2001, a period of 7 years and 5 months. Titus was in custody from June 2, 1994 for 14 months, a period of 1 year and 2 months until he was released on bail. He was also in custody from March 8, 1999 to October 5, 2001, a period of 2 years and 7 months. Titus' total time in custody was 3 years and 9 months.
5. The Third Defendant is the Attorney General of Trinidad and Tobago who was sued pursuant to the State Liability and Proceedings Act Chapter 8:02 for the acts of the First and Second Defendants who were police officers. The claim was withdrawn against those defendants.

THE ASSESSMENT

6. The claim as set out in the statement of claim filed on October 18, 2006 was for damages for false imprisonment and malicious prosecution.

7. The Claimants obtained judgment on liability against the Third Defendant on June 21, 2012 with damages to be assessed by a Master.
8. Both Claimants sought Special Damages as follows:

Re the First Claimant:

Loss of earnings from May 10, 1994 to October 5, 2001
@ \$480.00 weekly - \$181,920.00

Defence at Magistrate's court - \$10,500.00

Loss of footwear material - \$2,100.00

Re the Second Claimant:

Loss of earnings from June 3, 1994 for 14 months at
\$1,500 weekly - \$84,000

Loss of earnings from March 8, 1999 to October 5, 2001
@ \$1,500.00 weekly - \$192,000.00

Defence at Magistrate's court - \$16,000.00

Defence at Assizes - \$25,000.00

Transportation 6 times at \$20 each - \$120.00

9. No exemplary damages were claimed.

THE EVIDENCE

10. The witnesses who gave evidence at the assessment on behalf of the Claimants were as follows:
 - (a) **Curtis Barker**
 - (b) **Hendrick Lewis**
 - (c) **Jason Titus**
 - (d) **Nandlal Soogrim.**
11. All witnesses were cross examined by attorney for the Third Defendant.

12. No witnesses were called to give evidence by the Third Defendant.

MEASURE OF DAMAGES

13. Mc Gregor on Damages 15th ed. at paragraph 1619 sets out the components of an award of damages in false imprisonment cases:

"[False imprisonment] is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. 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 the attendant loss of social status."

14. With respect to damages for malicious prosecution, Mc Gregor on Damages 15th ed. at paragraph 1629 reads as follows:

"The principal head of damage here is to the fair fame of the plaintiff, the injury to his reputation. In addition, it would seem that he would recover for the injury to his feelings, i.e. for the indignity, humiliation and disgrace caused to him by the fact of the charge being preferred against him. No breakdown however appears in the cases. Holt CJ's second head was the damage of being put in danger of losing one's life, limb or liberty. If therefore there has been an arrest, and imprisonment up to the hearing of the case, damages in respect thereof should also be included and would be the same as would be recoverable in an action for false imprisonment."

15. In Saville v Roberts (1698) 5 Modern reports 405 the court dealt with the measure of damages for malicious prosecution in the following terms:

"There are three sorts of damages to a plaintiff any one of which is sufficient to support an action for

malicious prosecution: first damage to a man's fame, as if the matter whereof he is accused be scandalous. Secondly, such as are due to his person; as where a man is put in danger to lose his life, limb or liberty. Thirdly damage to a man's property as where he is forced to expend his money in necessary charges to acquit himself of the crime of which he is accused."

NOMINAL DAMAGES

16. In the House of Lords decision in Mediana (Owners) v Comet (Owners) [1900] AER 126 at page 128 Earl of Halsbury LC defined nominal damages as follows:

"The term "nominal damages" is a technical one which negatives any real damage, and means nothing more than that a legal right has been infringed in respect of which a man is entitled to judgment."

17. The Third Defendant submitted that the Claimants should be awarded nominal damages only because (a) a claimant who is believed to be guilty is not entitled to more than a bare verdict: Clerk and Lindsell on Torts 18th ed. at paragraph 16-35 and (b) the failure to add include an alternative charge did not result in damage to the Claimants.

18. The basis of this submission lies in statements made by the Court of Appeal at the hearing of the criminal appeal against the Claimants' convictions. The Court emphasized the importance of charging a defendant with the right offences. At page 5 of the judgment, de la Bastide CJ said:

"As Lord Goddard commented in the Seymour case, it is unfortunate that guilty persons should go free because of the failure to charge them with the right offence, but there is no alternative. Not only is it necessary to ensure that a person has been convicted of the right offence, but it is necessary to provide against the possibility of his having been convicted of the wrong one. What I mean is that whenever the evidence

may lead either to a conviction for receiving or to a conviction for some other offence, then both offences, receiving and the other offence, should be charged. It should then be left to the jury to decide which of these offences, if either, the accused is guilty of. In our jurisdiction, it is particularly important that this alternative be offered, as peculiarly the penalty for receiving under our law is heavier than the penalty for simple larceny."

19. The court went further to suggest that the Claimants would probably have been convicted of the alternative offence in the following statement at page 11 of the judgment:

"They are very fortunate men. The outcome is not by any means an indication of their innocence, but rather an indication that they have had the good fortune of being tried on an indictment which did not contain a count charging the offence of which they would probably have been convicted."

20. These statements from the Court of Appeal signify that the conviction for receiving the stolen vehicle was unsafe because the evidence supported an alternative charge of robbery, which was not put to the jury. Further, had that alternative charge also been put, the Claimants would probably have been convicted.

21. In Clerk and Lindsell on Tort 15th ed. at paragraph 18-32, the authors briefly discussed the position in cases, such as the present one, when the prosecution resulted in a conviction at first instance, which was quashed on appeal. The authors opined as follows:

"There has been some difficulty in cases where the prosecution resulted in a conviction at first instance which was quashed on appeal. The better opinion is that this will be considered in the light of all the facts in determining whether there was reasonable and probable cause, and the fact that the first tribunal convicted will not settle as a matter of law that

there was reasonable and probable cause for the prosecution."

22. In my opinion, the Claimants in this case did not obtain a "bare verdict" insofar as liability for malicious prosecution is concerned. This was not a case where the Claimants were properly found guilty but the prosecutor at the time he prosecuted did not have grounds for belief in their guilt. This in fact is a case where the Court of Appeal overturned the convictions on the ground that they were unsafe.
23. Apart from the failure to charge the Claimants with the alternative offence of robbery, there were other grounds for deeming the convictions unsafe. For instance in relation to the charge of shooting with intent, the Court at page 8 of the judgment held as follows:

"We cannot say that if proper directions had been given and the jury's attention had been directed to the evidence and the possible inferences that might have been drawn from it, with regard to intention, they would have inevitably come to the same conclusion, namely that Baker was guilty of shooting with intent."

24. Additionally it was open to the Third Defendant to argue at the liability stage that there was reasonable and probable cause for prosecuting the Claimants. Having consented to judgment on liability, it is not now appropriate to raise this issue.

RELEVANT CONSIDERATIONS IN DETERMINING QUANTUM

25. I now proceed to consider what quantum of award is appropriate for malicious prosecution and false imprisonment in the circumstances of this case.
26. No separate award will be made for false imprisonment because the Claimants' full period of incarceration must to be taken into account in relation to the malicious

prosecution claim. In malicious prosecution the intervening act of a judicial officer will not preclude recovery of damages whereas it does in the case of false imprisonment. This position was recently endorsed by the Privy Council in Terrance Calix v Attorney General [2013] UKPC 15 where their Lordships opined as follows:

"In any event, although a judicial act precludes liability in false imprisonment, it does not relieve the prosecutor of liability for malicious prosecution."

27. Some of the factors considered in assessing damages were the duration of the detention, conditions of incarceration, the nature of the charges, the duration of the preliminary enquiry, pecuniary expenses incurred and loss of reputation.

Detention of the First Claimant

28. Barker was incarcerated for approximately 7 years and 5 months.
29. He was housed in a prison cell measuring 6 feet by 10 feet which held as many as 20 persons. He slept on cold concrete or used cardboard, which was uncomfortable and mats. At night he used a bucket to urinate or when that was not available he used the ground. He defecated on newspapers. He was unable to sleep because of the crowded condition of the cell and poor ventilation. In the initial period of his incarceration, his inability to sleep was also due to sexual advances made towards him. He described the meals as terrible. Further, he was a vegetarian and was unable to eat many of the meals offered. The food was infested with bugs and other foreign matter. There were lice and cockroaches in the cell. He had one hour of airing each day.
30. Barker suffered a mental breakdown and spent 3 months at St Ann's Mental Hospital. His condition worsened on hearing of his son's death. He described his years in prison as "a

real hell" aggravated by the knowledge that he was innocently locked up and convicted.

Detention of the Second Claimant

31. Titus was incarcerated for 2 separate periods totaling 3 years and 9 months.
32. In prison, he was placed in overcrowded cells and had to sleep on cardboard or a piece of carpet. There were as many as 15 persons in a small cell measuring 6 feet by 12 feet. He was allowed one hour "airing" time during which he went outside and breathed in some fresh air and exercised his legs. Like Barker, he had difficulty sleeping at nights due to conditions in his cell including crowding, poor ventilation, foul odours and sexual advances made towards him by a few of the prisoners.

The Prosecution

33. The Claimants were charged with receiving stolen property, namely, a motor vehicle, shooting at a police officer and other firearm offences. There were six charges in all.
34. The cases were called over 55 times before the Magistrate between June 3, 1994 and November 29, 1995. The Magistrate committed both Claimants to stand trial on all six charges.
35. An indictment was laid on February 1, 1999 and the trial commenced before a jury on March 8, 1999. The Claimants were found guilty of the six charges and were sentenced to 7 years imprisonment.
36. The Claimants appealed and their appeal was upheld on October 5, 2001.
37. In summary, the prosecution, which eventually resulted in the Claimants' favour, lasted from June 3, 1994 to October 5, 2001, a period of 7 years and 4 months and involved three levels of court - the Magistracy, the High Court and the Court of Appeal. The offences for which the Claimants

were charged were of a serious nature. However there was no indication that the prosecution of the Claimants received any publicity.

Loss of reputation

38. Damage to fair fame and loss of reputation are important components in an award of damages for malicious prosecution.

39. In Terrance Calix v The Attorney General [2013] UKPC 15 at paragraph 16 the court held dealt with issues which impact reputation such as seriousness of the offence, publicity and good character as follows:

"16. Considering the judge's assessment of damage to reputation as a whole, the Board has concluded that his failure to advert directly to the fact that the appellant had a good character and that the malicious prosecution in respect of a very serious offence led him to underestimate the significance of this aspect of the appellant's claim. As the authors of Clayton and Tomlinson on Civil Actions against the Police, 3rd ed (2004), observe at para 14-064:

"The seriousness of the offence for which the claimant was prosecuted should be considered. The more serious the offence, the greater the damage to the claimant's reputation. Thus, for example, accusations such as dishonesty or sexual misconduct will cause more damage than accusations of minor public order offences or assaults. A money figure should be placed on this 'reputation damage'. The award should be increased if the prosecution received wide publicity."

and

"The claimant's reputation should then be considered. If he is of good character then the 'loss of reputation' sum should not be reduced. If, on the other hand, he has previous convictions then there will be reductions in his 'loss of reputation' damages."

40. While in Terrance Calix supra the Privy Council viewed the appellant's acquittal on a robbery charge as "a complete vindication of his innocence" holding that the appellant was therefore entitled to be compensated "on the basis that he was of unblemished reputation when he was prosecuted for rape", the circumstances of this case are somewhat different.
41. In the instant case, the Court of Appeal in a passage quoted above, indicated that the outcome of the appeal did not reflect the Claimants' innocence by any means. The learned Chief Justice expressed the view that had the alternative charge been laid the Claimants would probably have been convicted. This opinion ought not to be taken lightly coming as it did from the Court of Appeal, which had access to all the evidence from the lower court and which in the course of exercising its powers of review, was eminently positioned to form a reasoned opinion on the matter.
42. In effect, notwithstanding the eventual quashing of their convictions and sentences, the Claimants are not entitled to be compensated on the basis that they are of unblemished reputation. Accordingly a reduction will be made to the award in each case.

ASSESSMENTS INVOLVING LENGTHY DETENTIONS

43. In Josephine Millette v Mc Nicholls (2000) 60 WIR 362, the court provided guidance in assessing damages involving lengthy detentions. At page 367 de la Bastide CJ said:

"It is important, however, that judges approach the assessment of damages in cases like this in the round. I do not think that one can divide the award strictly into different compartments, one for initial shock, another for the length of the imprisonment and so on. All factors have to be taken into account and an appropriate figure arrived at."

The plaintiff who was detained for 132 days was awarded damages in the sum of \$145,000.

44. Other cases considered were:

Anthony Sorzano and Steve Mitchell v AG CA 101 of 2002

Robert Naidike v AG CA 86 of 2007

Peter Deacon v AG CV2010-4134

Wendell Beckles v AG CV2009-3303

Mark Blake v AG CV2010-3388.

GENERAL DAMAGES

45. The Claimants' loss of freedom with the resultant inconvenience and distress as detailed above can never be fully compensated for in money. They have gone through the judicial system and at the end of the day they have no conviction recorded against them in relation to the charges brought against them. However as discussed above, the reputation of the Claimants was brought into question by the Court of Appeal judgment.

46. In all the circumstances and looking at the matter in the round, I think that a fair award for the First Claimant is \$1,100,000.00 which includes aggravated damages and interest and for the Second Claimant is \$650,00.00 inclusive of aggravated damages and interest.

SPECIAL DAMAGES

47. The general rule is that special damages must be specially pleaded and strictly proved.

48. This principle does not mean that where there is only viva voce evidence in support of special damages, the claim must necessarily be rejected. In Ramnarine Singh and ors v. John Ansola, CA169/2008 Mendonca JA said:

"From these cases it is clear that the absence of evidence to support a plaintiff's viva voce evidence of special damages 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 case on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for the 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 reason."

The First Claimant

49. The First Claimant's special damages are considered below.

Loss of earnings

Apart from Barker's own evidence, this claim was supported by the evidence of Henrick Lewis, his former employer. His earnings were confirmed as \$480.00 a week. This claim was allowed in the sum of \$181,920.00 as claimed.

Defence at Magistrate's court

Barker was represented by Mr. Rambachan at the Magistrate's court. Although no invoice or receipt was produced, the evidence was unchallenged and the sum claimed was reasonable. This claim was allowed in the sum of \$10,500.00.

Loss of footwear material

The evidence in support of this claim was that Barker had stored footwear material at his home which was stolen when he was imprisoned. I am of the view that this claim was not proved and the loss is too remote. It was not allowed.

50. Total special damages for the First Claimant are assessed in the sum of \$192,420.00.

The Second Claimant

51. The Second Claimant's special damages are considered below.

Loss of earnings from June 3 1994 for 14 months

At paragraph 8 of his witness statement, Titus said he was working with KGC at the time of his arrest i.e. June 3, 1994 as a result of which he lost earnings. The witness Nandlal Soogrim who was a manager of the said company said that in March 1999 Titus worked at the said company. He did not say that Titus worked with the company in 1994 at the time he was first arrested. I do not accept Titus' evidence that he worked with the company in 1994 as it is not supported by the representative of his purported employer. This claim is not allowed.

Loss of earnings from March 8, 1999 to October 5, 2001

Based on Titus' evidence as supported by the evidence of Nandlal Soogrim, this claim is allowed in the sum of \$192,000.00.

Defence at Magistrate's court

Based on Titus' evidence, this claim is allowed in the sum of \$16,000.00.

Defence at the Assizes

Based on Titus' evidence, this claim is allowed in the sum of \$25,000.00.

Transportation

Based on Titus' evidence, this claim is allowed in the sum of \$120.00.

52. Total special damages for the Second Claimant are assessed in the sum of \$233,120.00.

EXEMPLARY DAMAGES

53. No claim has been made for exemplary damages and no award has therefore been made under this head.

INTEREST

54. In *Mc Gregor on Damages* 15th ed, the authors considered the question of interest in torts affecting the person at paragraphs 597 and 598 as follows:

*"Accordingly, interest can have no relevance where monetary damages are being awarded not as a replacement for other money but as representing the best that the law can do in the face of incommensurable loss which is not truly calculable in money. It is accepted that any award for pain and suffering and loss of amenities must be in the nature of a conventional sum, and to award interest on such a conventional sum surely becomes supererogatory. Indeed it is suspected that the House of Lord's endorsement of the reduction in the rate of interest to two per cent in *Wright v British Railways Board* [1983]2 AC 773 reflects an uneasiness at making any award at all...."*

There has in the past been no sign of any move by plaintiffs to claim, or by the courts to award, interest on damages in actions of defamation, false imprisonment, malicious prosecution and the like."

55. It is not the practice of the courts in this jurisdiction to award no interest on damages for non-pecuniary losses or in false imprisonment or malicious prosecution cases. However the court does have a discretion in the award of interest.
56. In approaching the general damages award in the round, I consider it appropriate to award sums that would compensate the Claimants for their injury to feelings and reputation over an extended period. The interest component of the general damages is in the region of 3% per annum for a period of 8 years (from October 2006 to July 2014).
57. As to special damages, I award interest to compensate the Claimants for being kept out of pocket for pecuniary losses incurred through the years of their prosecution and detention. Interest is awarded at the rate of 3% per annum from May/June 1994 to July 2014.

THE ORDER

58. The court therefore orders as follows:
- (i) The Third Defendant shall pay the First Claimant general damages assessed in the sum of \$1,100,000.00, inclusive of aggravated damages and interest.
 - (ii) The Third Defendant shall pay the First Claimant special damages assessed in the sum of \$192,420.00, with interest at the rate of 3% per annum from May 9, 1994 to July 3, 2014.
 - (iii) The Third Defendant shall pay the Second Claimant general damages assessed in the sum of \$620,000.00, inclusive of aggravated damages and interest.
 - (iv) The Third Defendant shall pay the Second Claimant special damages assessed in the sum of \$233,120.00, with interest at the rate of 3% per annum from June 2, 1994 to July 3, 2014.

(v) The Third Defendant shall pay the Claimants' costs to be assessed in default of agreement.

Dated this 11th day of December, 2014.

P. Sobion Awai
Master