

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2012-04788**

**BETWEEN**

**PAUL CHOTALAL**

Claimant

**AND**

**DEOLAL KANHAI**

First Defendant

**MAHADEO SAMAROO**

Also called **SAMAROO**

Second Defendant

**SUNNITY SINGH**

Third Defendant

**ALISA CHANDROUTIE SINGH**

Also called **ALICIA**

Fourth Defendant

**CHANDRADATH JADOONANAN**

Also called **JOHANNY SAMAROO**

Fifth Defendant

**SEEPEERSAD JADOONANAN**

Also called **MUKESH SAMAROO**

Sixth Defendant

**MUSTAPHA KARIM ALI**

Seventh Defendant

**Before the The Honourable Madam Justice Margaret Y Mohammed**

**Dated the 5<sup>th</sup> September 2016**

**Appearances**

**Ms R Ramlogan Attorney at law for the Claimant**

**Ms G Ganness Attorney at law for the First, Third, Fourth and Fifth Defendants**

### **REASONS**

1. The Claimant and the First to Seventh Defendants are neighbours residing at Debie Trace, Rochard Road, Penal. The Claimant's case is on the 24<sup>th</sup> day of November, 2008 at about 6:15 am all the Defendants physically attacked him while he was on his way to his mother's home which is also situated at Debie Trace, Rochard Road, Penal to collect food. As a result of the attack he sustained injuries. The Claimant also alleged that he made a police report thereafter and that from his perspective the incident arose from a land dispute between his mother and the Defendants.
2. The First, Third and Fourth Named Defendants, in their defence, have put forward a different version of the facts as stated by the Claimant. They deny any land dispute. They alleged that it is the Claimant who attacked the Fourth Defendant and her daughter Dana as they were standing near the roadway in front of their gate awaiting transportation to take Dana to school. According to them, the Claimant approached them and threw stones at them from a bucket which he was holding causing the Fourth Defendant to sustain

injury to her upper left arm. He later threw dogs' excrement on the Third Defendant. The First and Fourth Defendants further alleged that the Fourth Defendant and her daughter were shortly after the alleged incident taken by the First Defendant to the Penal Police Station to make a report of the incident and then to the Penal Health Centre to seek medical attention. Whilst they were in their vehicle at the Penal Health Centre, the Claimant attempted to pull Dana out of the back seat of their vehicle and two passers-by pulled the Claimant away and threw him to the ground which is what caused his injuries.

3. The Fifth Defendant denied that he participated in the incident since he was at the time at work at a pineapple farm situate at Manohar Trace.
4. The issue which arose for determination was whether the First, Third, Fourth and Fifth Defendants caused personal injury to the Claimant by an assault and battery on the 24<sup>th</sup> November 2008.
5. Both parties referred to the definition of an assault in **Andrew Lee Kit v Carol Charles**<sup>1</sup>, where Stollmeyer J (as he then was) stated "The long standing definition of assault is an overt act by word or deed indicating an immediate intention to commit a battery, together with the capacity to carry the threat into action, or to put a plaintiff in fear of an immediate assault. It is an intentional act. There is an assault if there is a menace of violence with a present ability to commit it, but there will be no assault if the threat cannot be put into effect."
6. In **Fabien Garcia v The Attorney General of Trinidad and Tobago**<sup>2</sup>, Dean-Armorer J explained that, "*An assault is established once the Claimant can prove that a reasonable man, if placed in his position at the relevant time, might have feared that unlawful physical force was about to be applied to him.*" The Honourable Judge in the said case defined battery as "*the application of force to another, resulting in harmful or offensive conduct. The elements necessary to constitute a battery are the application of physical force and the absence of a lawful basis for applying same.*"

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<sup>1</sup> CV 3870 of 1995

<sup>2</sup> CV 2009/00959

7. The determination of the issue is a question of fact and the Court has to determine on a balance of probabilities from the evidence presented whether the Claimant has discharged his burden of proving that all the Defendants were guilty of causing his injuries on the 24<sup>th</sup> November 2008. There was no evidence if the Second, Sixth and Seventh Defendants were served with the proceedings therefore the Claimant proceeded with the matter against only the First, Third, Fourth and Fifth Defendants.
8. At the trial the Claimant and his mother Mrs Radhika Chotalal gave evidence on his behalf. The Defendants evidence came from the First, Third, Fourth and Fifth Defendants. Both sides gave diametrically opposite version of the events. In determining the version of the events more likely in light of the evidence the Court is obliged to check the impression of the evidence of the witnesses against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**<sup>3</sup> cited by Rajnauth –Lee J (as she then was) in **Mc Claren v Daniel Dickey**<sup>4</sup>).
9. Based on the evidence from the witnesses there were four persons who witnessed the incident the Claimant, his mother Mrs Chotalal, the Third and Fourth Defendants. The First and the Fifth Defendants evidence were they were not around at the time of the incident. Having examined the evidence I have concluded that the Claimant has failed to discharge the burden of proving on a balance of probabilities that the Defendants assaulted him and caused him injuries for the following reasons.

***Consistency between Claimant's pleading and evidence***

10. The Claimant's evidence did not support his case. According to his statement of case, there was a land dispute between the Defendants and the Claimant's mother over a parcel of State land situate at Debie Trace, Rochard Road, Penal.

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<sup>3</sup> Privy Council Appeal No. 36 of 1897

<sup>4</sup> CV 2006-01661

11. The Claimant's evidence from his witness statement was that the reason the Defendants attacked him was that there was a land dispute between the Defendants and his mother whereby the Defendants were forced to relinquish a portion of their lands in favour of the Claimant's mother when the Penal Debe Regional Corporation designated a portion of the neighbouring lands to build a recreational ground. According to the Claimant this forced the surrounding inhabitants including the Defendants to give up certain portions of their lands with the exception of his mother whom he claimed was given more land because she was on the land for more than 20 years. However, apart from the Claimant's evidence, he provided no further evidence to corroborate his contention for the reasons the Defendants attacked him. He stated on the morning of the 24<sup>th</sup> November 2008 he was on his way to collect food from his mother's house which was situated opposite the home of the First, Third and Fourth Defendants when they, together with the four other Defendants attacked him causing him to suffer injuries.

12. Under cross-examination, the Claimant's evidence on the sequence of the Defendants who attacked him was undermined considerably. Initially he stated that he saw first the First, Third and Fourth Defendants run out of their yard and started throwing stones at him. He turned around and started running in the opposite direction. Later he stated that he saw the Second, Fourth and Fifth Defendants run out and join the First, Third and Fourth Defendants. However he did not run away as soon as the First, Third and Fourth Defendants pelted him and he did not stay in one spot. Based on the Claimant's evidence in cross examination the Fourth Defendant would have been in two places at the same time. It was also inconsistent with his evidence in chief since he said that all the Defendants attacked him at the same time. Counsel for the Defendants asked him which of the two versions was accurate, that in his witness statement or in his cross-examination and remarkably he stated both. However despite being ambushed and attacked by all the Defendants and with serious injuries to his left knee and a dislocated right knee cap he was able to outrun 7 adults for about 200 metres to escape them. In my view this material inconsistency between the Claimant's pleaded case, witness statement and cross-examination weakened the credibility of the Claimant's case.

13. He averred that on the 24<sup>th</sup> November 2008 at 6:15 am the First, Third and Fourth Defendants ran out of their gates which was opposite to his mother's house and began to pelt stones at him. Following them were the Sixth and Seventh Defendants. While all Defendants were attacking him, throwing stones and hitting him he tried to run away and dislocated his right knee cap. He alleged that the Defendants hit him and the Fourth Defendant held on to his shirt and pulled it and as all the Defendants were hitting him he fell on top of the Fourth Defendant. He stated that he suffered injury to his left knee, left elbow and right side of his face and that he dislocated his right knee cap.
14. The Claimant also pleaded that he called the Penal Police Station at the same time and then he made a report. In his witness statement he said he went to the Penal Police Station at 7:30 am and made a report to WPC Jeffrey. However he failed to provide any police report to corroborate his evidence which again undermined the credibility of his version of the incident.
15. The Claimant pleaded that he went to the Penal Health Facility on the day after the incident where he was treated for his injuries which he repeated in his witness statement. He produced a medical report to corroborate this aspect of his evidence which I will address later.
16. The evidence from the Claimant's witness on the incident was unreliable and did little to assist in corroborating his evidence. Radhika Chotalal is the mother of the Claimant who was 66 years at the time of the incident. According to her witness statement she was standing in her yard taking care of her plants while she was waiting on the Claimant to arrive to collect food to take to work. She saw the First, Third and Fourth Defendants outside in their yard since their house is situated directly opposite her property. As she saw the Claimant walking towards her house she heard the First Defendant say something then she saw the First, Third and Fourth Defendants run out their yard, pick up stones and began to pelt the Claimant with the stones. She then saw the Second, Fourth and Fifth Defendants who were downstairs the house of the First Defendant run out and joined with the others to pelt the Claimant. Based on Mrs Chotalal's evidence in chief, just like the

Claimant's evidence the Fourth Defendant was at two places at the same time when she first saw him namely outside the house in the yard and downstairs the house of the First Defendant. She also stated that she looked across to the Seventh Defendant's house and she saw him standing in his yard pelting stones at the Claimant. She then called out to the Claimant instructing him to return to his house and then she saw him turn around run a short distance away before stopping in the middle of the trace at which point all the Defendants ran towards him and started to slap and cuff him. However she could not see the Claimant since he was surrounded by the Defendants yet she could see that he was being cuffed and slapped by all of them. A few minutes later she then saw the Claimant running towards his house and the Defendants following him but not to his house since they all returned to their homes. If Mrs Chotalal's evidence in chief did not raise doubts in my mind as to her credibility, her evidence in cross-examination did not assist in removing my doubts.

17. I was in grave doubt if Ms Chotalal actually witnessed the alleged beating since her evidence was that the First Defendant's house was opposite to her house and there was a goat pen at the entrance of her driveway. In cross-examination Mrs Chotalal stated that where she was standing was about 100 feet away from Debie Trace and there was a fence around the First Defendant's house and a gate in front. There were flowers and she could see the garage and to see under the house she would have to go more outside but from the yard she could see the garage. She also admitted that she ran out because the trees were blocking her so she could see good.

18. I also doubted whether her version of the incident was her own eye witness account or whether she was simply relaying what was told to her by her son to fill in the gaps. Mrs Chotalal admitted in cross-examination that the Claimant reminded her the night before the trial about the incident and while she could not remember the date she remembered everything that happened on the date. She was able to recall which Defendants attacked the Claimant and the manner of the attack. When questioned who were the men standing downstairs the home of the First Defendant she said that Samaroo the son, Johnny the father and Rasta Mukesh the son. However there is no mention in her witness statement

that the Sixth Defendant, Mukesh Samaroo was downstairs the home of the First Defendant. Further despite her clarity of recall of the incident, she was unable to state what she had cooked that morning for the Claimant to take to work or what the Claimant was wearing when she saw him walking towards her house. In my view this is significant since both the Claimant and Mrs Chotalal said that the purpose the Claimant was visiting her that morning was collect food from her. Therefore at the very least she ought to have recalled what she had prepared for the Claimant to collect on that morning.

### *The Defendants pleading and evidence*

19. The First, Third and Fourth Defendants admitted that an incident did occur on the 24<sup>th</sup> day of November, 2008. They denied that there was any land dispute between them and the Claimant's mother. They denied they threatened or chased away any officers from the Penal Debe Regional Corporation when they visited the site of the proposed recreation ground in 2002 and that the construction of the recreation ground was in progress. They alleged that it was the Claimant who threw stones at the Fourth Defendant and her daughter, Dana whilst they were standing in front of their home at Debie Trace, Rochard Road awaiting transportation to take Dana to school. The Claimant allegedly approached them and threw stones at them from a bucket which he was holding causing the Fourth Defendant to sustain injury to her upper left arm They further claimed that later that same day the Claimant threw dog excrement on the Third Defendant and shortly after the alleged incident the Fourth Defendant was taken by the First Defendant to the Penal Police Station to make a police report arising out of the incident and then to the Penal Health Centre to seek medical attention. At the Health Centre whilst they were in their vehicle, the Claimant attempted to pull the said Dana out of the back seat of their vehicle. Two men pulled the Claimant away and threw him to the ground which caused his injuries. The Fifth Defendant has pleaded that he has no knowledge of the incident as he was at work at a pineapple farm at Manohar Trace at the time of the incident.
20. The First Defendant's evidence was consistent both in his witness statement and during cross-examination that he did not witness the incident. The only value of his evidence is

he corroborated the Fourth Defendant's evidence that he took her to the Penal Police Station and then to the Penal Health Centre on the same day after the incident for her to seek medical treatment. He acknowledged that all he knew about the entire incident was what the Third and Fourth Defendants reported to him. While he omitted to state in his witness statement which he stated during cross-examination that when the Fourth Defendant came into the house her shoulder was bleeding, in my view this inconsistency is immaterial since the Fourth Defendant's medical report did not indicate that there was bleeding but abrasions most likely caused by a blunt force object.

21. The Third Defendant's evidence was in a large part consistent with that given by her daughter, the Fourth Defendant and her son in law, the First Defendant. According to her she was sweeping her yard at the front of the house while the Fourth Defendant, her daughter and her granddaughter Dana was standing in front of their home awaiting a taxi. The Claimant had a bucket with stones and was pelting the stones at them. He also had a knife in the bucket which fell out onto the road. In cross examination, she admitted that the yard was relatively small and that she could see the Claimant pelting stones from the top of his mother's driveway. She too stated that her daughter's hand was bleeding which she omitted to state in her witness statement.

22. She also confirmed that First and Fourth Defendants went to Penal Police Station and the Claimant returned and threw dog excrement on her. In my view this aspect of the Third Defendant's evidence is not inconsistent with the First and Fourth Defendants evidence who stated that the Claimant met them at the Penal Health Centre where he attacked their daughter. Based on the sequence of the events as set out in the First and Fourth Defendants evidence, the incident happened around 6:30 am, by 8:30am the First and Fourth Defendants went to the Penal Police Station where they were advised to seek medical attention for the Fourth Defendant at the Penal Health Centre. After the incident at the Penal Health Centre the First and Fourth Defendants returned to the Penal Police Station to make a report of the second incident. In my opinion it was highly plausible that the Claimant could have returned to Debie Trace while the First and Fourth Defendants were by the Penal Police Station on the first occasion when he threw dog excrement on the Third Defendant and then he proceeded to the Penal Health Centre. I therefore

attached weight to the Third Defendant's eye witness account of the Claimant pelting the Fourth Defendant and her grand-daughter Dana since it was consistent with the Defendants Defence and the totality of the Fourth Defendant's evidence which I will now address .

23. The Fourth Defendant's evidence was she was standing with her daughter in front of their home waiting for a taxi to take her daughter to school when they were approached by the Claimant who was near the entrance of his mother's driveway which was situated opposite to their home. The Claimant took out stones from a bucket he was carrying and threw it at the Fourth Defendant causing her to sustain injuries. According to the medical report from the Penal Health Centre it stated that she sustained abrasions to the lateral aspects of her upper left arm. Under cross examination she said that the Claimant threw big stones at her and her daughter about the size of her palm. She stated that her arm was bleeding and she admitted that she did not state this in her witness statement. Whilst at the Penal Health Centre the Claimant attempted to pull her daughter Dana from the back seat of the car and he was only restrained by two passers-by and this is what caused the Claimant's injuries. Apart from the inconsistency of the bleeding of her arm in my view the Fourth Defendant's evidence was in a large part consistent with the Defence and was corroborated by the First and Third Defendants evidence.

24. According to the Fifth Defendant he lives at Debie Trace Penal. His overall evidence was that he was not present at the time of the incident since he said he was at work at Manohar Trace with one Roy Hosein and that he could not account for the Claimant's injuries. He admitted that he did not produce any evidence from his employer to confirm that he was at work at the time of the incident on the basis that he did not think that it was important. While I accept that the Fifth Defendant did not produce any corroborating evidence to support his assertion I accept his evidence given the inconsistencies in the Claimant's evidence implicating him in the incident and the consistent evidence of the Third and Fourth Defendants .

25. Therefore, although there were omissions from the Defendants evidence they were not material in the totality of their evidence when compared to the evidence in support of the Claimant's case.

### *The Contemporaneous documents*

26. The contemporaneous documents to juxtapose against the witnesses evidence was limited. They consisted of the Claimant's medical report dated the 9<sup>th</sup> July 2011 ("the Claimant's medical report"), the Fourth Defendant's medical report dated the 24<sup>th</sup> November 2008 ("the Fourth Defendant's medical report"), the First Defendant's police statement ("the First Defendant's police statement") and the Fourth Defendant's statement both given to the police at the Penal Police Station after the incident ("the Fourth Defendant's police statement"). There was no hearsay notice filed by any of the parties to have the contents of the medical reports and the statement admitted into evidence as to the truth of the contents. However neither party objected to them being tendered into evidence for the truth of their contents. In this regard I have treated the contents of the said documents as being admitted for the truth.

### *The medical reports*

27. The Claimant's medical report and the Fourth Defendant's medical report were exhibited to their respective witness statements as evidence in support of the injuries they sustained as a result of the incident. According to the Claimant's medical report he had soft tissue injuries to the left temporal region, left forearm and left knee and an abrasion on right elbow. The Fourth Defendant medical report stated that she suffered abrasion to the lateral aspect of her upper left arm and that the injuries were probably inflicted with a blunt object. An examination of the medical report tendered by the Claimant showed that while it was dated the 9<sup>th</sup> July 2011 it stated that the Claimant was examined on the 25<sup>th</sup> November 2008. On the other hand the medical report attached to the Fourth Defendant's witness statement was dated the 24<sup>th</sup> November 2008. In my view both reports were contemporaneous documents since the Claimant's medical report would have been compiled from the medical records at the Penal Health Centre.

28. However, in determining the weight to be attached to each medical report I considered that I did not have the benefit of either medical practitioner's testimony. I therefore attached more weight to the Fourth Defendant's medical report for the following reasons:

- (a) The Fourth Defendant's medical report was prepared by the physician who attended to her. The Claimant's report was prepared based on his medical records and not by the physician who attended to him.
- (b) The Fourth Defendant's medical report set out injuries which was consistent with her evidence and her statement to the police . The Claimant's report did not indicate that he suffered from any dislocated right knee cap which was his evidence. Notably the medical reports stated that “ At this visit the doctor requested a psychiatric assessment ” which added to my doubt on the plausibility of the Claimant's version of the incident.
- (c) The Fourth Defendant's medical report shows that she sought medical attention for her injuries on the same day of the incident. The Claimant's medical report stated he sought medical attention the day after the incident which meant that there could have been an intervening event between the time of the incident and when he sought attention which may have been the cause of the Claimant's injuries.

29. I also treated the First and Fourth Defendants police statements as contemporaneous documents since they were given on the same day of the incident. I attached much weight to the Fourth Defendant's police statement since it was given on the same day of the incident therefore it was based on a more recent memory compared to her evidence in the instant proceedings. Further, it corroborated the following material aspects of the Defendants pleading and her evidence in this matter namely, she was standing at the front of her gate with her daughter when she saw the Claimant from a distance approaching her with a bucket in his hand; when he reached a short distance from her he took out stones and pelt her; she saw a knife fall from the bucket with the stones; she ran and both the First and the Fourth Defendant reported the incident to the Penal Police Station; she sought medical attention at the Penal Health Centre where the Claimant

attempted to pull Dana out of the car and he was stopped from doing so by two passers-by.

30. I only attached weight to the First Defendant's police statement which confirmed that he took the Fourth Defendant to report the incident to the Penal Police Station and later to seek medical treatment at the Penal Health Centre and that while there the Claimant attempted to pull Dana out of the vehicle but he was stopped by other persons.

31. Therefore based on my assessment, in my view the contemporaneous documents did not support the Claimant's claim.

***The plausibility of the rival contentions.***

32. Given the inconsistencies of the Claimant's evidence with his pleaded case, his lack of corroborating evidence I have concluded that the Claimant's contention of the incident was less plausible when compared to the evidence of the First, Third, Fourth and Fifth Defendants.

**The Defendants counterclaim.**

33. The First, Third, Fourth and Fifth Defendants filed a Counterclaim and the Claimant did not file a Defence to the Counterclaim. Therefore pursuant to Part 8.13 (5) CPR the Defendants counterclaim is automatically struck out since the First, Third, Fourth and Fifth Defendants did not apply for judgment pursuant to Part 12 CPR.

**Order**

34. The Claimant's action is dismissed.

35. The First, Third, Fourth and Fifth Defendants Counterclaim is struck out pursuant to Part 8.13 (5).

36. The Court hereby declares that pursuant to Section 31 (3) of the Legal Aid and Advice Act Chapter 7:07 that the Claimant being an aided person has acted improperly in bringing these proceedings against the Defendants. Accordingly the Claimant shall pay to the Defendants prescribed costs in the sum of fourteen thousand dollars (\$14,000.00).

**Margaret Y Mohammed**  
**High Court Judge**